

Kern County College of Law

Criminal Procedure

Final Examination

Spring 2023

Prof. D. Kinnison

Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

Question 1

Victor was walking down the street when a man ran up to him and robbed him at gunpoint of his wallet and phone. About 30 minutes later, Victor got home and called the police. Based on Victor's description, the police put out information that an armed robbery had occurred and the suspect was "*a Black male, 5'5," 35 years old, chubby, black hooded sweatshirt, baseball hat, black gun.*" The dispatch described the area where the robbery had happened.

Officer Jones was driving, about 45 minutes after the robbery, about half a mile from the scene of the robbery, when he heard the description over his dispatch radio. He saw Donnie, a young man, leaning into the window of a car, talking to the passenger. Donnie appeared to Officer Jones to be African-American and was wearing a dark-colored hooded sweatshirt with a yellow dragon on the back, with the hood was up over his head, blue jeans, and bright pink and yellow shoes. Jones could not tell his age. Jones pulled over and walked up to the man, and said "Hey, I want to talk to you!"

Donnie turned to look at Officer Jones. From about 20 feet away, Jones saw the man had an unusually long beard. To Jones, Donnie looked about 25-30 years old, medium build, around 5'9" feet tall. When Donnie continued to stand there, Jones pulled out his firearm and pointed it at Donnie, yelling, "Get on your knees!" Donnie dropped a bag of cocaine behind the car's tire. Jones, not seeing the cocaine at the time, tackled Donnie and handcuffed him.

Other officers told Victor, "We think we have the guy but we need you to make an ID" and brought Victor to the scene. Donnie was standing, handcuffed, with scratches on his face from being tackled into the sidewalk, next to Officer Jones. Victor, from the back seat of the police car about 30 feet away, said "Yes, I think that's him."

Jones told Donnie he was under arrest. Before putting Donnie into the police car, Jones took all the items out of Donnie's pockets and put them into an evidence envelope, including a switchblade knife, which is illegal to possess in that jurisdiction. Jones did not find Victor's phone or wallet or a firearm. Jones also picked up the cocaine on the ground and later booked it as evidence. The District Attorney charged Donnie with robbery, possession of an illegal knife and possession of cocaine.

Donnie's attorney brings a motion to suppress the cocaine, the switchblade knife, and Victor's identification based on 4th Amendment grounds and Victor's identification on grounds that the identification procedure was unduly suggestive. What arguments may Donnie reasonably raise in support of her suppression motion, what arguments may the prosecution reasonably raise in response, and how should the court rule with regard to each claim?

KCCL
Criminal Procedure
Spring 2023
Prof. D. Kinnison

Question 2

Police suspected Devra of illegally growing marijuana in her backyard (assume that growing any amount of marijuana is illegal in this jurisdiction). On January 13, a regular police informant, Ingrid, told her “handler,” Officer Otter, that she had been in Devra’s backyard for a birthday party on November 15 and had seen “at least 20 marijuana plants.” Ingrid had been arrested 5 times for misdemeanor offenses and was convicted of perjury 10 years ago. Ingrid had two pending criminal cases at the time that she gave Officer Otter the tip about Devra.

On January 14, Officer Otter wrote an affidavit for a search warrant for Devra’s house and backyard. The Officer’s affidavit included Ingrid’s statement about Devra and her criminal history but not the pending cases against her (though the officer knew about it). The judge signed the warrant the same day, authorizing police to search the entirety of Devra’s house and yard to find any marijuana, growing or use paraphernalia, plastic baggies, scales and money, based on Officer Otter’s training and experience that marijuana growers commonly possess such items.

Police arrived at Devra’s home the next morning. They did not knock but hit the door with a battery ram, knocking it off the hinges. Police searched Devra’s home and yard. A dirt area in the yard appeared to have been recently dug up and police found no evidence of marijuana or other contraband in the yard. In a kitchen drawer inside the home, police found a firearm that was not registered to Devra. Devra was arrested and charged with unlawful possession of the firearm.

Devra’s attorney brings a motion to suppress the firearm on 4th Amendment grounds. What arguments may Devra’s attorney reasonably raise, what arguments may the prosecution reasonably raise in response, and how should the court rule?

Question 3

Homicide Detectives were investigating the suspicious death of Vincent and arrested a suspect, Denny. The next day, Detective Smith went to the county jail where Denny was being held on suspicion of murder. Smith went in plain clothes, unarmed and by himself. Guards brought Denny to an interview room and Smith asked the guards to unhandcuff Denny and bring him a glass of water. Smith gave Denny a sandwich that he had brought with him.

Smith asked Denny how he was doing and asked if he was lacking anything in the jail facility. Smith lied to Denny, saying that Smith grew up in a neighborhood just like Denny's, and asked Denny about his childhood. Denny was quiet, occasionally giving one-word answers. After about a half an hour, he ate the sandwich Smith had brought.

Smith knew, but Denny didn't, that the homicide was on video. The video clearly established that it was an intentional murder and not self-defense. But the suspect could not be identified on the video.

Smith leaned in close and told Denny that Smith knew Denny wouldn't kill Vincent for no reason, that Smith had spoken with Denny's mother and knew Denny was a good person. Smith told Denny that his partner, Detective Daisy, believed that Denny had committed first degree, premeditated murder, but that Smith believed that Denny had just acted in self-defense. Smith put down his pen and said to Denny, "I won't write this down, but that's what happened, isn't it?" Denny said, "I guess so" and looked at the ground. (Unbeknownst to Denny, everything that happens in that room is audio and video recorded).

Smith then said, "I have to read you these rights now just so we can keep chatting, ok?" After reading all the *Miranda* warnings to Denny, which Denny said he understood, Smith continued to ask Denny about the death of Vincent and Denny made incriminating statements.

After Denny is charged with murder, his attorney brings a motion to suppress the entire contents of what took place in the interview room between Smith and Denny on 5th and 14th Amendment grounds. What arguments may Denny's attorney reasonably raise, what arguments may the prosecution reasonably raise in response, and how should the court rule? Analyze the pre-*Miranda* and post-*Miranda* parts of the interrogation separately.

Criminal Procedure - KCL

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Answer Q1

4th Amendment Search and Seizure Limitations

Citizens have a right to be free from unreasonable searches and seizures of person and property by the government. In this case, the defense will assert that Donnie's rights were unreasonably violated.

Was seizure of a person proper?

Under the totality of circumstances standard, a seizure occurs if a reasonable person would not feel that he or she was free to decline the officer's requests or otherwise terminate the encounter. Additionally, a person is seized when there is physical application of force by an officer and submission to that show of force. A seizure can be for the brief investigatory purposes based on reasonable suspicion, based on articulable facts, or for the purpose of arrest based on probable cause.

The defense would likely argue that there was clearly a detention. The ordering of Donnie to his knees at gunpoint was almost certainly sufficient to establish a detention. If not, the tackling and handcuffing should remove any possible doubt of a detention. Clearly, the reasonable person would not have felt free to terminate the encounter with the officer. Thus, it seems clear that the court would find that Donnie was detained.

The question that remains is whether the detention was reasonable under the 4th Amendment. The defense would likely argue that Donnie failed to match the suspect's description in too many ways, and therefore there was insufficient justification for a detention. Significantly, the height of 5'9 is substantially taller than the suspect's 5'5. Further, the Donnie's "medium build" did not match the suspect's "chubby" build. In addition, the "unusually long beard" that Donnie had would be very unlikely to have escaped Victor's notice. These three substantial variations from the suspect's description are strong evidence that there was not reasonable suspicion to detain Donnie.

The prosecution might try to argue that there were several aspects of Donnie's appearance that matched that of the suspect to try to justify the detention. The dark-colored hoodie, African-American male, similarity of age, and presence in the area where the robbery was committed.

The prosecution might also try to argue that the detention of Donnie was justified under the "hot pursuit" doctrine, and/or exigent circumstances due to the suspect being armed. "Hot pursuit" generally applies to following a suspect into a residence, which did not occur here. Exigent circumstances generally applies only where police see people who are injured or are being threatened with injury. Here, neither of those situations are present, so these arguments would very likely fail.

A Terry stop should be a temporary and brief seizure to investigate criminal activity. However, when Jones got close enough to assess Donnie's appearance, Jones should have known that there were too many significant differences between Donnie and the suspect's description. Consequently, the court would most likely find the detention to have been unlawful, and suppress the evidence of the switchblade found in Donnie's pocket, being the "fruit" of an unlawful detention.

Was there an improper search or seizure of property?

Evidentiary searches and seizures must be reasonable to be valid under the 4th Amendment, and searches are generally considered unreasonable without a warrant though there are certain circumstances where a warrant is not required.

As discussed above, the switchblade would likely be suppressed as a product of an illegal search. The detention was clearly suspect, and the disparities between the description of the suspect and the appearance of Donnie would not appear to justify a detention, much less an arrest of Donnie.

The defense is also likely to argue that the seizure of the cocaine was the “fruit” of an illegal detention of Donnie, as discussed above, and therefore should be suppressed.

The defense would likely argue that the cocaine was located only after he was unlawfully detained and therefore should be excluded. Further, the defense would argue that the cocaine was discarded by Donnie only after the officer indicated an intention to detain Donnie. Since that detention was likely improper, the defense would assert that the finding of the cocaine was “fruit” of the illegal detention, and should be suppressed.

The prosecution likely argue that there was no detention of Donnie at the time he discarded the cocaine. At that point, Officer Jones had merely expressed his desire to detain Donnie.

This situation is analogous to that of In re Hodari D., in which the Supreme Court held that drugs discarded as an officer was attempting to detain a suspect were not “fruit” of an illegal detention, since the officer had not seized the suspect at the time, but was

merely attempting to detain him.

In addition, the prosecution may argue that the finding of the cocaine was inevitable discovery and/or an independent source of evidence from the allegedly improper detention. This issue would also appear to be governed by *In re Hodari D.*, and thus the finding of the cocaine would very likely be admissible at Donnie's trial.

4th Amendment witness identification

A defendant can attack an identification as denying due process when the identification is both unnecessarily suggestive and there is a substantial likelihood of misidentification.

The defense would likely argue that Officer Jones's statement to Victor that "We think we have the guy but you need to make an ID" was overly suggestive. "We think we have the guy" conveys to the victim that police believe they have the right person in custody. Given the disparity between the suspect's description and the appearance of Donnie, discussed above, the statement by Officer Jones does seem overly suggestive. Further, those same disparities support the argument that there is a substantial likelihood of misidentification. The officer's opinion could easily influence a victim to simply agree with the police department's assessment – "We think we have the guy" conveys not just Officer Jones's opinion but also indicates that the police department shares officer Jones's opinion.

In addition, the defense may argue that the process of showing Donnie to Victor, handcuffed and next to a police car, was unduly suggestive. However, the Supreme Court held in *Kirby v. Illinois* that a show up is not always an illegal identification tactic.

The prosecution would likely argue that the fact that the show up occurred on the same day as the robbery greatly mitigates against a misidentification. The event was fresh in the victim's mind, and thus the victim is far less likely to misidentify a suspect. The prosecution may offer that the victim witness gave numerous details of the suspect's identification, including the age, height, build and clothing but that these are not certainties due to the fact that he was also a victim having had a gun in his face, which admittedly caused him "shock." They would argue that the missing components of the description could be explained by his mental status at the time of the incident but that his later identification was confirmed adequately.

On balance, the great disparities between the suspect's description and the appearance of Donnie would likely lead the court to find that there is a substantial likelihood of misidentification in this case. The ID would likely be suppressed as a violation of due process.

Court Ruling

The court in Donnie's trial would likely grant the motions to suppress the switchblade and Victor's identification, but would likely allow the evidence of the finding of the cocaine.

ANSWER Q2

State v. Devra

Was there an unreasonable search of Devra's residence?

The Fourth Amendment protects against unreasonable search and seizures; protecting the interest of liberty and privacy. Legitimate, or "reasonable" expectations of privacy include those things that a person keeps private, and which society recognizes as being a proper subject of privacy. Further, no warrant shall be issued, but upon probable cause (the quantum of reasonably trustworthy information that would warrant a person of reasonable caution that a belief that an offense has been or is being committed, supported by oath and affirmation particularly describing the place to be searched and the person or things that are to be seized. As a general matter, evidence that is gained in violation of the Fourth Amendment will be excluded.

Valid Warrant

A valid warrant requires probable cause, particularity, and must be issued by a neutral and detached magistrate, and must be executed without unreasonable delay.

Probable Cause

Probable cause exists when there is a strong suspicion that a crime was, is being, or is about to be committed. Here, Officer Otter on January 14 wrote an affidavit that referenced a statement from Ingrid. The officer had received information from Ingrid, a "regular" informant, who called Officer Otter her "handler". Ingrid had been arrested 5 times for misdemeanor offenses, and had been previously convicted of perjury 10 years prior. At the same time, Ingrid had pending criminal cases.

The defense will likely challenge the validity of the search warrant. Officer Otter wrote an affidavit for search warrant based on Ingrid's information, and did not include the derogatory information when the officer submitted the affidavit for a warrant to the judge, even though the officer's statement included statement from Ingrid. For this to have been a valid warrant, the officer's affidavit would have been seen by the judge to be one that established probable cause, based on the officer's statements. Although there was some early court authority for the proposition that the affidavit should include information regarding the reliability and credibility of the informant, the current state of the law appears to not require such information for the issuance of a warrant. However, such factors are clearly relevant, and the defense could raise them in an attempt to challenge the validity of the warrant. Presently, a warrant may be invalidated only upon a showing of deliberate falsification or reckless disregard for the truth in the affidavit. Franks v. Delaware. That standard does not appear to be met with the leaving out of a report of the factors relating to the informant's credibility, especially in light of her being a "regular" informant, which seems to suggest some accurate prior information having been supplied to police.

In this case, the report of marijuana growing in the back yard of Devra is questionable, since police found no evidence of marijuana cultivation at the time of the search warrant. However, the apparently freshly dug up areas in the yard seem to support the possibility that the information was accurate.

Although possibly a close case, it seems more likely that the warrant, and the resulting search, will be upheld.

Particularity

A warrant must state with particularity the places and persons to be searched or seized. Here, the judge signed a warrant on the same day, authorizing police to search the

entirety of Devra's house and yard to find any "marijuana, growing or use paraphernalia, plastic baggies, scales and money".

The warrant was a valid warrant because of probable cause, particularity, and was issued by a neutral and detached magistrate. It was executed without reasonable delay.

The question of whether to suppress the firearm

Knock and Announce

Although there is no specific, absolute, or prescribed method of knocking and announcing, there will be three elements that must be met:

1. The police must announce their presence.
2. The police must announce the purpose of the entry ("we have a warrant for...")
3. There must be a proper delay to allow the people inside to open the door.

There are some exceptions to the knock and announce rule however:

1. Knock and announce is not required when "circumstances present a threat of physical violence."
2. Where police officers possess a reasonable belief that evidence will likely be destroyed if advance notice were given.

Here, the police arrived at Devra's home, and did not knock on the door, instead, they hit the door with a battery ram, knocking off the hinges. Here, the doctrine of knock and announce may come into play. While law enforcement has the ability to enter a dwelling or place of business through the power of a warrant, there is a 'common sense' requirement of the police to knock and announce. This is an important protection issue for both the police and for the people inside the home. It is not clear here, why the police would not have knocked and announced.

Nevertheless, in Michigan v. Hudson the Supreme Court held that knock and announce

violations do not trigger the exclusionary rule. Thus, even though a knock and announce violation occurred here, it would not lead to the exclusion of the evidence of the firearm, unless the actions of the police were deemed to “shock the conscience” (Raley v. Ohio). Given that the officers had an apparently valid search warrant, it is highly unlikely that the knock and announce violation in this case would be deemed to “shock the conscience.”

What arguments may Devra's attorney reasonably raise?

Devra's attorney may raise an argument that the warrant's specificity that the police could search the house and yard to find "marijuana, growing or use paraphernalia, plastic baggies, scales, and money" did not include rummaging through drawers.

Devra's attorney may raise an argument that the warrant was not issued as a no-knock warrant, and that the police violated Devra's reasonable expectation of privacy when they battered the door down

Defense could argue that Devra had a reasonable expectation of privacy and that she reasonably expected drawers in her kitchen to be private, and that the officer's intrusion in that area violated her reasonable expectation of privacy.

Was the search of the premises beyond the scope of the warrant?

The defense may attempt to argue that the search of the drawer where the firearm was found was illegal as exceeding the scope of the search warrant. The argument will be that the purpose of the search was directed at marijuana growing activities.

Searches pursuant to a warrant are limited to what is reasonably necessary to discover the items described in the warrant. However, the Supreme Court has been very lenient in excusing mistakes by officers in the execution of search warrants. See LA County v.

Rettele.

The prosecution could reasonably argue that because there was a valid warrant, that evidence obtained by the police in reasonable reliance on a facially valid warrant may be introduced as evidence by the prosecution, even if there is an ultimate finding that the warrant was not supported by probable cause.

The prosecution may argue that the places (and persons) to be searched met the particularity requirement. Here, the warrant's specificity requirement, of searching for "plastic baggies, scales, and money". Plastic baggies, scales, and money could reasonably be found by searching drawers, and the warrant further included the allowing of the police to search "the entirety of Devra's house".

The prosecution could also argue that the gun was in plain view of the area they were allowed to be in. The warrant stated that the officers could search the "entirety of Devra's house", and that included specificity about finding 'plastic baggies, scales, money", which could be reasonable concealed inside drawers, and when they were searching the drawers, the gun was in "plain view" of the area they were allowed to be in.

Even if the warrant were deemed invalid, the search would likely fall within the purview of the "good faith exception" under U.S. v. Leon, in which the Supreme Court held that if police reasonably rely on an invalid search warrant, the exclusionary rule will not apply.

If the court rules that the search warrant was valid, it would likely not rule to suppress the gun, based on the officer's good faith belief can be introduced as evidence, even if the warrant is not supported by probable cause.

Conclusion

The search warrant, the search, and the finding of the firearm are likely to be upheld by the court as being reasonable under the 4th Amendment. Thus the finding of the firearm would most likely be admissible in the Devra's trial.

Criminal Procedure – Answer 3

The question at issue is whether the court should grant Denny's motion to suppress the statements made during his interview with Detective Smith.

Custodial Interrogation

A suspect is considered in custody when he reasonably believes that they are not free to leave the situation or conversation. The person is then undergoing interrogation when they are subject to questioning that the police know or should know that with their words or actions, they are likely to elicit an incriminating response.

Here, Denny is being housed in the local jail, presumably prior to arraignment for the murder of Vincent. This is significant in that up to this point, he has not been entitled to legal counsel, as counsel is only a right that becomes due at the outset of a custodial interrogation or after adversarial court proceedings have begun.

While there are no facts presented that Denny was told outright that he must attend an interview with Smith, a reasonable person being held in jail and brought to an interview by guards would likely feel pressure to comply, if not fearful of any consequences not to participate. The fact that Smith had the guards unhandcuff him, bring him water and that Smith himself was dressed in plain clothes may speak to Smith's attempts to endear rapport with Denny moving forward with the interview but does not detract from the fact that Denny likely did not feel free to end the conversation and decline to attend the interview due to being in custody.

Smith similarly must have been aware of the inequity of their roles in the interview or he likely would not have made subsequent attempts to endear himself through providing a sandwich, benign conversation about the jail facility and the neighborhood in which he claims to have been raised "just like Denny's." While subjective intent by Smith is speculative, it appears to have the purpose of leading to a conversation wherein he knew or had reason to know that after establishing trust and transitioning to questions about the murder he already knew was on video, was likely to result in an incriminating statement by Denny.

Therefore, there is little doubt that Denny was subjected to a custodial interrogation.

Defense Pre-Miranda arguments for suppression under the 5th Amendment

The defense will argue that the pre-Miranda questioning of Denny violated the 5th Amendment privilege against self-incrimination because the requirements set forth in Miranda v. Arizona were not met.

The 5th Amendment provides that no person shall be compelled in any criminal case to be a witness against themselves, and additionally, under the judge-made standard for

Miranda warnings, an incriminating statement obtained as a result of custodial interrogation may not be used against the suspect at a subsequent trial unless the police previously informed the suspect of their Miranda rights (the right to remain silent, that any statement made by the suspect may be used against them in court, they have the right to consult an attorney, including having that attorney present during questioning, and they have a right to have an attorney appointed if they cannot afford one).

Here, the custodial interrogation was well underway before Smith provided the required Miranda warning. By the time Smith recited the warning, he had already employed tactics designed to elicit a confession, including several false statements (having grown up in a neighborhood similar to Denny's, and his stated belief that Denny had acted in self-defense whereas Smith saw in the video that it could not have been self-defense), and the deception when he said ""I won't write this down but that's what happened, isn't it?" When Denny replied, "I guess so," this apparent statement of guilt, or confession," was done prior to and outside the Miranda warnings, which followed after this statement, when Smith offered, "I have to read you these rights now just so we can keep chatting." The deception of implying that no record would be made of Denny's statement about the killing is clear, given that the interview was recorded.

Therefore, Denny's attorney will likely argue that Denny's so-called confession that began with "I guess so," should be suppressed and due to the violation that led to subsequent questioning any additional statements to be used as evidence should be viewed by the court as fruit of the poisonous tree and excluded from trial.

Prosecution's response to pre-Miranda 5th amendmen-t issues

The prosecution will likely argue that there is no proof that Smith intended to subvert the Miranda rights of Denny. The argument would be that the detective simply attempted to establish rapport with Denny prior to beginning the formal interview.

The Supreme Court has held that pre-Miranda questioning will not violate the 5th Amendment protections if the unwarned questioning seemed unplanned, and the failure to give Miranda warnings was inadvertent. Oregon v. Elstad. The argument would be that the notion of a planned subversion of Miranda involves pure speculation.

Nevertheless, if Denny's statements are deemed to have been obtained in violation of Miranda, they would likely be admissible for the prosecution for the purpose of impeachment should Denny testify contrary to his statements to Smith.

Defense arguments for suppression of post-Miranda statements

The defense will also argue that the post-Miranda statements should be inadmissible as "fruit of the poisonous tree", with the pre-Miranda interview tainting the subsequent waiver.

The defense would argue that the post-admission Miranda recitals should be deemed ineffective, as part of an intentional effort to subvert Miranda principles. Missouri v. Seibert. The pattern of deceit by Smith strongly supports the argument that the interview was carefully crafted to induce admissions from Denny, and that therefore there was a plan to subvert Miranda by delaying the required warnings.

In addition, the argument would be bolstered by the fact that requirement of recitation

of Miranda rights prior to a custodial interrogation is common knowledge even among ordinary citizens. There were no exigent circumstances relating to public safety requiring immediate answers from Denny. New York v. Quarles. Nor were there any other distractions provided in the facts. It can thus not reasonably be asserted that Smith's failure to pre-advise was "inadvertent."

Prosecution's response to post-Miranda 5th amendment issues

As noted above, the Supreme Court has held that pre-Miranda questioning will not violate the 5th Amendment protections if the unwarned questioning seemed unplanned, and the failure to give Miranda warnings was inadvertent. Oregon v. Elstad. The argument would be that the notion of a planned subversion of Miranda involves pure speculation.

As stated above, the argument would be that the effort to establish rapport does not equate to a design to subvert Miranda.

Conclusion regarding 5th Amendment Miranda issues

On balance, it seems likely that the court would find an intentional subversion of Miranda and the statements before and after the Miranda advisal would be suppressed.

Defense arguments for suppression under Due Process

The defense would further argue that the deceptive tactics and subversion of Miranda principles constituted a violation of Denny's due process rights under the 5th and 14th Amendments.

For confessions to be admissible, the Due Process Clause of the 5th and 14th Amendments requires that statements be made voluntarily, and this voluntariness is assessed by looking at the totality of the circumstances, including the suspect's age, education and mental condition, along with the setting, duration and manner of the police interrogation.

Here, Denny's attorney will argue that the voluntariness under which Denny supposedly confessed was not evident. The court must look to the Denny himself and consider his understanding of the situation. He was currently in jail, which is likely less than comfortable conditions, being brought via guards to an interview room and immediately being questioned by someone he does not know regarding the death of someone he does know.

Though there are no facts in evidence that the interrogation was excessively harsh in any way, there are no facts indicating that Denny's discomforts were alleviated either.

Additionally, being in jail is inherently oppressive. Since he did not eat the proffered sandwich for the first half hour of the interview, it is reasonable to conclude that Denny was under stress such that his post-admission understanding and waiver of the Miranda rights are highly questionable.

Therefore, taken in totality, between Denny's stressful situation and Smith's inherent coercion in the process, Denny's waiver of his Miranda rights was not voluntary and thus a violation of Due Process protections.

- Prosecution's response to 14th amendment issues

The prosecution will argue that regardless of Denny's understanding of the process, given the familiarity of ordinary citizens with Miranda rights supports the argument that Denny understood his rights. Further, having understood his rights he in fact gave a knowing, intelligent and voluntary waiver of his rights. There were no outward signs of distress or mental incapacity, other than the delay in eating, which could be attributed to his having recently eaten, or desire to concentrate on the interview. Further, the interview excessively long or tedious in any way.

False statements to a suspect, even statements designed to evoke emotional reactions, have been held to not violate Due Process. Leyra v. Denno.

Conclusion regarding Due Process issue

The circumstances of the interrogation would likely not be deemed so offensive as to violate Denny's Due Process protections.

Conclusion

The court will likely rule that there were violations of Denny's 5th amendment right to the privilege against self incrimination through the use of effective Miranda warnings, but that his Due Process rights under the 5th and 14th Amendments were not violated. Therefore, the prosecution would not be allowed to present Denny's statements to Smith in its case in chief.

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4th Amendment Protections

The 4th amendment protects individuals in the United States against unreasonable searches and seizures. A detention may or may not rise to the level of a seizure of the person. To determine whether a detention rises to the level of a seizure, and therefore triggers the protections of the 4th amendment, the court will examine the totality of the circumstances leading to the detention.

Victor's Call to 911

Victor was originally the victim of an armed robbery. He placed a call to 911 near the time of the robbery and gave a thorough, if unremarkable, description of the man who robbed him and the area in which the robbery occurred. Victor was not a "confidential informant" in that his identity was known to the 911 dispatcher and was preserved. Victor would be subject to cross examination concerning the contents of the 911 call in the future, should it be necessary. Here, there is little concern that Victor could have fabricated the entire story, since he was not anonymous. Further, Victor described events which had happened in the past, and not events which he predicted to occur in the future. There is, therefore, no issue with the contents of the description that Victor gave to the 911 operator and it was sufficiently reliable to allow Officer Jones (or any other officer who heard it) to depend on it.

This is mostly irrelevant - use of your limited time

Consensual Encounter between Officer Jones and Donnie

An officer may have a consensual encounter with a person in a public or private place. A consensual encounter is generally not a detention nor is it a seizure (and it is certainly not an arrest) so there are no constitutional issues which arise. A consensual encounter exists when a police officer and a citizen interact, generally but not always in a public place, consensually. In other words, the private citizen knows he or she is free to terminate the encounter and leave at any time. Here, the initial interaction between Officer Jones and Donnie was consensual. Officer Jones merely approached Donnie on the sidewalk and said he wanted to speak with him. There was no display of a weapon and the officer did not tell Donnie he was not free to leave or that he was under arrest. At that time, Donnie could have turned around and walked away.

Officer Jones's Detention of Donnie

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The initial, consensual encounter quickly became a detention. A detention exists when a reasonable person, in light of all the surrounding circumstances, is not free to leave due to either a physical application of force from an officer or show of force from the police. An officer may detain a person for investigation if the officer has reasonable suspicion that the person detained is involved in criminal activity. Reasonable suspicion exists when the officer can articulate specific facts which lead him or her to believe the individual they are investigating is involved in or has just completed criminal activity. This is a Terry stop. The detention may not last any longer than necessary to allow an officer acting dilligently to investigate his suspicion and either develop probable cause (discussed below) to make an arrest, or dispel his suspicions and release the person who was detained.

Here, the state will argue that Officer Jones had reasonable suspicion to detain Donnie. Officer Jones received a thorough description of a robbery suspect. Donnie matched many parts of the description of the robbery suspect. Both Donnie and the robbery suspect were black males and wearing dark-colored hooded sweatshirts. Donnie was also located near the scene - approximately half a mile away, which was easily reachable by a person on foot in 45 minutes. The state will argue that this was sufficient suspicion for Jones to detain Donnie. The state will further argue that his detention was for a reasonable amount of time while the police fully investigated the robbery. The delay between his initial detention and his ultimate arrest was not unreasonable - it would have been for the amount of time it took to get Victor from his home to the scene where Donnie was.

-2 Missed argument - Prosecution would argue that description discrepancies were the result of the stress of having a gun pointed at Victor during the incident.
Donnie will argue that his description did not match the description provided by the 911 caller in many important ways, and therefore reasonable suspicion to detain him did not exist. Donnie has a good argument. The 911 call described the robber as wearing a baseball hat, 35 years old, chubby, and wearing a black sweatshirt. Donnie had a very long beard, was not wearing a baseball hat, and had several conspicuous items of clothing. He was wearing bright pink and yellow shoes and his sweatshirt had a yellow dragon on the back. It would be reasonable for the 911 caller to have remembered such conspicuous clothing and it is more than likely those would have been included in the description. Further, Donnie will argue that the time between the robbery and the time Officer Jones detained him was excessive. It was approximately 45 minutes later, and they were only half

a mile from the scene of the robbery. Donnie will argue that it was not reasonable for an armed robber to remain so close to the scene of the crime for such a long time after committing it. Donnie will also argue that his detention took an inordinate amount of time, since Donnie was detained (but not arrested) from the time he was ordered to his knees at gunpoint until the time he was placed under arrest.

But although Donnie's argument is persuasive, a Court will more likely than not find that Donnie's original detention by the officer was not unreasonable because it was justified by reasonable suspicion, and thus did not violate the 4th amendment prohibition against unreasonable seizure.

Victor's In-Field Identification of Donnie

Donnie was detained based on Victor's description. After he was detained, the officers sought to have Victor make a positive identification of Donnie through the use of an in-field "show up." A "show up" occurs when the victim of a crime is brought to a location to observe one individual whom police suspect is the offender. The "show up" process can be unduly suggestive. If the "show up" is unduly suggestive, then it cannot be used to prove the defendant's identity at trial. On the other hand, if the "show up" is not unduly suggestive, then the identification in the field will stand and can be used as evidence at trial. The "show up" is evaluated for suggestiveness based on the totality of the circumstances.

Here, the state will argue that the show up was not unduly suggestive. They will rely on the fact that this show up, like all others, involved one defendant, largely matching the description of the suspect they were given by the victim. The state will also argue that because Victor was so far away from Donnie, Victor could not properly see the scratches on Donnie's face or the handcuffs on his wrists, thus diluting the suggestiveness of the show up. The prosecution will also argue that Victor was the first, best person to make a positive identification of the man who robbed him. Since robbery is a very intimate crime, it is reasonable that Victor would have gotten a very good look at the person who robbed him and been able to easily identify him, even if the show up was suggestive.

-1 missed argument - show up was same day as the robbery, reducing likelihood of mis-ID.
The defense, on the other hand, will argue that the show up was definitely unduly suggestive. The first problematic aspect is the statement from the officers to Victor that "we think we have the guy but need you to make an ID." The statement from the officers to

-2 missed argument - The Supreme Court has held that show ups are not per se unduly suggestive. See Kirby v. Illinois.

Victor is unduly suggestive: it suggests to Victor that the officers believe Donnie is the person who robbed him. Victor is likely to believe the officers and go along with them, identifying whoever they present him with as the person who robbed him. Second, Donnie was in handcuffs and had scratches on his face, which further suggests to Victor that Donnie was dangerous, or may have tried to escape, or fought the officers when they detained him.

Based on the totality of the circumstances, the Court would likely find that the identification procedure was unduly suggestive and suppress Victor's in-field identification of Donnie.

Officer Jones's Arrest of Donnie

An arrest may occur with or without a warrant. An officer may arrest a defendant on a warrant, issued by a neutral and impartial magistrate, upon a sworn affidavit establishing probable cause for arrest. Such a warrant is required (except under exigent circumstances not relevant here) when an arrest is made in a defendant's home. An arrest in a public place, however, does not require a warrant, so long as the officer has probable cause to believe the arrestee has committed a felony in our outside his presence, or has committed a misdemeanor in his presence. Probable cause exists when an officer possesses sufficient knowledge of facts and circumstances that would warrant a reasonable person believing that the arrestee is committing or has committed an arrestable crime.

Here, Donnie was placed under arrest after Victor identified him as the man who robbed him. The state will argue that there was probable cause to arrest Donnie because Donnie was identified by Victor as the man who robbed him at gunpoint. If Victor's identification of Donnie was proper, then the officers had probable cause to arrest him.

On the other hand, Donnie will argue that because Victor's identification was made after an unduly suggestive lineup, there was no probable cause to arrest him, because without that identification, the officers only had their initial reasonable suspicion. If the officers never developed probable cause to arrest him, then any arrest would be invalid.

Based on the unlawfulness of the in-field identification, a court will likely find that the officers had no probable cause to arrest Donnie.

The Search of Donnie's Person

A search is evaluated for reasonableness under the 4th amendment. To determine whether the 4th amendment applies, it is necessary to determine whether the government searched a place where a person has a legitimate expectation of privacy. A person's pocket is certainly a place where a person has a legitimate expectation of privacy.

Here, Officer Jones arrested Donnie, and *after* arresting him, searched Donnie's pockets. Because a government agent was searching an area where a legitimate expectation of privacy in the area searched exists, the search is presumed to be invalid without a search warrant, unless an exception applies.

There is an exception to the warrant requirement: the officer may search an individual incident to arrest. This means that if a person is placed under a lawful arrest, the officers making the arrest (and the jail at booking) can search the entire person and all of the clothes of the person who is under arrest. The switchblade was found during a search incident to arrest. No warrant was required, and the search is lawful so long as the arrest was lawful. But, since there was no probable cause to arrest Donnie, the search incident to arrest was invalid and the switchblade would be excluded.

The Bag of Cocaine

As stated above, a search is evaluated for reasonableness under the 4th amendment. If Donnie had a legitimate expectation of privacy in the area searched for the cocaine, then the search is invalid without a warrant unless an exception applies. Here, Donnie dropped the bag of cocaine behind a car tire. There is no legitimate expectation of privacy under a car, so the search was not unreasonable and the 4th amendment is not triggered here. The cocaine was in plain view, and the officers had the right to be in a public street. The cocaine would therefore be admissible despite the unlawful arrest (although it would be difficult to prove at trial that it belonged to Donnie since no one saw him drop it there and he made no statements claiming the cocaine.)

Exclusion of Victor's Identification of Donnie

Because Victor's identification of Donnie at the showup was unduly suggestive, it is subject to the exclusionary rule. The exclusionary rule is a judge-created rule to exclude evidence that was obtained in violation of the constitution. The court will grant Donnie's motion to suppress Victor's identification of Donnie. Because that evidence is excluded, neither it (nor

-2 What would the defense argue? The discarding of the cocaine was fruit of an illegal detention. But Hodari D. has held otherwise.

any of the fruits from the poisonous tree of Victor's improper identification of Donnie) can be used in the prosecution's case in chief.

Effects of the Exclusion in This Case

The motion to exclude evidence includes the cocaine, the switchblade, and Victor's identification of Donnie. For the reasons stated above, Victor's identification of Donnie at the scene of his detention would be excluded by the court. As a result of that exclusion, all fruits of that particular poisonous tree would also be excluded.

Donnie's original detention was lawful, and Donnie discarded the cocaine in a public place. Because the officers did not find the cocaine as a result of an invalid identification, the motion would be denied as to the cocaine.

The motion would be granted under these facts as to the switchblade. Probable cause to arrest Donnie did not exist until Victor identified him. If Victor's identification is excluded, there is no probable cause to arrest. If there is no probable cause to arrest, there is no lawful arrest, and therefore there is no search incident to arrest. There is therefore no exception to the warrant requirement. The switchblade was found in Donnie's pocket, but was found without a warrant, and should also therefore be excluded.

Alternate Reality - If there was a Stop and Frisk Instead of Just a Stop

Although he did not do so, the officer could have also discovered the switchblade when he detained Donnie prior to Victor's identification. Had the officer been so inclined, he could have "frisked" Donnie when he was originally detained. This search is authorized by *Terry* for officer safety. As long as the officer has reason to believe the suspect he has detained could be armed and dangerous, he may perform a cursory pat down for weapons. Here, Donnie was suspected of committing a robbery with a gun. It was reasonable for the officer to believe Donnie had a gun when he was originally detained, so a frisk would have been appropriate in this instance and allowed by the 4th amendment.

If the switchblade was discovered as a result of a stop and frisk based on Victor's 911 call, which under these circumstances would have been lawful, the officers would have had probable cause to arrest Donnie based on the switchblade alone. It then follows that Donnie would be taken to the police station, where he could be identified via traditional lineup by Victor. So long as that lineup was

*Good thoughts,
but NO points
for non-issues.*

constitutionally sound and not unduly suggestive, Victor's identification could then be admitted and the motion to suppress would be denied as to all items.

It is, however, possible that the stop and frisk could be held invalid for lack of specific, articulable facts as was the case in *Florida v. J.L.* where a youth in a plaid shirt was frisked at a bus stop based on a 911 call about a man with a gun. In that case, Victor's positive identification in the field would be necessary to establish probable cause for arrest.

83

2)

Reliable and Unreliable Informants

Police may use a variety of informants for the purposes of investigating crime. A reliable informant is an informant who has a proven record of providing timely, accurate, reliable information to the police. These types of informants may generally be relied on (hence the moniker 'reliable') for specific, articulable facts that give police reasonable suspicion or probable cause to detain, search, and arrest. An informant who is not reliable may give information helpful to the police, but the information is not generally of sufficient quality or reliability to be relied on for the purposes of obtaining search warrants or establishing reasonable suspicion or probable cause. In those instances, the police usually rely on other techniques (such as surveillance) to develop facts sufficient to obtain warrants.

-1 Missed rule - Informant info judged by totality of circumstances.
Ingrid can be assumed to be a Reliable Informant

Here, Ingrid has given information to the police in the past. The facts of this case do not specify whether or not the information Ingrid has given in the past turned out to be true or false. It can be inferred, though, that since the police have put so much stock into Ingrid and her information to assign her a "handler" that she is reliable enough for their purposes. Further, the facts do not specify that Ingrid is a confidential informant, so she could presumably be cross-examined by defense counsel in the future concerning her statements to the officers.

Search Warrants, Generally

The 4th amendment protects individuals in the United States against unreasonable searches and seizures. A search is presumed unconstitutional if it is performed by the government in an area where a person has a legitimate expectation of privacy in the area searched and the police do not have a search warrant, unless an exception to the warrant requirement applies. A search warrant may only be issued by a neutral, impartial magistrate upon an affidavit establishing probable cause that the area to be searched contains evidence or other items used in criminal activity. Probable cause exists when an officer (or issuing magistrate) possesses knowledge of sufficient facts and circumstances as would warrant a reasonable person to believe criminal activity had occurred or was occurring.

Officer Otter's Search Warrant Affidavit

Here, Officer Otter relied on Ingrid's statements to him when he penned the affidavit in support of his search warrant application. The statements in the affidavit included the information that Ingrid had been in Devra's home approximately two months before, there were at least 20 marijuana plants in the yard, Ingrid had been arrested 5 times for misdemeanor offenses, and Ingrid was convicted of perjury 10 years ago. The affidavit also contained Officer Otter's background, training, and experience, and a list of items he expected to discover when he searched the home. The affidavit did not include the fact that Ingrid had two pending criminal cases when she gave Officer Otter her statement.

-2 Missed prosecution argument - Affidavits no longer need to include info re informant's credibility.

Officers are required to include all material information in their search warrant affidavits. Failure to do so can make the affidavit subject to attack, resulting in an invalid warrant being issued and executed. If the allegation is that an officer intentionally misled the magistrate, or recklessly omitted material information from his affidavit, defense counsel can file a motion to traverse a search warrant.

H

At the Franks hearing, if it is determined that an officer intentionally misled the magistrate or knowingly or recklessly omitted material information from his affidavit, the affidavit is re-evaluated with the missing or untrue information added or corrected to determine whether probable cause still exists to issue the warrant.

Here, Officer Otter intentionally withheld information from the magistrate that Ingrid (the informant) was subject to two pending criminal cases. That information would then be added back to the affidavit and the magistrate would make a new determination as to whether or not probable cause now existed.

The state will argue that the missing information was not germane to the probable cause determination, since Ingrid had a long criminal history and had been convicted of crimes of moral turpitude. That information was known to the magistrate when he issued the warrant, since Officer Otter disclosed that in his original affidavit. The state will argue that the addition of two more pending charges would have no effect on the issuing magistrate's judgment that probable cause existed to issue the warrant.

The defense will argue that the missing information was definitely material, and that since Ingrid has new charges, she could be attempting to fabricate information to help the police in exchange for leniency. Their argument would further be that since the officer deliberately withheld information from the magistrate, it is possible he has continued to do so, and the entire affidavit is therefore unreliable.

Both arguments have merit. The trial court in this instance would likely rule that, although the officer did mislead the magistrate, probable cause still exists because the magistrate was already aware of Ingrid's propensity for untruthfulness and there is no reason to believe the officer lied in his affidavit.

The Execution of the Warrant

A search warrant must specify the place to be searched as well as the items to be seized, both with specificity. Here, the warrant specified that all of Devra's house and yard were to be searched, and the items to be seized were marijuana, growing or use paraphernalia, baggies, scales, and other items used in the trafficking of narcotics. Because it meets the specificity requirements for a search warrant, it appears to be valid on its face, and the police may justifiably rely on it. After obtaining a valid warrant, officers are required to serve the warrant promptly (typically within a day or two, but almost never more than a week.) Finally, officers are required to knock and announce their presence before forcing entry, unless an exigent circumstance exists.

Armed with a valid search warrant, the police executed the warrant on January 15. The police violated the knock and announce rule by using a battering ram to knock down the door, without first announcing themselves. The state will argue that there was an exigent circumstance: if the police had identified themselves by knocking and announcing their presence, any occupants of the house could destroy evidence, since the items sought are easily disposed of by flushing down a toilet or any similar act.

The defense will argue that there was not a sufficient exigency to justify their failure to knock and announce themselves.

The prosecution has the better argument, since narcotics are often disposed of in a very rapid manner when the police come knocking. It is immaterial, though, since the exclusionary rule is not enforced for a simple failure to knock and announce. In other words, it doesn't matter why the police didn't knock and announce themselves, since nothing bad will happen to them for their failure to do so even if they had no justification. The state could simply shrug and say "whoops" and the search would still be valid.

Notwithstanding the knock-and-announce violation, once inside, the police were entitled (pursuant to their search warrant) to search the entire premises for narcotics and other paraphernalia. The police may seize any other evidence of a crime, if it is located in a place they are authorized to search pursuant to a warrant. In this case, a gun was found in a kitchen drawer.

The prosecution will argue the police did not exceed the scope of the warrant. Since drugs, plastic baggies, scales, money, and use paraphernalia would all fit inside a kitchen drawer, the police were entitled to look inside it. They were allowed to seize any contraband they found inside, whether or not it was related to the reason for the original search warrant.

The defense, on the other hand, will argue the police exceeded the scope of the warrant. The primary target of the warrant was the marijuana plants in the back yard, and since they found none, they should have left the residence without searching further.

The state's argument here is stronger, and the court will likely find the gun had been legally seized.

Suppression Motion as to the Gun

Devra's attorney has filed a motion to suppress the firearm. Since the firearm was seized as contraband, from a place that did not exceed the scope of a search warrant, which was issued on an affidavit which survives a *Franks* analysis, the motion to suppress the firearm will likely be denied by the court.

-10 Missed issue - while police may have legally seen the gun, the gun is not *per se* contraband, and no gun was mentioned in the affidavit or the warrant.

Prosecution might argue that drug dealers commonly use gun to protect against theft.

Defense might argue that although seeing the gun was a "plain view" matter, inspecting the gun for its serial number violated the scope of the warrant, and therefore violated the 4th Amendment. See Arizona v. Hicks.

-5 Missed issue - Did police methods "shock the conscience", thus violating Due Process

3)

Question Three: Denny

Custodial Interrogations

A person is in custody if they are not free to leave or move, or have been formally arrested. Here Denny had been arrested and was being held on suspicion of murder. An interrogation is usually conducted by law enforcement or an agent of law enforcement and is designed to illicit incriminating evidence from the accused. Here, detective Smith was a law enforcement agent and initiated the questioning of Denny who was in custody. A court will likely find this was a custodial interrogation.

5th Amendment Right

The 5th amendment applies to custodial interrogations. Custodial interrogations are protected by the 5th amendment right against self incrimination and the accused has a right to the presence of an attorney at a custodial interrogation. The 5th amendment also requires Miranda warnings to be read before questioning. Miranda warnings are the following: the right to remain silent, anything said may be used against you in court, you have the right to the presence of an attorney, if you cannot afford an attorney one will be appointed to you. The 5th amendment also protects the accused who wish to remain silent by prohibiting their silence to be used against them in court. Here, detective Smith began telling Denny about evidence they had to show Denny acted in self-defense and evidence they had from Denny's mother. Smith then asked Denny if the events happened as the detective had just described. Denny was in custody at the time and the detective began questioning Denny about the murder without reading Denny his Miranda rights. Denny can argue his rights were violated because he did not waive his right to an attorney. A valid waiver requires a knowing and intelligent waiver from the accused; silence is not a valid waiver. Prosecution may argue the questioning did not begin until after Denny was read his Miranda warnings and detective Smith was simply engaging in small-talk with Denny before issuing the warnings. Prosecution may also argue Denny was silent at first and later gave a voluntary statement. Denny may argue the police used unethical tactics by lying about the evidence, but it is not illegal for the police to lie to the accused in an interrogation. A court will likely find this was a custodial interrogation that violated Denny's 5th amendment rights

-2 Missed issue - Was interview custodial if Denny was free to end the interview by leaving the interview room?
See Howes v. Fields.

because of the failure to give Miranda warnings, and the absence of a knowing, intelligent waiver from Denny.

Coercion

Interrogations must be conducted in an environment and manner that is not coercive. Coercion by law enforcement may be explicit through their words or physical force or implicit through conduct and the environment. Here, detective Smith was not in uniform, friendly toward Denny, offered Denny food and water which Denny accepted and asked the guards to remove Denny's handcuffs. The prosecution will point to these facts to say the environment was not coercive and Denny voluntarily answered detective Smith's questioning because he was comfortable. Detective Smith also gave Denny false facts about what evidence they had of the crime, and used some emotional pulls by saying Denny's mom told him that Denny was a good person. Smith also told Denny he disagreed with his colleague Detective Daisy on her belief that Denny committed premeditated murder or murder in the first degree. Smith told Denny he believed Denny acted in self-Defense and he would not write down Denny's response. Denny can argue he was coerced to agree with Smith when asked if self-defense is why he killed the victim. Denny can argue he was made aware of the alternative crime of first-degree murder and then presented with a lesser crime. The prosecution can argue this was not coercive and that Denny was very comfortable and voluntarily responded. Denny can argue he was misled by Smith saying this wouldn't be written down, and was more comfortable agreeing with the detective as a result despite being recorded. The prosecution will argue that Denny not knowing he was being recorded should not affect his statements to law enforcement and have captured his honest statements. A court will likely find Denny was not coerced into giving a statement and that being unknowingly recorded should not affect a person's statements to law enforcement.

Incriminating Statements - before Miranda

An interrogation is usually conducted by law enforcement or an agent of law enforcement and is designed to illicit incriminating evidence from the accused. The 5th amendment protects the accused from involuntary self-incrimination. Here, Denny was not read his Miranda warnings before Smith evoked an incriminating statement from Denny. Smith asked if Denny acted in self-defense and Denny replied "I guess so." Denny can argue this

statement isn't an affirmative yes or no. The prosecution can argue that this is an incriminating statement because Denny did not deny he committed the murder, he simply guessed it was in self-defense. A court will likely find Denny's Statement to be incriminating however, this statement was made without Denny being read his Miranda warnings and may not be permissible as evidence.

Incriminating Statements- after Miranda warnings

Detective Smith read Denny his Miranda rights, Denny confirmed that he understood his rights and Smith resumed questioning. Denny made incriminating statements after being read his Miranda rights and he said he understood his rights. Denny can argue this is not permissible because he did not waive his Miranda Rights. A waiver must be knowing and intelligent and must be communicated to law enforcement. Here Denny did not sign a waiver but the prosecution will argue that statements given voluntarily after Miranda warnings are read are admissible. The prosecution will argue they asked Denny if he understood his rights before questioning resumed and Denny said he understood. Denny may argue this occurred without counsel present. The prosecution will argue that Denny did not unequivocally request counsel be present, once counsel is requested an interrogation must stop until counsel is present. A court will likely find the statements made after Denny was aware of his Miranda rights are admissible in court and were obtained lawfully.

14th Amendment Right

The 14th amendment is the due process clause that extends the right to a fair trial and a speedy trial to all criminal defendants. the 14th amendment also applies to the 5th and 6th amendments to ensure due process for the accused. Here for Denny to have a fair trial he was the right to counsel at all critical stages of criminal proceedings for felonies and misdemeanors where incarceration may be imposed. Here Denny is facing a murder charge which is a felony that carries a sentence of incarceration, therefore the due process clause applies to his 6th amendment right. Denny also has the right be made aware of his Miranda rights before custodial interrogation. Here Denny was in custody and brought into an interview room for interrogation by a detective. Thus, the due process clause applies to Denny's 5th amendment right.

-3 Conclusion Needs more discussion. Did Smith's tactics "shock the conscience"?
false and misleading statements, but no express threats or oppressive conditions
Totality of circumstances standard applies.

Denny's motion to suppress the entirety of his statements is likely to be denied. The court is likely to grant a motion to suppress the statements made before Miranda warnings were issued because this violates Denny's 5th and 14th amendment rights. The court is likely to deny Denny's motion to suppress the statements made after Miranda warnings were given because Denny knowingly and voluntarily made the statements without requesting counsel; therefore no violation occurred after Denny was aware of his Miranda rights.

END OF EXAM

Missed issues:

- 10 Was Smith's interview designed to circumvent Miranda?
See Missouri v. Seibert and Oregon v. Elstad.
- 2 Was Denny's 6th Amendment right to counsel violated?
See Messiah v. U.S.