

Criminal Procedure Final Exam Summer 2012
Question 1 - Issues Outline

Initial investigation of Sal's Photos

- Government action by Paul and Chance? (4th)
- Standing in Sal's photos sent to Quik Pix? (Katz)
- Standing in ISP records held by Hitman? (Miller)

Surveillance and search of Sal's Porch

- Porch as home, curtilage or open field? (Dunn)
- Warrant required to investigate packages? (4th)
- If yes, exception to the warrant requirement?
 - Abandoned property? (Greenwood)
 - Plain view exception? (Hicks)
 - Exigency exception? (Hayden)
 - Probable cause exception? (Azevedo)
- Conversation with Nellie the neighbor
 - Confidential reliable informant? (Aguilar-Spinelli)
 - Supplies sufficient probable cause to arrest Sal? (Gates)

If 4th Amendment violation at this point, does time or independent source attenuate the taint?

Initial encounter with Sal in the vicinity of the federal building

- Consensual encounter, detention, or arrest?
- If detention
 - Reasonable articulable suspicion of criminal activity? (Terry)
 - Submission to show of authority or application of physical force? (Hodari)
- If arrest: Probable cause to arrest? (Gates)
- Standing in a taxi? In a suitcase in taxi's trunk? (Rakas)
- Exceptions for search of Sal's person and property
 - Terry pat? (Terry and Long)
 - Search incident to arrest exception for Sal? (Chimel)
 - Search incident to arrest exception for taxi? (Gant)
 - Probable cause exception for search of the taxi? (Azevedo)

Interrogation of Sal by Frank/three approaches

- 5th Amendment Voluntariness standard: mental health impairment (Connelly)
- 6th Amendment Right to Counsel standard: Sal's statement suggest he is represented?
- 5th and 6th Amendments Miranda approach
 - Custody? (Orozco)
 - Interrogation? (Innis)
 - Did Sal invoke Miranda's 6th Amendment protection? (Edwards)

Application of exclusionary rule (Wong Sun)

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Use of Spider the Snitch: reliable informant? (Aguilar-Spinelli)

Photo-Line up for Spider's review

- 6th Amendment critical stage? (Ash)
- 5th Amendment due process violation/unduly suggestive (Simmons)

Significance of Grand Jury investigation

- 6th Amendment critical stage? (Mandujano)
- Notice to Ike and the prosecutor regarding retention of Abe?

Wiring of Spider to secure statement from Gaby?/three approaches

- Spider an agent of the state/government action?
- 5th Amendment Voluntariness standard: alcohol impairment (Spano)
- 6th Amendment Right to Counsel standard: offense specific (Cobb)
- 5th and 6th Amendments Miranda approach
 - Custody? (Orozco)
 - Interrogation? (Innis)
 - Did Gaby invoke Miranda's 6th Amendment protection? (Edwards)
- If a 5th or 6th Amendment violation, is exclusionary rule applicable?
 - Grand jury proceeding? (Calandra)
 - Physical evidence seized subject to exclusion? (Patane)

Arrest of Gaby by her Probation officer

Gaby's jailhouse confession to Ike/three approaches

- 5th Amendment Voluntariness standard: alcohol impairment (Spano)
- 6th Amendment Right to Counsel standard
 - 6th Amendment offense specific? (Cobb)
 - Did intervening indictment trigger the 6th Amendment? (Edwards)
- 5th and 6th Amendments Miranda approach
 - Custody? (Orozco)
 - Interrogation or functional equivalent? (Innis)
 - Invocation by "I want to talk to my lawyer first...?"
 - Did Gaby invoke Miranda's 6th Amendment protection? (Edwards)
- If a 5th or 6th Amendment violation, is exclusionary rule applicable?
 - Grand jury proceeding? (Calandra)
 - Physical evidence seized subject to exclusion? (Patane)

Gaby's decision to testify in her own defense: confessional admissible (Harris or Ventris)

Application of exclusionary rule (Wong Sun)