

- 1) You authored two exceptionally well organized, succinct exams which demonstrate a solid understanding of the subject. Well done!

Government Actor

The Constitution provides protections against government actions. To assert a violation of a constitutional right, there must have been action by a government actor or agent. Detective Don is a paid officer of the state and is considered a government agent.

Standing - Uri

For an individual to assert ^{his} their Fourth Amendment right, they must have had a reasonable expectation of privacy in the place searched or items seized. The reasonable expectation of privacy is measured by the Katz standard: An individual manifested a subjective expectation of privacy and society finds that expectation to be objectively reasonable.

Detective Don stops Uri while he is driving his car for Uber. Uber drivers typically own their vehicles which as the owner and operator would give Uri Fourth Amendment protection in his car. Society recognizes a reasonable expectation of privacy in ones car, although it is considered a lesser expectation than ones home.

Uri has standing to the search and seizure of his vehicle and his cell phone.

Fourth Amendment

The Fourth Amendment is the right of the people to be secure in their persons, houses, papers and effects from unreasonable searches and seizures by the government. A warrantless search is presumed to be unreasonable unless one of the outline exceptions apply.

Don's seizure and subsequent search of Uri, his vehicle and his phone were all conducted absent a warrant.

Pretext Stop

Detention: When an officer has an articulable reasonable suspicion of criminal activity he may stop a suspect for an investigatory detention which is limited in scope and time. Under California v. Hodari, one is seized when an officer applies physical force or when a subject submits to a show of authority. Upon viewing a car driving under the speed limit, Don activated his lights (show of authority) and Uri pulled over (submission to authority) which resulted in a detention for both Uri and his passenger Paul.

Don will assert that driving under the speed limit is indicative of intoxication or driving under the influence which justifies the detention. Uri will assert that the xenophobic detective was racially profiling when he made the stop; however, the fourth amendment would not be the right avenue to remedy that assertion but rather the equal protection clause. See *Whren* → pretext okay as long as suspicion is reasonable

During the investigatory detention Don did field sobriety tests and Uri passed. At this time the purpose of his investigation was likely complete (if he truly pulled him over on

suspicion of driving under the influence) however he continued to detain Uri. Detentions should be for only as long as necessary and when Don kept Uri longer to use her Textalyzer, Uri could assert that it was now a prolonged detention absent any probable cause. Don may bring up, however, that distracted driving could also be a reason for the slow driving and was justified.

Search of Vehicle

? See Brendlin
 Under Arizona v. Gant, an officer may search a recent occupant of a vehicle and the car incident to arrest for the purpose of safety and to find any evidence of the crime. Paul did not have standing in the car (he was a passenger in the vehicle) and may not assert a violation. However, Don going into the car was not a valid warrantless search *state* under Gant because Paul was arrested on an outstanding warrant for assault and *weapons* therefore no evidence of that crime could reasonably be found in the car. The only way the search under the drivers seat could be valid is under the theory of Michigan v Long which states an officer can search for weapons inside the car in places that are immediately accessible to the suspect. *if articulably armed + dangerous.*

Use of Textalyzer *Move up.*

A search of a cell phone typically requires a warrant as it is deemed to have an expectation of privacy. While Don did not have a warrant, the issue here is if the textalyzer equipment would be considered a search under the Fourth Amendment. While it first states it can only determine activity, the fact that it was able to determine what site Uri was last on shows that it can gather personal information from the cellphone and I believe this would be considered a search under the Fourth Amendment and would require a warrant.

Pat Search

Immediately following the textalyzer results, Don conducts a pat search of Uri. Under Terry v. Ohio, a warrantless open hand pat search may be done when an officer believes one to be armed and dangerous for the purpose of officer safety. Here, since a loaded handgun was found under Uri's driver seat, Don may have reason to believe Uri could be armed so the pat down search is permitted to check for weapons. Under the plain feel exception, when the officer conducts the pat search and feels something immediately apparent as contraband, he may seize the object. When Don conducted the search he "retrieved ammunition from Uri's pants pocket." Assuming Don did not manipulate the pocket and it was immediately apparent to him to be contraband, his seizure was valid.

Arrest of Uri

An arrest must be on a basis of probable cause given the totality of the circumstances. Given the discovery of the loaded handgun within the vehicle as well as the ammunition from the pocket, there was probable cause to arrest Uri without a warrant. *good!*

Search of the Trunk

After the car was impounded, the police searched the vehicle two days later in a valid inventory search. This may be conducted when a car is impounded for safety and anti-

*Does a search 2 days later address the underlying rationale for an inventory search?
 Question re. papers?*

theft reasons. The search of the trunk for the inventory search is valid and the discovery within is legally obtained evidence.

Confession

Due Process (Voluntariness Approach): When one gives a involuntary incriminating admission due to police coercion, the conduct is a violation of the suspects 5th and 14th amendment rights and is inadmissible. If the admission is one of free will or police coercion will be determined by looking at several factors such as length of interrogation, threats, promises and mental capacity. Here, the environment Uri was placed in and Don's comments to Uri were never of a coercive nature and Uri admission on a phone call is one of free will.

Self Incrimination (Miranda): Custodial interrogation by police categorically present a risk for coercion and any incriminating statements made during a custodial interrogation are presumed inadmissible unless procedural safeguards are observed. Under Miranda, one who is in custody (a reasonable person would not feel free to leave) and is being interrogated (police activity likely to elicit an incriminating response) requires that the suspect be advised that they 1) have right to remain silent 2) anything can be used against them and 3) they have the right an attorney either retained or appointed. While Don told Uri he was not under arrest and Uri sat not hand cuffed in a open room, he still may be considered in custody. It is likely he did not feel free to leave as Don was awaiting a call from immigration and one would likely feel that they could not get up and walk away until being cleared. For this reason, Don should have told Uri has Miranda rights. In addition, it could possibly be found that Uri invoked his rights when stating he wished to call his uncle who was "better than the public defender." If this is deemed a clear assertion, then questioning must stop. *Is this a sufficient invocation?*

The incriminating admission, however, was not obtained by the actions or questions of Don. Rather, Uri was left in a police room talking to his Uncle. Even though he may assert that this was an attorney client talk and he had invoked his right to an attorney, this is likely not the case. Since there is no expectation of privacy on information stated over the phone to a third party in a setting such as a open police room, it is likely the taped confession by Uri is not a violation of Miranda.

Sixth Amendment: The right to counsel by one being charged of a crime attaches after the first accusatory pleading. Here, Uri was not yet charged so his right to counsel's presence at the police station had not yet attached.

Exclusionary Rule

Under the exclusionary rule, any evidence obtained by a violation of an individual's constitutional rights will be suppressed and not admissible at trial unless an exception occurs. Uri will move to have the search of the car be a violation of a constitutional right as a search of the car incident to Paul's arrest may not have been valid. Uri will want to suppress the "Poisonous Fruit" from that search which will include the loaded handgun and ammunition. Uri will also move to suppress the information found by the Textalizer which will likely be suppressed as a violation for a warrantless search.

Exculpatory Evidence

Paul testified at Uri's trial, however, the DA didn't disclose that he had been convicted of perjury which is information that would tend to help the defense and the DA had a duty to share that information with Uri's counsel prior to trial. *Good.*

1/4 : You authored two great exams!
The organization was outstanding and issue

Exam Name: Criminal Procedure Final, Stark Slater, Summer 2017

ID:

~~Spelling detailed. Keep it up!~~

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2) *ψ in 1 para.*

GOVERNMENT ACTOR

The Constitution protects people against certain acts by the government. In order to argue a violation of the 4th, 5th, or 6th Amendment, the act in question must have been committed by a government actor. Here, O'Day (O) is a police officer, and therefore a government actor.

STANDING - DEX

In order to object to a Constitutional violation, an individual must have Standing. Standing, in respect to the 4th A, requires that the individual have an *actual* (subjective) expectation of privacy, and that society is objectively willing to recognize that expectation (*Rakas*). The *Katz* court determined that this expectation of privacy not only applies to places, but to the person as well. Here, Dex has a reasonable expectation in his car, that society would be willing to recognize. Dex has standing, however, the amount of privacy may not be much.

FOURTH AMENDMENT

The 4th A to the Constitution, as applied to the States through the 14th A, protects the people from unreasonable searches and seizures by the government of their person, house, papers, and effects. Absent exceptions, any search or seizure by a government actor requires a warrant issued by a neutral magistrate, founded on probable cause, that is particular to the person, place, or things to be searched and seized.

DETENTION - DEX / INFORMANT

A detention occurs when an officer displays signs of force, or if the individual submits to a show of the officer's authority (*Hodari*). An officer must have an articulable reasonable suspicion (ARS) that criminal activity is afoot in order to detain an individual. Here, O has ARS that criminal activity is afoot, based on what his dispatcher told him, that there was a "physical altercation". In reality, it seems that three men were only arguing, not fighting physically. O and dispatch also may have negligently relied on a non-reliable informant, Mel (M). The *Aguilar* court devised a two-part test to determine whether an informant is reliable; 1.) the basis of knowledge for their tip, and 2.) their veracity. The *Spinelli* court added a third prong, that there must be additional corroborating evidence to support Probable Cause (PC). M most likely had good knowledge to base his tip off of, as he was witnessing the occurrence. His veracity might not be tested, if he has never provided a tip before. However, he would likely describe what was going on accurately since it was his store. M provided the dispatcher with three characters of the license plate, which ended up not matching the D's license plate. However, the comparison was close enough to believe that this may have been D's car, and enough to corroborate M's tip.

Dex is pulled over by O and briefly complies. This is not enough to show that D was detained, because the facts state that it was brief, and D fled on foot shortly after. D was not detained.

O ENTERS D'S CAR / SEIZES LICENSE

Once D flees, O returns to D's car. Again, Dex has standing as to his car, but there is an issue that he abandoned it in his flight from O. There is no expectation of privacy for abandoned items. However, D may argue that he was coming back to his car, and thus it wasn't abandoned. This would require O to obtain a warrant to search his car, absent an exception to the warrant requirement. O may argue that he was in "hot pursuit" of D, and thus was able to search for evidence that could lead to him and conserve public safety (*Warden v. Hayden*). O may also argue that the license was in his plain sight. The plain sight exception to the warrant requirement can allow the officer to seize the

evidence if he is 1.) lawfully in the place where he was, 2.) the evidence was objectively illegal, and 3.) that it was in his plain sight. A license is not objectively illegal, so this would not suffice.

O SHOWS LICENSE TO OTHERS TO ID D

This showing of D's license to the employees amounts to a photo line-up. D has not yet been charged or indicted, so this sort of line-up would typically be allowed (*Kirby*). However, D may argue that there was a Due Process violation, as his picture was the only one shown. This is unduly suggestive to the employees taking part in the identification. Thus, this identification may not be allowed in as evidence. O may argue that Pete's identification would amount to an Independent Source. The Independent Source exception to the exclusionary rule allows illegally obtained evidence to be introduced, if the evidence has been found completely unrelated to the misconduct. Pete seemingly not involved in the ID of D, said that he has seen him before downtown, and that he was homeless. This would be too close to the misconduct, and the unduly suggestive aspects of the ID would likely extend to Pete.

good!

PC for

INFORMANT - HILDA

Informant requirements mentioned supra. Hilda may have a good basis of knowledge for her tip, however she is prone to hallucinations, thus her veracity is also most likely not trustworthy.

O FINDS D'S TENT AND ENTERS

Does D have standing in his tent? It seems that this is D's current home, which gives him the subjective reasonable expectation of privacy, and society would objectively agree with that, although it does not amount to the protection of a permanent home.

Carney issue

O announces his presence at the tent, however, he does not have PC to believe that this is actually D's tent (Hilda's reliability mentioned supra). O does have a warrant for D's arrest, which would allow him into D's tent, however, O could not know for sure that this Tent was D's. O announces his presence at the Tent, and received no response. the *Richards* court requires that an officer knock and announce his presence and intent before forcibly entering the home, or in this case, tent, unless there are exigent circumstances. There are no exigent circumstances here, as facts do not indicate that O hears anything that may be destruction of evidence. O did announce his presence, however, did not articulate that he was there because of an arrest warrant. O's entry into the tent will most likely be considered unlawful, as he did not have PC to believe that this was D's tent.

O SEIZES THE KNIFE AND METH

O has an arrest warrant for D, but not a search warrant. D will argue that O entered the tent unlawfully, via unreliable information. O will argue that his training and experience led him to believe that this was D's tent. O will argue that he seized the knife and meth incident to arrest, as the items were most likely within the immediate control and access of D (*Chimel*). (and plain view?)

O SPEAKS TO D AT D'S CELL

Move this up here

D is arrested at this point, and is brought to jail specifically for questioning. O asks D if he wants to talk, and D responds "no, not really". This is not an unequivocal invocation of D's 5th amendment right to remain silent. The facts also do not state if D is aware of his *Miranda* rights, as they may not have been read to him when he was arrested. O asks D if he "wants to clear things up", which can be considered the functional equivalent of questioning, as O may be trying to illicit an incriminating response. D says that he does want to clear things up, but O says that his right to remain silent has already been invoked. D can waive that right to remain silent in this scenario, as long as he does so voluntarily, knowingly, and intelligently. O is obliged to scrupulously honor D's right to remain silent, however, it does not seem that the right was unequivocally invoked in the first place. O likely knew that, meaning that his statement may have been made to keep D in jail and create a more coercive environment for a confession.

SAL VISITS DEX

At this point, X has been arraigned, and his Right to Counsel has attached, as he has now begun adversarial criminal proceedings (*Massiah*). D's is entitled to have his public defender with him at any subsequent parts of the proceedings. Sal asks D if he still wants to straighten this out, then D confesses to assault and possession of contraband. Sal's statements may be seen as questioning, as he is inviting D to speak. This may be considered custodial interrogation, which would invoke another reading of D's *Miranda* rights, if they have not been read already.

MIRANDA RIGHTS

If an individual is arrested, or subjected to custodial interrogation, they must be read their *Miranda* Rights (MR) before questioning begins. The MR inform an individual of their right to remain silent, that anything can and will be used against them in a court of law, that they have the right to an attorney, and if they can't afford an attorney, one will be provided for them. It is imperative that the individual understands these rights before they are questioned.

Custodial interrogation is required to trigger a need for MR. Custodial Interrogation requires two things; 1.) that the individual is in custody, whether that's actual custody (i.e. arrested), or that their freedom of movement is significantly restricted, and 2.) that they are interrogated. Interrogation occurs when the individual is expressly questioned by the government actor, or it's equivalent of attempting to illicit an incriminating response (*Innis*).

Here, D is clearly in custody, as he is in jail. D has been in jail for one night, which would likely still make the environment a coercive one. Sal may have committed the functional equivalent of questioning in asking D if he wants to clear things up. S would have had to read D his MR before asking this question. The subsequent confession may be a violation of D's constitutional rights.

D also did not knowingly and intelligently waive his right to counsel, his right to remain silent, or his right against self-incrimination. D did not sign the waiver, making it much more difficult for the prosecution to prove that this was knowing and intelligent.

END OF EXAM