

Question 1 – One Hour

On July 7, Chance, a clerk at Quik Pix Digital Photo Shop, received an online order from Sal@thehitman.com to print a poster sized photo. The photo was date stamped July 4 and depicted a man in full tactical gear carrying assault weapons. Frightened by the image, Chance alerted Policeman Paul and provided him with the photo and email address attached to the order. Paul contacted the customer's Internet Service Provider (ISP), Hitman. Without a warrant, Hitman gave Paul the Internet Protocol (IP) address and billing address attached to that email.

The next day, Paul, in an unmarked car, began surveillance of this billing address, a single family suburban residence. He observed UPS make no less than a dozen deliveries over the period of several days. The UPS man routinely had to "pitch" the packages onto the porch over a 5' locked iron gate. When Paul noticed the packages remained unclaimed for several days, he decided to investigate. He hopped the gate and unstacked the boxes. They were all addressed to a "Sal," and the return business addresses included "Ammo-Man" and "Powder-Valley." Several bore large fluorescent stickers saying "SOLID EXPLOSIVE" and "Adult Signature Required." One of the heavier boxes had been damaged when UPS threw it over the fence. It was leaking a grey material that Paul recognized as extruded gun powder. He took the leaking package, intending to prepare a search warrant for the property. On his way out, neighbor Nellie cornered Paul, concerned he might be a burglar. He showed her his id and she breathed a sigh of relief; "I'm glad you're here. That man who lives here scares me. He's such a loner. I think he uses drugs; he's constantly ranting and raving to himself about the government."

On July 15, Paul was on uniformed patrol in the vicinity of the federal building when he noticed a man, later identified as Sal, carrying a large suitcase and pacing nervously on the sidewalk. Sal appeared to be the individual from the photo emailed to the Quik Pix store. Paul pulled over and approached on foot. Sal turned around, saw Paul, and ran to a taxi starting to load passengers. Sal pushed the passengers out of the way, slammed the suitcase in the trunk, jumped in, and told the taxi driver to speed away. Paul ran back to his car, activated his lights and sirens, and pursued the taxi. The taxi driver pulled to the side of the road to let Paul pass, as required by the Vehicle Code.

Instead, Paul pulled in behind the taxi and approached the driver's side. He ordered Sal out of the car and searched Sal's person. He removed a canister of tear gas from Sal's pocket and felt what he recognized to be personal body armor under Sal's clothing, the possession of which is a violation of state law. Paul placed Sal under arrest in his patrol car and returned to open the taxi's trunk. Paul removed Sal's suitcase, forced open its lock, and searched its contents. From among clothing and personal items Paul removed illegal firearms, Sal's full prescription bottle of psychiatric medication for schizophrenia, and Google Earth images of several federal facilities.

FBI agent Frank was called to the cell where Sal had been held. Frank read Sal his Miranda rights and asked, "So, what should we do with a person who wants to kill innocents?"

Sal answered, "You can ask my lawyer these questions."

Frank snickered, "What? Are the voices telling you there's a lawyer here waiting to help you? You are crazy. A man in your position should get psychiatric help, not jail."

Sal confessed to, and was convicted of attempted terrorism and weapons violations.

Discuss Sal's rights under the 4th, 5th, and 6th Amendments. Do not discuss any substantive crimes or defenses or any issues related to the proper jurisdiction for the prosecution of the case.

Question 2 – One Hour

“Spider” is a snitch for the local Sheriff’s Department. Over the last two years, he has been paid small sums of money for his tips, which generally proved reliable. Spider used the money to fuel his own drug habit. On one occasion, his perjury conviction was reduced from a felony and he was granted an early release off parole after he cleared up an unsolved robbery. Spider contacted Investigator Ike regarding a homicide that had occurred two years earlier, when Victim Vic was found dead in the garage of a home he shared with his wife. Spider told Ike that Vic’s ex-girlfriend Gaby was responsible, and provided leads to key pieces of evidence.

Armed with this information, Ike put together a photo-line-up for Spider to review. The 6 black and white images included a picture of a woman named Gaby taken 2 weeks earlier when Gaby was arrested on a domestic violence case. (Gaby was subsequently arraigned, appointed a public defender and released on those charges under the supervision of a probation officer). Spider looked at the line-up for 30 seconds, but could not identify her. Spider watched Ike replace Gaby’s 2 week old picture with a picture of Gaby taken 4 years earlier by the DMV. Ike left the other 5 photos in place. Spider immediately said “No question. It’s her.”

Gaby soon learned from her sources on the street that she was the target of a Grand Jury investigation into Vic’s death. Concerned that a homicide case could be too much for the Public Defender to handle, Gaby retained Attorney Abe to represent her in the Grand Jury proceedings. Her arrogance about having a real lawyer compelled her to email both Ike and the prosecutor proclaiming, “Beat you to the punch. You’re on notice that I hired a lawyer.”

The state beat back when Spider contacted Ike, hoping to work off a new case. Ike suggested Spider wear a police “wire” and engage Gaby in conversations regarding her relationship with Vic while Ike listened in. Spider agreed and invited Gaby out for the night. After sharing several pints of beer and shots of whiskey, Gaby confessed to Spider that she had “gotten away with murder.” She identified the location of the murder weapon from which DNA evidence was seized. Her taped statements and the weapon were presented to the Grand Jury.

Unfortunately, Gaby failed to notice that her probation officer on her domestic violence case had also been sitting at the same bar. It was a condition of her release that she was not to consume alcohol or be in a place where alcohol was the primary item of sale. The following day the probation officer arrested her and placed her back in custody at the county jail.

Trying to put the nail in the coffin of Gaby’s homicide case, Ike went to visit Gaby in jail. He began by reading Gaby her Miranda rights. Gaby replied, “I want to talk to my lawyer first if I’m going to be charged.” In an abundance of caution, Ike left to go to the jail lobby. He tried twice, unsuccessfully, to reach Gaby’s Public Defender who was stuck in court, and Abe, who was stuck in Tahoe. While waiting in the lobby, Ike ran into the prosecutor who presented the case to the Grand Jury, and learned that the Jury had just handed down an indictment against Gaby for first degree murder. Ike returned to Gaby’s cell and told her, “Sorry, it’s too late for you. I wish I could have helped you.” Hearing this, Gaby broke down sobbing, begging for help, and confessing to Ike that she killed Vic during an incident of domestic violence.

At her trial for Vic’s murder, Gaby disregarded Abe’s advice and testified in her own defense over Abe’s objection. She was convicted and sentenced to prison.

Discuss Gaby’s rights under the 4th, 5th, and 6th Amendments. Do not discuss any substantive crimes or defenses or any issues related to the chain of custody of the evidence.