

Monterey College of Law
Criminal Law & Procedure (Hybrid)
Final Examination
Spring 2022
Prof. I Mora

Instructions:

Answer Two (2) Essay Questions.

Answer Twenty (20) MBE Questions.

Total Time Allotted: Three (3) Hours.

Recommended Allocation of Time: Equal Time per Question.

QUESTION 1

Information gained from a constitutionally proper wiretap gave law enforcement agents a reasonable suspicion that Deb was a cash courier in a money laundering scheme associated with the distribution of narcotics. To obtain probable cause to arrest Deb, and to build their case against other participants, the agents placed Deb under surveillance. They saw her drive into an office park complex and legally park the car. She walked into the complex carrying a soft cloth briefcase. As she walked, Deb engaged in evasive actions the agents recognized as moves designed either to reveal or lose any potential surveillance.

Deb walked into a building where the agents lost sight of her for a few moments. When she emerged from the building and approached the car, it became apparent to the agents that she was aware of the surveillance. Three agents surrounded Deb and asked her questions about the money laundering scheme. During this conversation, agent Aldo seized and squeezed the briefcase held by Deb. When he felt a lump, he could not identify, Aldo reached into the briefcase and felt a heavily taped bound object about three inches in diameter which he removed from the briefcase. Aldo will testify that he has seen such objects in the past, and they frequently contained drugs. Aldo cut the package open and discovered a substance that a field test indicated was cocaine. He arrested Deb.

Without Miranda advice and waivers, Aldo asked Deb if she owned an automobile. She replied that she did, and pointed to the car the agents had seen her park. She refused Aldo's request that she consent to a search of the car. The agents nonetheless searched the car, finding a loaded handgun concealed under the dashboard.

Deb is awaiting trial on charges of possession with intent to distribute cocaine and unlawful possession of a handgun.

On what ground or grounds under the United States Constitution might Deb move to suppress:

1. The narcotics? Discuss.
2. Deb's statement that she owned the car? Discuss.
3. The handgun? Discuss.

QUESTION 2

Police officers believed that Dell had assaulted Brad because Brad failed to pay Dell for cocaine Dell sold to Brad. The officers obtained a valid warrant for the arrest of Dell on an assault charge. They went to Dell's apartment and arrested Dell at the front door when he responded to their knock. The officers then walked through the apartment, and in a rear bedroom, made initial observations of drug paraphernalia which they left in place.

A police officer advised Dell of his Miranda rights. Dell immediately stated: "I do not want to talk to you." Dell was booked and placed in a cell with a man named Stuart Snitch, an inmate who was known by the jailers to be an informant. Stuart asked Dell why he had been arrested and engaged Dell in a conversation about drug sales during which Dell made statements incriminating himself concerning drug trafficking. Stuart promptly related Dell's statements to jail personnel.

Police then obtained a warrant authorizing a search of Dell's apartment for cocaine and drug paraphernalia. The affidavit in support of the search warrant recited that Dell had sold cocaine to Brad. The affidavit also recited that a police officer had seen drug paraphernalia in Dell's apartment. The affidavit did not disclose Dell's statements to Stuart, and omitted the circumstances under which police initially observed the drug paraphernalia. Officers who executed the search warrant seized the drug paraphernalia and cocaine, which they also found in the apartment.

Dell has been charged with possession of cocaine and drug paraphernalia under applicable state laws.

1. Dell has moved to exclude from evidence his statements to Stuart. Dell claims his statements were involuntary, were elicited after he invoked his Miranda rights, and were obtained in the absence of counsel. Dell argues that admission of the statements would violate his rights under the Due Process Clause of the Fourteenth Amendment, the Fifth Amendment, and the Sixth Amendment to the United States Constitution. What arguments should the prosecutor make in opposition to Dell's motion, and how should the court rule on the motion? Discuss.
2. Dell has also moved to exclude any evidence of the police officers' initial observations of drug paraphernalia in Dell's home *and* to exclude the items seized in the search made pursuant to the search warrant. What arguments based on the Fourth Amendment to the United States Constitution should Dell make in support of these two motions, what arguments should the prosecutor make in opposition to the motions, and how should the court rule on the motions? Discuss.

80

1)

1. Motion to Suppress Narcotics

Fourth Amendment - The Fourth Amendment protects against unreasonable searches and seizures.

Government Conduct

A search must be conducted by a government agent. Here, Aldo was a government agent.

Reasonable Expectation of Privacy

A REP occurs when the defendant has an actual expectation of privacy and this expectation is one that society is willing to recognize. Aldo seized and squeezed Deb's briefcase. Deb would believe that she has a REP that her ^{good} briefcase would not be seized or opened by the police. This would also be something that society would recognize as a REP.

Because there is government action and REP, then there would ^{good} need to be warrant for the police to search her briefcase, unless there was an exception that applied. The facts indicate that there was no warrant because they were attempting to get probable cause for a warrant, therefore there needs to be an exception to the warrant requirement in order for the search to be lawful.

good

Exceptions to the Warrant Requirement

very nice introductory discussion

Exceptions to the warrant requirement include, exigent circumstances, search incident to a lawful arrest, automobile exception, consent, plain view, evidence of admissions, and stop/frisk.

Exigent Circumstances

Exigent circumstances arise when the police are in hot pursuit of a felon, public safety, and prevention of the destruction of evidence. In these situations, there is an exception to the warrant requirement for unreasonable searches. Aldo may argue that he believed that Deb was carrying drugs in her briefcase and that she could dispose of the evidence if they didn't seize it. He would also argue that Deb was acting evasive and knew that she was being watched which increased the urgency to seize the bag. But, there was no probable cause to indicate that she was carrying drugs, just that she was acting suspiciously.

Stop/frisk

When a suspect is stopped and frisked, there is no warrant requirement. An officer just needs reasonable suspicion that the suspect may have been involved in previous, present or future criminal activity. A suspect is considered seized. The officer can then pat down the suspect to check for any weapons she may have on her or any evidence of a crime, but they cannot feel around for evidence. They can also briefly question the suspect. After detaining Deb, Aldo squeezed the briefcase and when he felt a lump reached in. Aldo argues that he had seen such objects in the past and they usually contain narcotics, but he had squeeze and manipulate the briefcase in order to feel the box. Therefore the stop/frisk exception wouldn't apply.

Plain View

Plain view applies to evidence obtained without a warrant if the officer was lawfully able to be at the location, the officer could see the evidence with his own eyes and the officer had probable cause that the evidence was part of a crime. The officers were not able to view the package of narcotics in the briefcase until it was opened, therefore plain view would not apply. *incriminating character of item is immediately apparent*
good

Exclusionary Rule

This is a judge made rule that excludes evidence obtained in violation of one's constitutional rights. This includes fruit of the poisonous tree, any additional evidence obtained as a result of the unlawful seizure. There are three exceptions, independent source, attenuation and if the evidence would have been obtained anyway by lawful means. *nice rule statement; how about application/analysis?*

Independent Source

2. Deb's Statement

Fifth Amendment - protects one's right from self-incrimination.

Miranda Warnings

When a suspect is in custody and before being interrogated by police, the police must issue the suspect their Miranda warnings. These warnings include the right to remain silent, anything you say can be used against you, the right to an attorney, and the right to have an attorney appointed if you can't afford one. These warnings do not need to be issued verbatim, but must be reasonably conveyed to the suspect. A suspect can waive their Miranda rights as long as they do it unambiguously.

Custody

A person is in custody when they feel they they are not free to leave the police interaction. Here, Deb was arrested, therefore she was in custody. good

Interrogation

A person is being interrogated when they are expressly questioned by the police or when the police should have reason to know that their actions and words would incite an incriminating response from the suspect. Here, as soon as Deb was arrested, the police asked her if she had a vehicle. The police would say that was just a routine question, but Deb would argue that it was an express question and she should have been Mirandized. She would also argue that it was a request for an incriminating statement because they wanted to search the car. The police would state that they were just confirming what they knew was her car. good

Conclusion: How about a Due Process Clause of the 14th A. (Voluntariness) discussion?

Because Miranda warnings were not given, and therefore there was not a waiver, If the question was one to elicit an incriminating response, then the statement would be inadmissible.

3. The Handgun

Fourth Amendment, supra

Government Action, supra.

Reasonable Expectation of Privacy, supra.

There is a reasonable expectation of privacy in our own vehicles. Therefore because there was government action and REP, a warrant would be needed. Because there was no warrant, an exception to the warrant requirement would be needed to search the car.

Exception to the Warrant Requirement, supra

Search Incident to a Lawful Arrest (SILA)

A warrant is needed for a SILA but the search is limited to the immediate surroundings of the suspect (wingspan), to prevent her from obtaining a weapon, and those areas where evidence could be destroyed. Because Deb was arrested, the agents were only able to search her immediate surroundings. If she was arrested at her vehicle, then the police would be able to search the inside of the passenger area of the vehicle but not the trunk. Because Deb had to point to the vehicle, she was not near it and therefore this exception would not apply.

was it reasonable to believe the vehicle contained evidence of the offense of the arrest?

Automobile Exception

With this exception, the police may search an automobile prior to arrest if they have probable cause to believe that the vehicle contains evidence of a crime. The police may search the entire vehicle, including the trunk and any compartments that they believe the specific item(s) that they believed were in the car could fit in. Here, Deb had been arrested and therefore only SILA could apply.

more analysis on automobile exception

Consent

Deb did not consent to the search. *correct, but conclusory (incorporate facts)*

Conclusion

The evidence of the handgun would more than likely be suppressed because it was obtained without a warrant or an exception to the warrant requirement.

Issues list: Final exam, Criminal Procedure 128B HYB, 2022

Weight of issues:

+ (necessary item of discussion)

* (item of greater weight)

// (item of lesser weight)

///(very minor issue)

Credit ranges:

✓✓✓(outstanding; unusually complete & thorough answer; discussed all major & minor issues).

✓✓ (very good; may have missed minor issues or lacked complete discussion of some fact or legal rule, otherwise reasoning clear and cogent, reflected quality understanding of subject matter).

✓ (satisfactory to good; may need some improvement in identifying issues with heading and discussing in correct order, analysis incorporated facts satisfactorily).

1/2 (missed issues & organization lacking, answer is cursory, deficient in significant areas, reflected minimal understanding).

∅ (unsatisfactory answer or failure to address any major issue).

The interrogatory poses three items of evidence that the prosecution will seek to admit at trial, and asks the student to determine whether each piece of evidence is admissible under the U.S. Constitution. Thus, this question is best structured/ organized by taking each item of evidence individually, and then determining whether the admission of each item of evidence violates Deb's constitutional rights.

1. Admissibility of the narcotics
2. Admissibility of Deb's statement that she owned the car
3. Admissibility of the handgun

I. Admissibility of the Narcotics

a. // The facts indicate that the wiretap was constitutional and that the agents had a "reasonable suspicion" that the defendant was involved in a crime. However, although these facts might justify a "detention," it is the search and seizure of the narcotics which must be validated as a warrantless search. Thus, a Fourth Amendment analysis is required.

b. +4th Amendment (protects against unreasonable search & seizure)

i. +Gov. action (search of briefcase by police)

ii. +REP/ standing (Deb's briefcase)

1. +Apply & conclude.

iii. +Warrant requirement (here, warrantless search of briefcase)

1. +Apply & conclude.

iv. +Exceptions to warrant requirement

1. +Stop & Frisk

a. +Stop

1/2 i. +Apply & conclude.

ii. Here, police had reasonable suspicion that Deb was involved in a crime (stop justified); however, the issue remains whether the search of Deb's briefcase was justified under the circumstances.

b. +Frisk

i. +Apply & conclude.

c. +*Scope of intrusion/patdown of outer clothing- *Terry v. Ohio*; *Minnesota v. Dickerson* (case names optional, not necessary). The scope of the frisk is generally limited to a patdown of the outer clothing for concealed instruments of assault.

i. +*Apply & conclude.

- ✓✓ 2. //Plain view/ plain feel/ plain touch; (may be discussed as separate issue *or* in conjunction to frisk analysis under stop & frisk; *or* in the form of a discussion regarding scope)
 - ✓✓ a. //Apply & conclude.
- ⊘ 3. +Search Incident to a Lawful Arrest
 - a. //Wingspan (scope)? Discuss.
 - b. //PC to arrest, was it a 'lawful' arrest (legal standard)? Discuss.
 - c. **Was the search "incident to" arrest (timing)? Discuss.
 - i. +overall Application & Conclusion.
- 1/2 v. ///Exclusionary Rule; optional discussion as a precursor issue or as a wrap up issue at the end of 4th A. analysis.

II. Admissibility of Deb's Statements that She Owned the Car

- a. +Due Process Clause of the 14th Amendment (Voluntariness):
 - ⊘ i. A confession must be voluntary under the totality of the circumstances; prosecution will successfully argue that there is no evidence of official compulsion or coercion.
 - ✓ ii. +Apply & Reasonably conclude.
- ✓ b. + 5th Amendment- Miranda:
 - ✓ i. +Custody. Discuss.
 - ✓✓ 1. +Apply & conclude.
 - ✓ ii. +Interrogation. Discuss.
 - ✓✓ 1. +Apply & conclude.
- c. ///Impeachment exception (if Deb chooses to testify at trial, she can be impeached with her statement).

III. Admissibility of the Handgun

- ✓ a. +Fourth Amendment- (search of car)
 - ✓ i. +Gov. action
 - ✓ ii. +REP/ standing
 - ✓ iii. +Warrantless search (exceptions to warrant requirement)
 - ✓ 1. +*Consent
 - ✓ 1/2 a. +Apply & conclude.
 - ✓ 2. +*Automobile exception
 - 1/2 a. +Apply & conclude
 - b. +Fruit of poisonous tree discussion (PC to search car developed from illegal search of briefcase)
 - ✓ 3. +*Search Incident to a lawful arrest
 - ✓ a. +Apply & conclude
 - ⊘ b. //Fruit of poisonous tree discussion (search of car tainted by illegal arrest; PC to arrest developed from illegal search of briefcase)
 - i. ///Inevitable discovery (wouldn't have discovered the handgun if they had acted constitutionally).
 - 4. ///Plain View: (gun was not in plain view; was concealed)
 - 5. ///Inventory Search: (Although the police can search a vehicle that has been impounded, here the seizure of the vehicle was the product of the illegal search of Deb's briefcase; car was legally parked in office park complex when searched).

2)

83

The People v. DellQuestion 1: Excluding Evidence of Dell's Statement to StuartMiranda:

Did Dell effectively assert his right against self incrimination and right to counsel under the 5th Amendment?

When an individual is in custodial interrogation and/or upon being arrested, they are to be given a Miranda Warning to protect them against self incrimination. A Miranda Warning has four essential elements: the right to remain silent, the warning that anything the individual says may be held against them in a court of law, that they have a right to an attorney, and if they cannot afford one, one will be appointed to them. An individual has to assert their Miranda rights clearly and unambiguously/unequivocally. Once that is done, the police need to scrupulously honor them.

In the case at hand once Dell is arrested, they advise him of his Miranda rights and he states, "I don't want to talk to you." This may mean he is invoking his right to remain silent but he (Dell) does not clearly state, "I want to speak to an attorney."

The police effectively gave Dell his rights, but it is not clearly that Dell effectively invoked them given his response. If a suspect has been given their Miranda Warnings and states they want counsel, then all questioning stops and the 5th Amendment is not offense specific so the police cannot speak to them without counsel on any charges. If they invoke their right to remain silent they police will have wait a period time before they can question the suspect or they will have to wait until the suspect initiates.

Due Process Clause:

Were Dell's statements to an informant in the jail cell a violation of his due process rights and hence not admissible in court?

good
For a violation of due process to occur in this incident, Dell's confession would need to be involuntary. There is not evidence that when he spoke to the informant that his statements were coerced and not voluntary. Dell did not know that the Stuart was an informant helping the government, so there is no coercion here. Stuart asked why Dell was arrested which seems like a normal conversation between two cell mates. Dell voluntarily told Stuart about the drug sales and trafficking.

good job referring back to the all of the question
The prosecution will argue that these statements by Dell to Stuart are voluntary and hence admissible.

Dell will argue that he invoked his right to remain silent or an attorney (again his statement I do not want to talk is a bit ambiguous and can have multiple meanings), but nonetheless, he will argue that this was coercive because Stuart was intentionally planted and began to ask him questions.

good use of facts

5th Amendment:

good job breaking up call of question
Was Dell's 5th Amendment right to remain silent and right counsel violated when he provided statements to the informant?

Once a person invokes their right to remain silent it must be honored by the police. The right to counsel must also be honored by the police and is not offense specific so the suspect or defendant cannot be asked about the case at hand or another case. However, if the defendant initiates conversation or questioning with the police they may proceed.

Moreover, under the 5th Amendment, the police may use clandestine means, such as an uncover informant to learn more the defendant in custody as long as that individual is not aware that there are informing the government.

good | The prosecution will argue again, that when Dell stated he did not want to talk to the police that this was not clear or unambiguous. They will also argue that Dell didn't know that Stuart was a police informant and therefore the confession was not coerced and can be admitted.

Dell will argue that stating he did not want to talk was clear and that he was invoking both his right to counsel and to attorney that police needed to stop any type of questioning unless counsel was present or he started/prompted the conversation.

6th Amendment:

Are Dell's 6th Amendment right to counsel violated when he made incriminating statements to Stuart the informant?

The 6th Amendment right to counsel is offense specific and attaches once an individual is formally charged. At this point, the defendant is entitled to have counsel present at all critical stages of judicial proceedings, such as arraignments, pre-trial motions, post-indictment line-ups, the trial, and sentencing.

Here the fact pattern states that Dell was first ^{on the assault} booked before he was charged. He was booked and put into a cell with Stuart, the facts do not state he was charged until after the warrant to search his apartment was executed. Therefore, if Dell was NOT in fact charged but just book, his Six Amendment right to counsel did not technically attached and he did not have to be afforded an attorney or use his own until he was formally charged and Stuart's questions fall under the 5th Amendment (discussed above) not the 6th Amendment.

with the 6th Amendment, the ^{as} Messiah rule is what shows us an individual has a right to counsel once charge, the case of Dobbs ruled it was offense specific, and Montejo states that an individual can waive their rights to speak to police, even if 6th Amendment is attached as long as it is knowingly, voluntarily, and intelligently done by the defendant.

The prosecution is going to argue that there is no 6th Amendment violation here because it is not yet attached when Dell made his statements to Stuart.

Dell will argue that they were attached and that he invoked his right to counsel when Mirandized and it carried over.

Conclusion:

If the court finds that Dell stating he did not want to talk to officer when he was Mirandize was not sufficiently clear and unambiguously to whether he wanted to remain silent and wanted an attorney (and the facts do not state he specifically asked for an attorney) then the prosecution will successfully be able to admit his statements to Stuart as evidence since they were not coerced, he voluntarily talk to Stuart, and Dell did not know that Stuart was working on behalf of the government.

Question 2: Initial Observation and Search Warrant of Apartment (FYI--Below I refer to this warrant as the second warrant since the arrest warrant was the first warrant)

4th Amendment:

When police first entered Dell's apartment with the arrest warrant was their broader search in his home and the rear apartment ^{rear bedroom} lawful under the 4th Amendment? Was warrant valid since it used evidence from this search and omitted the information from the informant?

A person can make a 4th Amendment claim against unlawful search and seizure when they have a reasonable expectation of privacy and there is government conduct.

Arrest Warrant:

Was there an initial valid arrest warrant for Dell and can the drug paraphernalia be admitted as evidence?

good | The facts state that the police had a valid arrest warrant and arrested Dell outside his house. It is assumed they had probable cause, it was issued by a neutral magistrate, with the particular persons, and places to be seized. However, the arrest warrant does not give permission for an officer to go in a search the home. In fact they can only search the person in a limited way under search incident to lawful arrest in the home and in the immediate area, so going in the house and the rear bedroom may be unlawful, at least this is what Dell will argue.

good | The prosecution will argue that the officer had plain view of the drugs and related items, but he did not have lawful access to this area of the house so it may be hard for the prosecution to argue that this evidence was immediately apparent and hence in plain view.

Second Warrant Issued:

Do the police have proper probable cause for the second warrant issued to search Dell's apartment after he was in custody?

A valid warrant is discussed supra (this essay and the previous). This second warrant does not rely on the informant's conversation with Dell but with the evidence that the police saw with the arrest warrant only.

Dell will argue that when the police arrested him the warrant did authorize a full sweep of his house and this evidence should be excluded under the judicial remedy of the exclusionary rule.

Exclusionary Rule:

The exclusionary rule is a judicial remedy as stated above to deter bad police conduct under the 4th Amendment) and that they police will need to find an exception, such as an independent source (which could have been the informant but that is not included here), sufficient time or attenuation/time passing, or inevitable discovering.

Dell will argue that none of these exceptions seem to apply, so the prosecution will have a hard time arguing that the additional evidence from the arrest warrant should be omitted.

The prosecution would have been better off to go with the informant information since it was not coerced and they argue that Dell's statement to police was not a clear indication of invoking Miranda. The informant could have been an independent source to support the search warrant and evidence of drug paraphernalia at Dell's house.

Dell will have a hard time getting the evidence that he sold cocaine to Brad suppressed because that seems to be the basis of the first arrest warrant which is stated to be valid.

Conclusion:

It does appear that this second warrant does not have fully permissible evidence to support the probable cause standard since it using information found at the apartment when the arrest warrant was executed and this search was too broad by the police. The police should have used the information from the informant to support it and the sale of drugs to Brad, the former seems to be more valid (the independent source of the

informant) as analyzed above. If the court finds that part of the warrant's basis is invalid, they may suppress the evidence found under the first arrest warrant when cops entered the rear room. However, if the court finds that the police officer did not know about the broad first search and does not have reason to believe anything is not valid in the warrant and operated on good faith, the evidence may be admissible because an officer executing a warrant in good faith that is not invalid on its surface or they have no reason to believe there is a problem with it will not necessarily invalidate evidence.

END OF EXAM

Issues list: Final exam, Criminal Procedure 128B HYB, 2022

Weight of issues:

+ (necessary item of discussion)

* (item of greater weight)

// (item of lesser weight)

///(very minor issue)

Credit ranges:

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✓ (satisfactory to good; may need some improvement in identifying issues with heading and discussing in correct order, analysis incorporated facts satisfactorily).

1/2 (missed issues & organization lacking, answer is cursory, deficient in significant areas, reflected minimal understanding).

Ø (unsatisfactory answer or failure to address any major issue).

In the first interrogatory of this question, the student is specifically directed to discuss the prosecutor's arguments opposing Dell's motions to exclude the statement made to Stuart Snitch. Of course, a discussion of the court's probable ruling encompasses the defendant's counter arguments as well, but the student should follow the instructions by discussing the prosecutor's arguments in response to each motion first.

The second interrogatory asks about Dell's motion to exclude initial observations by the police of drug paraphernalia in Dell's home *and* to exclude the items seized in the search made pursuant to the search warrant. Thus, the second interrogatory is handled best, if it is split into 2 and 3 by the student (as demonstrated by the organization below).

1. Dell's Motion to Exclude Statements Made to Stuart Snitch
2. Dell's Motion to Exclude Evidence of the Police Officers' Initial Observations of Drug Paraphernalia
3. Dell's Motion to Exclude the Items (cocaine & paraphernalia) Seized Pursuant to the Search Warrant

I. **Dell's Motion to Exclude Statements Made to Stuart Snitch**

✓ a. **Dell's Claim of Involuntariness**

- ✓ i. +*DP Clause of the 14th Amendment- (Voluntariness): A confession must be voluntary under the totality of the circumstances; prosecution should argue that there is no evidence of official compulsion or coercion.

- ✓✓✓ 1. *Apply & conclude.

b. **Dell's Claim of Miranda Violation**

- ✓ i. +*5th Amendment- Miranda: Defendant subject to custodial interrogation is entitled to Miranda warnings. Dell was under arrest and in custody at the time the statement was made, and was entitled to Miranda warnings, which he received. Prosecution should argue that Miranda applies only to interrogation by a government agent; b/c Stuart was not a police agent, Miranda does not apply.

- ✓✓✓ 1. *Apply & conclude.

c. **Dell's Claim of Violation of Right to Counsel**

- ✓✓ i. +*6th Amendment- Right to Assistance of Counsel: Defendant has the right to assistance of counsel after formal charges have been filed; prosecution should argue that b/c no charges had been filed when Stuart obtained the statements, the 6th A RTC does not apply.

- ✓✓✓ 1. *Apply & conclude.

2. //Offense specific (charged offense—assault—not drug crimes)

II. Dell's Motion to Exclude Evidence of the Police Officers' Initial Observations of Drug Paraphernalia

- ✓ a. +*4th Amendment- (Search)
 - ✓ i. +Gov. conduct
 - ✓ ii. +REP/ standing (D's apartment, D's bedroom)
- b. Exceptions to Warrant requirement
 - ✓ i. +SILA
 - ✓ 1. +Wingspan (rear bedroom was not in his wingspan; arrested at front door on assault charge)
 - 1/2 2. +Protective sweep (any reasonable discussion)
 - ✓ a. *Apply & conclude (could conclude either way).
 - ✓ ii. +Plain View (police may make a warrantless seizure when they are legitimately on the premises, discover evidence or contraband in plain view, and have probable cause to believe that the item is evidence; Dell will argue that police were not entitled to be in the rear bedroom when observations were made.
 - ✓ 1. *Apply & conclude (could conclude either way).

✓ **III. Dell's Motion to Exclude the Items (cocaine & paraphernalia) Seized Pursuant to the Search Warrant**

- ✓ a. +*4th Amendment- (Search)
 - 1/2 i. +Gov. conduct
 - 1/2 ii. +REP/ standing
- b. +Searches Conducted Pursuant to a Warrant (here, search warrant for D's apartment for cocaine & drug paraphernalia)
- ✓ c. +*Requirements of a Warrant- (validity of search warrant); to be valid, a warrant must be issued by a neutral & detached magistrate, be based on probable cause established from acts submitted to the magistrate by a government agent upon oath or affirmation and particularly describe the place to be searched and items to be seized.
 - ✓ i. +Sufficient PC? (Could conclude either way).
 - ✓ ii. +*Apply & conclude (could conclude either way).
- ✓ d. +Good Faith (Warrant) Exception- (evidence obtained by police in reasonable reliance on a facially valid warrant may be used by the prosecution even though the warrant is not supported by PC; discussion of whether or not there was evidence of bad faith by police).
 - ✓ i. +Apply & conclude (could conclude either way).