

1886: You authored two well-organized, well-reasoned
 1) exams which demonstrate a solid understanding
 of the law.

FOURTH AMENDMENT (4A)

85/80

The 4A reads that people have the right to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and that warrants shall not be issued, without probable cause, supported by oath or affirmation, and describing with particularity the place to be searched and item(s) to be seized.

For an individual to have standing to bring a 4a violation, there must be conduct by a government actor and the individual must have a reasonable expectation of privacy (REOP) in the place searched/item seized that society is willing to recognize as reasonable (Katz).

GOVT ACTOR-GREEN (G)

To have a constitutional violation, there must be conduct by a government actor. Green is a police officer, a recent academy graduate, and therefore a government actor.

STANDING-DIDI (D)

Didi must have a subjective expectation of privacy that is objectively reasonable to bring a 4A claim.

Here, she has a mobile business, that she has a reasonable expectation of privacy in that society is willing to recognize as reasonable. It is a lesser expectation of privacy than a traditional home, as mobile homes are mobile and can be moved quickly (Carney). Commercial businesses also have a lesser REOP than a traditional home. *good!*

However, Didi still has standing to bring a 4A violation as she has some REOP.

OFFICER GREEN LOGGING INTO THE GPS TRACKER-SEARCH OF MOBILE BUSINESS?

A search happens whenever the government intrudes on a persons REOP of privacy. A search is presumptively invalid, and a search warrant is needed unless one of the exceptions applies. One exception to the search warrant requirement is consent. Consent is given by the individual when they expressly agree to what the entity or person is asking. The scope of consent is defined by the person giving consent.

Here, D has a GPS tracker on her mobile cupcake truck which tracks her movements to ensure that she operates in specified zones. As part of her business license, the City required that she install a GPS tracker to ensure that she operates in specific zones. She has willingly consented to the GPS tracker being put on her car, and is part of a regulatory requirement for mobile businesses.

good analysis

Because D has consented to the GPS tracker as part of her business license, this search is reasonable.

OFFICER GREEN PARKING HIS CAR IN FRONT OF D'S BUSINESS- DETENTION?

Encounters with police can be consensual, a detention or an arrest. Consensual encounters do not implicate the 4A. Detentions occur when a person is seized by there being a show of physical force by the police or the individual submits to authority. The officer will have reasonable articulable suspicion that criminal activity is afoot and can briefly detain an individual for an investigatory stop to investigate. Arrests are a seizure that need probable cause (PC). Probable cause is with all the info the police officer has within his knowledge, it is reasonable to believe that a crime has been committed (Brinegar).

Here, G looks at the GPS tracker and sees that D is parked in a fire zone, which is illegal. This gives him reasonable articulate suspicion that criminal activity is afoot (she could be breaking a law) and he goes to investigate. By parking his car in front of her mobile truck he has shown physical authority and she is not free to leave.

depends on position of the car.
D is detained.

OFFICER GREEN ENTERING THE TRUCK-SEARCH?

It sounds like there is a consensual encounter between D and G when she is asking him what he is doing at the truck and he tells her he is writing a ticket. However, she is still not free to leave because her truck is blocked, so this is a continued detention.

Green tells D he is writing her a ticket, adding eagerly that he has never seen the inside of a food truck before. The facts are unclear, but G could be saying this to try to coerce D into getting her consent to go inside. D invites G to come in, giving him consent to enter the truck. G doesn't have to tell D that she doesn't have to consent (Drayton), and the consent is giving freely and voluntarily, so the consent is valid and G is legally in the mobile business.

D will argue that she was fooled into giving consent. However, this argue will fail because there is no proof she actually was fooled.

SEIZURE OF ITEMS IN THE MOBILE BUSINESS?

meth - A seizure occurs when the government takes possession of something that belongs to an individual, who had a REOP of privacy in that item. A seizure is presumptively invalid, and a warrant is needed unless one of the exceptions applies. One exception to the warrant requirement is plain view. In order for the plain view exception to apply, an officer must be legitimately on the premises, the item must be in plain view, and the officer must have probable cause to believe that the item to be seized is contraband.

Here, G enters the mobile business and his attention is immediately drawn to bags of white powder on the counter, which he recognizes as meth for sale.

G is lawfully in the mobile business because he had consent to enter, he immediately recognizes the white powder as meth, and the item is in plain view.

He can seize the meth.

As G reaches to pick up a bag, he accidentally bumps a computer mouse, prompting the screen on a laptop to display customer names, images and what were believed to be monies for sale. He takes a screen shot of the list and seizes the bags,

G will argue that all of these items should come in because he accidentally hits the mouse and the items come up in plain view. *what do we call this? good faith? exclusionary rule not served.*

D will argue that these items should be suppressed because even though G accidentally hit the computer which made them come in to plain view, they were not originally in his plain view, she had a REOP by having the computer screen locked, and G didn't have PC to believe that the the spreadsheet had anything illegal on it. It is (unclear what the images) are. If they were drug related, G would have probable cause to believe that this was related to drugs, but his belief based on the names might not be enough to rise to the level of probable cause for the seizure.

SEARCH OF D AND SEIZURE OF CASH

After seizing the bags, he tells D to turn around and searches her person. Because D is detained, G can do a frisk of her person if he has a reasonable articulate suspicion that she is armed and dangerous, but this search is limited to finding weapons (Terry). if during this search, he feels something that is clearly contraband, he can seize it under the plain feel exception (Minnesota v Dickerson).

G will argue that because he had just seized drugs, he thought D might be armed and dangerous, and so pats searches her, but his search was limited to finding weapons. *would the wad of cash be evic. of drug sales?*

Another exception to the warrant requirement is a search incident to arrest.

Contemporaneous with a custodial arrest, an officer can search a person within the immediate vicinity, for officer safety and preservation of evidence (Chimel). G places handcuffs on D, and he will argue that the search was incident to custodial arrest.

During this search, he finds a large amount of cash in her apron which he seizes. The apron was part of her immediate person, and under the search incident to arrest exception is allowed to search it (D then tells G that what is in the bags is baking soda.) *Separate issue*

At this point, G releases D with a citation to appear and doesn't arrest her. There can be no search incident to citation. Therefore, the cash that is seized is inadmissible because it was seized pursuant to a search incident to arrest, and D wasn't ultimately arrested. The cash also would not come in under the frisk, because that search was limited to finding weapons.

G will argue that because of the suspected criminal activity, the motorhome would eventually be towed, and the drugs and cash would be found pursuant to an inventory search, when the police can go through the entire mobile truck and do an inventory of all items to protect themselves against claims of theft, protect D's belongings, and for officer safety. *Is it an eventuality it would be towed? Didi was released.*
ADAM-STANDING

Adam's name is found on a spreadsheet in D's motorhome.

G encounters him on the street and asks to talk to him. Adam has a REOP in his person.

ENCOUNTER WITH ADAM (A)

Police encounters can either be consensual, a detention or an arrest, supra.

Here, Green is looking at the GPS on the mobile truck and sees that it's in a high crime area outside of the specified zones for food sales and goes to do an investigatory (search) which is permissible.

G sees Adam in the dark and asks him to talk. A starts walking toward G, submitting to authority. A could be detained, but based on the totality of the circumstances, a reasonable person would feel free to leave. A is not detained, and this is a consensual encounter.

G immediately frisks Adam. In order to do this, he would need a reasonable articulable suspicion that A was both armed and dangerous, and this frisk would be limited to finding weapons. G will argue that it is night, he is in a high crime area, and that A is a known drug addict, and based on training and experience, he had reasonable articulable suspicion to believe that A might be armed and dangerous. G

would also argue that for his own safety, he frisked A. During this frisk, he finds a gun. The finding of the gun gives G probable cause to arrest A, which he does, and he transports him to county jail.

A will argue that there was no reason to believe that he was armed and dangerous.

Based on the totality of the circumstances, the frisk will most likely be found to be reasonable.

FIFTH AMENDMENT (5A)

The 5th amendment states that individuals have a right to be free from self-incrimination and there are judicially created procedural safeguards that are put in place to help protect individuals against self-incrimination. The Miranda warnings are one of the procedural safeguards, and informs individuals that they have the right to remain silent, anything they say can be used against them in a court of law, they have the right to an attorney, if they can not afford an attorney one will be appointed for them. Miranda warnings need to be given to an individual whenever they are in custodial interrogation. Custodial means that the individual has been arrested or has had their freedom restrained and based on the totality of the circumstances are in a place they are not free to leave. Interrogation means express questioning or the functional equivalent (Innis). Voluntary confessions made in violation of Miranda warnings will be inadmissible at trial. An individual can invoke^{for the case in chief} their 5A rights if done so unequivocally, and can remain silent and not answer questions until they have an attorney present.

Here, G asks A if he wants to share what he knows about D and her business. based on the totality of the circumstances, A is in custodial interrogation because he is arrested and not free to leave, and G is asking him questions trying to elicit a *discuss* response. His Miranda warnings have not been given. A remains silent for the ride, but has not invoked his 5A as silence is not enough to invoke.

They are in the car for an hour and then A voluntarily tells G D sells meth at night. in the car ride G made a statement, but it was not enough to be coercion. A's statement

Are you discussing due process here?

will be seen as voluntary, but it was done in violation of Miranda, and will not be admissible at trial. It could be admitted at trial for impeachment purposes only. *good*

6A-D AND A BOTH HIRE COUNSEL CARL (C)

The 6A provides that people have the right to be represented by an attorney at all critical stages. The facts states that C represented both from arraignment to conviction. The right to counsel attaches whenever an accusatory pleading is filed, here at the arraignment. Both D and A being represented by the same attorney could create a conflict of interest, where C might not be representing both of their best interests. (The court would need to hold a FRCP 44(c) hearing, which is a prompt *federal court only* hearing to inquire into the conflict of interest and advise both D and A that can they hire separate counsel.) A conflict of interest can amount to ineffective assistance of counsel.

SUPPRESSION OF EVIDENCE

D will file a motion to suppress the all the evidence, including the drugs seized and the spreadsheet found. She will argue that she gave false consent to G to come into the mobile truck. (She will also argue that bags of white powder on the counter are baking soda.) If they really are baking soda, then there is nothing to suppress. She will argue that the spreadsheet should be suppressed because G didn't have probable cause to believe that it had anything to do with drug activity.

This is a trial issue; here, it is what is reasonable to the officer.

If the bags on the counter were really baking soda, and the spreadsheet is suppressed, there will be no evidence and no case against D. *(except for the gun)*

The state will argue that Adam was an independent source, who voluntarily advised them that D sold drugs.

2)

FOURTH AMENDMENT (4A)

4A, supra.

 GOVT ACTOR-DEPUTY DAVE (D)

Government actor, supra. Deputy Dave (D) is a paid police officer, and therefore a government actor.

STANDING-SID (S)

Standing, supra.

Sid is driving his dad's car, which in he likely has a reasonable expectation of privacy (REOP) in his car, and also a likely REOP at his neighbors house, if they are at each other's houses a lot. *(do even "friendly" neighbors have an expectation of privacy in other's homes? yards?)*
 Sid has standing to bring a 4A violation.

D INITIAL ENCOUNTER WITH S

Police encounters can be consensual, a detention, or an arrest (supra).

Here, D is patrolling a subdivision that had been leveled by wildfires. He notices a van parked in front of a partially burned residence with two individuals sitting inside and a flurry of activity. Based on D's cop sense, this gives him reasonable articulable suspicion that criminal activity is afoot and gives him reason to detain the individuals to investigate. D runs the license plates, which he is allowed to do. He sees that the car is from out of town, giving him more reason to detain and investigate. D pulls up along S and motions for S to roll the window down and S complies. Because S knows that D is a cop, he is submitting to authority and is detained. S then drives away and guns it. He has no longer submitted to authority, and this encounter has turned from a detention to a consensual encounter. If any evidence is found during the commission of this chase, it will be admissible. However, D loses S. *Evidence would be officer's observation.*

D SUBSEQUENT ENCOUNTER WITH S

D sees the van parked in a driveway a few weeks later. *stale?* At this point he has probable cause to arrest S, but he has no warrant, and he cannot arrest him at someone else's home without a warrant. Only in a one's own home can they be arrested without a warrant (Payton v New York). D will need a search warrant to arrest S at the

yard?

neighbor's property, which he doesn't have yet. He will need an exception to get into the neighbors yard to get to S. D looks through a broken slat in the gate to the rear yard.

The backyard is considered the curtilage of a home, and the curtilage is considered part of the home for 4A purposes. US v Dunn gave a 4 factor test to determine if an area is within the curtilage of the house: 1. the area's proximity to the home; 2. if the area is within an enclosure surrounding the home; 3. the area to which the use is put; 4. if the owner has taken any steps to block the area from the public view. Here, the backyard area is close to the home, with a fence surrounding it, people hang out as evidenced by this neighborhood gathering, and there is a fence put up to block the outside view. This is curtilage and enjoys 4A protection.

When D looks through the broken slat into the backyard, he will argue that he was where he was legally allowed to be, on the outside of the property. he would argue that this was an open field, where there is no REOP (Oliver). He would also argue plain view and that he was just looking through a broken fence, where there was no REOP. *Is it arguable that the fence into the back is curtilage? (okay)*

D sees neighbor Ned (N) flicking ashes into the yard's tall dry grass. Because there had been a wildfire just a few weeks ago and everyone's senses are probably heightened, D would argue that he burst into the curtilage and the backyard for exigency purposes.

D then sees Sid Jr by the BBQ. he will argue that due to the exigency, he was lawfully allowed to be on the premises, and in plain view he saw Sid Jr. he was then allowed to arrest Sid because he was where he was legitimately allowed to be, he saw sid in plain view and had probable cause to arrest (seize) him.

S will argue that seeing N flick ashes into dry grass was not enough to create an exigency, and therefore D was not legally on the premises and the arrest (seizure) of himself was unlawful.

While senses are heightened and everyone is on edge from the recent fires, this will likely not rise to the "exigency" level, and the seizure of Sid could be unreasonable. If it was unreasonable, everything that happens after would be suppressed.

What about seeing Sid drinking?

SEIZURE OF SAFE

After being arrested, S asks D if he can't get the wallet out of the back of his dad's van so it can be inventoried at jail. When S is booked, all of his items will be taken from him and inventoried.

When S opens the van to get the wallet, D sees a partially burned out safe in the van and seizes the item without a warrant. He can seize the safe under the plain view exception (supra). However, because D followed S to the van, D was in a place he was legitimately allowed to be, had probable cause to believe that the safe was stolen from a house because it was partially burned and S doesn't live in the area so it wasn't from his house, and the safe was in plain view. D can seize the safe.

S will argue that D lacked probable cause to believe that the safe was contraband, as it could have been a friend's safe that he was safekeeping. However, based on the fact that S is under arrest for evading an officer, this most likely gives probable cause to believe that the safe is contraband. Flight alone is not enough to give probable cause, but based on the totality of the circumstances, D has probable cause to believe the safe was stolen, and it was reasonably seized.

WALLET SEIZED

The wallet was seized, but it would have eventually been obtained through the inventory at the jail.

INVENTORY of safe

The safe is inventoried after S is booked into jail without a warrant. One exception to the warrant requirement is an inventory exception. Since S has been booked into jail, his items can be inventoried to protect his property, to protect the police from claims of theft, and for safety purposes. During the inventory, D finds jewelry he believed survived the fire. *Could the van have been locked & secured?*

5 AMENDMENT (5A)

The 5A, supra.

Not clear which exceptions you are relying on here: Plain view, arrest, Chimel or Gant P.C. (Argued)

The next morning, S visits D at the jail in a colorfully decorated playroom that is used when toddlers visit their parents in custody. Based on the totality of the circumstances, it doesn't sound like S is in custodial interrogation. S could get up and leave at anytime, making this not custodial, and he also is not being asked express questions or in an environment likely to elicit a response or its functional equivalent. (Innis). There is no custodial interrogation at this point.

statements designed to elicit?
"Oakmont" jurors?

Then D is reading S his Miranda rights, and D interrupts S, asking where his lawyer is. S has not sufficiently had his Miranda rights read to him, since D did not complete them and is not aware that S understands what they are. When S asks "where's my lawyer" it sounds as if he is trying to invoke his 5A right to an attorney, in which case the police would have to stop all questioning, but this is too ambiguous to invoke the 5A and D doesn't have to stop asking S questions. However, S stops talking.

Your organization is a little rough here - keep all approaches separate

Dave tells him he will meet his lawyer the next day. As S is only in custody, and there has been no accusatory pleading filed yet, S's 6th Amendment right to counsel has not yet attached. Massiah

D then continues on and tells him not to let the 12 people from the hood of Oakmont, not the hood of Oakland decide his fate. D could be trying to coerce S into confessing. intrinsic promises are ok when trying to get a confession, but extrinsic promises aren't. Due process

D will argue that his statement was not coercive, but S will argue that he felt threatened into confessing, especially because he didn't know what mitigating meant.

S then confesses. However, his confession will not be admitted. His Miranda warnings were not read to him, and his confession could have been the product of coercion, although likely not. If it was found to be coerced, it would not be a voluntary confession.

6A

6A, supra.

Sid is arraigned, meaning his 6A right to counsel has attached and is appointed a public defender, which he is entitled to if he can't afford his own counsel. The public defender can't get to S and neither can his parents, and so S voluntarily calls D and wants to clear his conscious and confesses.

S's 6A right to counsel has attached, and D most likely knows that because it has been a few weeks since he was arraigned and he wouldn't be sitting in jail for that long unless he had been charged. D might know that the reason why S wanted to talk to him was confession, and D should have had the public defender there. Talking to a individual who's 6A right to counsel has attached is a violation of Massiah.

Same crime

The state will argue that the confession should come in because D made it voluntarily and was not in a custodial interrogation. This will fail.

EXCLUSIONARY RULE

S will argue that his arrest was unreasonable because D didn't have authority to enter his friends property and arrest him and as such, everything discovered after should be suppressed. This would include the safe, his wallet, and his confession.

The state will argue that there was enough attenuation between the confession to allow it to come in and remove the taint.

END OF EXAM