MONTEREY COLLEGE OF LAW
MIDTERM EXAMINATION
SPRING 2017

CRIMINAL PROCEDURE

Professors B. Brannon & S. LaBerge

Instructions

1. This examination consists of three sections of equal value. There is a three (3) hour time limit to complete the exam.

2. Sections 1 and 2 are each essay questions.

3. Section 3 consists of 25 multiple choice questions. Circle the letter corresponding to the correct answer. Please write your ID number (not your name) and your professor's name on page 1 NOT AVAILABLE

3. Make sure that you read each essay question carefully before answering. Attempt to organize your answer before you start writing. The essay questions test primarily on your ability to apply the law to the facts. The best answer is one that includes a succinct statement of the relevant legal principles, followed by a detailed analysis of how these legal principles apply to the facts, and a conclusion.

4. There are multiple issues to address in the essay questions. Some issues are fairly straightforward and do not require detailed analysis. Other issues are more complicated; those issues merit more extended discussion.

5. Bluebook Users/Essays -- Please write your ID number (not your name) on the cover of each of your bluebooks. Write your professor's name. Number your bluebooks. Return every page of this examination along with your bluebooks. Write on only one side of each bluebook page. Your answer must be double-spaced. Make sure your answer is legible. You will get no credit for words or sentences that we cannot read.

6. Computer Users/Essays -- Please type your ID number (not your name) at the beginning and end of your essay. Also type the name of your professor at the beginning. Return every page of this examination along with your answer.

7. This exam has twenty (20) pages including this instruction sheet.

2017 CRIMINAL PROCEDURE QUESTION 1

An armed robbery occurred at a Wells Fargo bank. The perpetrators obtained $7500 in cash from a bank teller's cash drawer. The teller reported that two handgun-carrying suspects fled the bank and drove away in a blue BMW sedan, which a bank customer followed onto southbound Highway 1 travelling at a high rate of speed. The customer then stopped following the BMW.

After receiving the above information from the CHP dispatch center (both witnesses provided identifying information), one minute later CHP Officer Jones observed a light gray BMW sedan with two occupants travelling the speed limit southbound on Highway 1 about one mile south from where the customer stopped following the suspect vehicle.

Officer Jones activated his emergency lights to pull over the BMW. The BMW sped up to 85 mph and then suddenly swerved onto a freeway exit ramp. Officer Jones followed the speeding BMW and observed the passenger toss an object as the BMW exited the freeway.

The BMW then stopped. At gunpoint, Officer Jones handcuffed the two occupants of the BMW. Officer Jones, while pat searching the passenger, felt a compressible cylindrical bulge in the passenger's pocket and removed the object, which turned out to be a roll of $20 bills.

Sheriff's deputy Phillips brought the bank teller to the location of the stop. Phillips read the teller a standard admonition which included the direction "Do not assume the person you will be seeing is the perpetrator merely because we are asking you to look at him." The two suspects were standing handcuffed next to the CHP car. The teller said he was "pretty sure" the two men robbed the bank, but he was not 100% positive.

Officer Jones then searched the interior of the BMW but found no evidence. He then searched the trunk and found a handgun and cash. The total amount of cash Jones recovered, adding the roll in the passenger's pocket to the cash in the trunk, was $7500.

Officer Jones searched the freeway exit where he saw the object land and found a handgun there.

Before the passenger's trial for bank robbery, his defense counsel brought a motion to suppress the following items of evidence:

1. The roll of $20 bills.

2. The handgun and cash in the trunk.

3. The handgun found next to the freeway exit.

4. All identification testimony by the teller.

What arguments should defense counsel make? How should the prosecutor respond? How should the court rule?

CRIMINAL PROCEDURE QUESTION 2

On October 31, Monterey police lawfully arrested Karen on probable cause she committed a burglary within the city. Officer Berretta advised Karen of her Miranda rights. Karen lawfully waived, but during subsequent questioning Karen stated, "It would be better if I had an attorney." Beretta responded, "It would be better for your boyfriend Ken if you talk to me." Karen knew that Ken was a suspect in a large scale illegal marijuana grow in Monterey County. Berretta then said, "Ken's marijuana beef could go away." Karen then confessed to the burglary and told Beretta he could find a diamond ring she stole during the burglary at a pawn shop she identified.

Two days later, Karen was arraigned on the Monterey burglary and a public defender was appointed to represent her. She entered a not guilty plea and the court released Karen from custody on her own recognizance.

Detective Jones from the Carmel Police Department was investigating a burglary in Carmel in which Karen was a suspect. On November 10, Jones contacted Karen at her apartment and asked to speak with Karen. Karen invited Jones in and they sat down in her living room. Jones told Karen he knew she committed a burglary in Carmel. Karen admitted she had committed a Carmel burglary. Jones told Karen he knew she had more stolen jewelry from the Monterey burglary. Karen admitted she did and handed Jones a diamond pendant.

Beretta recovered the diamond ring from the pawn shop and the victim in the Monterey burglary identified the diamond ring and pendant as her stolen property.

Subsequently, the District Attorney charged Karen with the Carmel burglary.

Before Karen's trial on the two burglaries, her attorney moved to suppress the following items of evidence:

1. Karen's confession to Beretta.
2. The diamond ring.
3. Karen's confession to Jones that she committed a Carmel burglary.
4. Karen's confession to Jones that she had more stolen jewelry from the Monterey burglary.
5. The diamond pendant.

What arguments should defense counsel make? How should the prosecutor respond? How should the court rule?

QUESTION 1 ANSWER OUTLINE[1]

Credit ranges from ½ to ++++; ½ = half of a +

No credit = Ø

This question requires analysis of RS for the show of authority (emergency lights) and PC for the arrest (for the search incident to arrest of the passenger), or whether a valid Terry pat occurred, and PC for search of the trunk. If there was no RS or PC, items 1, 2 & 4 are likely fruit of the poisonous tree under the exclusionary rule. Item 3 will be admissible per *Hodari*, because there was no submission to the show of authority until the BMW pulled over and therefore no seizure until then. There are two components to the identification testimony by the teller: The show-up identification procedure (which passes Due Process because it was necessary although suggestive) and the teller's testimony about who robbed him at the bank. If the show-up is excluded as poisonous fruit of an illegal stop or search, testimony concerning the robbery will be admissible per *U.S. v. Crews*, as long as the teller's identification testimony is based on his independent recollection of the robbery rather than from the show-up. This is operation of the independent source exception to the exclusionary rule.

1. The roll of $20 bills

Issues:

++1. Was there reasonable suspicion for the show of authority (activation of emergency lights)? If not, the exclusionary rule may apply to evidence that is fruit of the poisonous tree.

++2. Was there probable cause for the arrest of the passenger? If so, the pat search was lawfully conducted incident to arrest, which is a bright-line exception to the warrant requirement without any showing of exigency.

++3. In the alternative, was there RS for a detention and Terry pat? Was this a detention rather than an arrest? Was there RS the cylinder was a weapon? Or did Jones develop PC the cylinder was contraband when he felt it without manipulating the "compressible" cylinder? To remove the object, Jones needed RS it was a weapon or PC it was contraband without the benefit of "manipulation."

Rules:

++++Quantum of Proof Required for a Detention:

1. Quantum of proof required: Reasonable suspicion that crime afoot. *Terry v. Ohio* (1968).
2. Requires reasonable suspicion of an ongoing crime rather an isolated episode of past criminal misconduct. *Navarette v. California* (2014).

[1] This outline is not a model answer because may not include model analysis (a complete and thorough analysis of all facts) and may not offer a conclusion. The outline is designed to assist professors in grading exams and as a key for students to identify issues and the applicable law. See best student answer for examples of analysis and conclusions. Also, it is not possible due to time constraints to obtain all credit available. Better answers address major issues thoroughly where more points are available. Points may be deducted if an answer addresses minor issues without spotting central issues.

3. Reasonable suspicion defined:
    a. Less than probable cause. How much less is difficult to define, but requires objective facts that support the seizure or exigency. Reasonable suspicion is more than a "hunch."
    b. A fair possibility—possible cause. A reasonable <u>possibility</u> crime is afoot.
        i. "A particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez* (1981).
4. Reasonable suspicion need not rule out possibility of innocent conduct. *United States v. Arvisu* (2002).
    a. Of course factual discrepancies do not automatically negate reasonable suspicion. However, there must be enough specific facts that <u>do</u> match. For example, a license plate number that is close but not in fact correct may constitute reasonable suspicion for the stop of a car that matches the otherwise consonant general description of the car. A description of the make and model that is different but similar to the car detained may constitute a reasonable suspicion under the totality of the circumstances, depending on time and distance from the scene of the crime.
5. A detention occurs when a reasonable person would not feel free to leave [*United States v. Mendenhall* (1980)] and <u>also</u> requires either a physical touching to effect the seizure OR a show of authority + <u>submission</u> by the suspect [*California v. Hodari*(1991)].
6. A passenger in a car is seized, along with the driver, during a traffic stop. *Brendlin v. California* (2007).

+++Weapons Frisks

1. Standard: Reasonable suspicion suspect is armed and presently dangerous. Usually a frisk of the person. *Terry v. Ohio* (1968).
2. Not a search for evidence other than weapons.
    a. For objects which may be a weapon or used as one, officer need not be certain object is a weapon. Visual inspection permitted if reasonable suspicion, even if probably not a weapon.
3. <u>Plain feel</u>: But if an officer has a reasonable suspicion to pat search, plain feel/tactile perceptions can create probable cause to seize an item that is not a weapon if, without manipulation, plain feel reveals probable cause of contraband or evidence of a crime. *Minnesota v. Dickerson* (1993).
4. Reasonable suspicion armed and dangerous as a matter of law:
    a. Stops for violent crimes.

++Arrests Distinguished from Detentions:

1. Arrest defined: Formal arrest (officer tells subject they are under arrest) or restraint on freedom of movement of the degree associated with arrest. **Objective standard** (intent of police and subjective views of suspect not determinative).
2. Requires probable cause.
3. Forced movement to a custodial area favors arrest.
    a. Forced transport a short distance for in-field ID is usually only a detention.

b. **Use of handcuffs and/or drawn guns favor arrest, although use when reasonably necessary to assure safety of officers conducting stop may still constitute detention.**

+++Probable cause:

1. PC is a fair probability or substantial chance that evidence of a crime or contraband will be found in a particular place; OR a reasonable ground for belief of guilt that is particularized as to a person and/or place.
2. PC is based on the totality of the circumstances by common sense evaluation. *Illinois v. Gates* (1983).
3. PC is less than a preponderance.
    a. Innocent explanations do not necessarily negate probable cause.
4. It is only when the plausible explanations substantially outweigh the probability of criminal activity that probable cause is lacking.
    a. Example of PC: Probable cause to arrest front passenger in a car existed where five baggies of cocaine found hidden in center backseat armrest and $763 in cash was in glove box. Probable cause to arrest also existed for driver and backseat passenger in car. [Crime of possession of narcotics = right to exercise dominion and control, not necessarily ownership.] *Maryland v. Pringle* (2003).
    b. There is probable cause to search multiple locations even if the evidence could not be in two places at the same time, as long as there is probable cause and a logical nexus between the crime and the location to be searched.

+Authority for custodial arrest:

1. Bright line—even if arrest is for an offense which **does not carry jail time**, is very minor, and no need for immediate detention, arrest valid. *Atwater v. City of Lago Vista* (2001). In *Atwater* under Texas state law officer had discretion to arrest or issue citation.
2. Bright line rule without need for police or reviewing court to conduct reasonableness balancing inquiry.
3. Searches incident to such arrests are valid and evidence obtained resulting from arrest admissible.

++Search incident to arrest:

1. Person and containers immediately associated with arrestee: If PC for arrest, exception to warrant, RS and PC requirements for search. Bright-line rule without showing of exigency factors.

+++4th A Exclusionary Rule:

Fruit of the poisonous tree/Attenuation doctrine: The exclusionary rule may apply to fruits of illegally obtained evidence. However, the **attenuation doctrine renders evidence admissible when the connection between illegal police conduct and the evidence is remote or has been interrupted by some intervening circumstance so that the constitutional interest violated would not be served by suppression of the evidence obtained.** *Utah v. Strieff* (2016). This doctrine also applies to 5th and 6th A violations.

1. **Attenuation factors** [*Brown v. Illinois* (1975); *Utah v. Strieff* (2016)]:
    a. Temporal proximity between unconstitutional conduct and discovery of evidence.
    b. Were intervening circumstances present?
    c. Purpose and flagrancy of official misconduct.

2. The exclusionary rule applies only when a reasonably well trained officer would have known the search or seizure was illegal in light of all the circumstances. It applies only when police deliberately violate the 4th A, or when police are reckless, grossly negligent, or engage in recurring or systemic negligence. Police negligence, if it is attenuated from the arrest, does not trigger suppression. *Herring v. United States* (2009).
3. When police act with an **objectively "reasonable good faith belief" that their conduct is lawful, or when their conduct involves only simple "isolated" negligence**, the deterrence rationale loses much of its force and exclusion cannot pay its way. *Davis v. United States* (2011).
4. Reasoning: The exclusionary rule applies only when the substantial social costs of the rule (cost to the truth in evidence) are outweighed by the benefits of deterring 4th A violations.
    a. Where applicable, the exclusionary rule must pay its way by **substantially** deterring official unlawfulness.

++++Analysis/Search incident to arrest on PC of passenger: No detention occurred until the BMW pulled over when the driver submitted after the show of authority (activation of emergency lights). The show of authority which led to the detention required reasonable suspicion. There was a discrepancy in color between the description of the BMW at the bank and the BMW Jones stopped. However, the discrepancy was close. The make of the car, the number of occupants, the direction of travel on Highway 1, and the position of the car when Jones spotted it was consistent with the BMW's involvement in the robbery. The passenger was detained when the driver stopped the car. Did Jones have PC to arrest the passenger and search him incident to arrest at that point? The fact that the BMW fled in response to the officer's emergency lights and the toss of an object add to the totality of the circumstances in a common sense evaluation of whether there was probable cause to arrest the occupants. Under Atwater, although Jones could arrest the driver for speeding and conduct a search incident to arrest, that theory will not work for the passenger. So the search of the passenger incident to arrest requires PC he robbed the bank. If there was no RS for the show of authority (which is the closest question here), or if there was no PC to arrest, the role of $20 bills would be excluded as poisonous fruit under the exclusionary rule, unless saved by the good faith exception.

++++Alternate Analysis: Officer Jones could conduct a Terry pat of the passenger with reasonable suspicion he was armed and dangerous. If there was RS, a lower standard than PC, that the passenger committed the bank robbery, then Jones could detain and Terry pat search the passenger. If there was no RS for the show of authority, the pat search is fruit of the poisonous tree. A pat search within Terry parameters is valid when there is RS the suspect committed an armed bank robbery. There are two difficulties under this theory: 1. Was handcuffing the passenger at gunpoint within the scope of a detention, or was it an arrest which requires PC? 2. Did Jones, once he felt the compressible cylindrical bulge, in light of his tactile perception, have RS the object was a weapon, or did Jones "manipulate" what he knew was not a weapon, and illegally create PC it was contraband (if for example, if he "manipulated" the compressible cylinder and recognized it was a roll of bills)? The latter is not permitted under Dickerson. On the other hand, if by plain feel Jones had PC the cylinder was evidence of contraband (a compressible roll of bills taken in a bank robbery), then Jones could remove (seize) it. Analyzing this indistinct line is unnecessary, as long as Jones had PC to arrest, and it is probably easier for the prosecution to argue SILA based on PC than to argue this was a detention and Terry frisk on RS, given the roll of bills was not a weapon. Also, handcuffing at gunpoint looks more like an arrest than a detention. However,

when investigating an armed robbery, it may be reasonably necessary for officer safety to, at gunpoint, apply handcuffs to accomplish a Terry pat of a suspect. Jones was the only officer at the scene and was outnumbered by the two suspects.

2. The handgun and cash in the trunk

Issues:

++1. Was there probable cause to search the trunk?

++2: Does passenger have standing to contest search of trunk? The passenger does not need standing if the handgun and cash are derivative evidence of an illegal seizure of the passenger. The passenger must demonstrate standing if the handgun and cash are primary evidence of a 4th A violation.

Rules:

+++Automobile Exception: Only PC required to search a car (**no warrant required**).

Bright line rule without any showing of exigency required: Applies even if police have time to obtain a warrant and even if there is no risk of destruction of evidence. *Chambers v. Maroney* (1970).

1. Exception: Reasonable suspicion for search of interior incident to arrest: Interior and containers--**but not trunk**--may be searched incident to arrest upon **reasonable suspicion** evidence in vehicle related to arrest crime. *Arizona v. Gant* (2009).

+++Passengers' standing to contest search of trunk on PC

1. The exclusionary rule does not permit vicarious assertion of someone else's 4th A rights. A defendant's own 4th A rights must be violated. A defendant cannot argue that evidence should be excluded in his trial because someone else's 4th A rights were violated. *Jones v. United States* **(1960)**.
2. The two tests to establish standing are the same ones used to determine whether a search occurred:
    a. The defendant must have a legitimate expectation of privacy in the area or thing that is searched or seized. *Rakas v. Illinois* (1978). Standing is resolved by substantive principles of 4th A law using *Katz* **REP test**.
        i. Subjective expectation of privacy
        ii. That society accepts as reasonable.
    b. Although the Supreme Court has not directly decided the issue, in addition to REP, a defendant may demonstrate standing because the state committed a common law trespass against D to find something or to obtain information [*Jones* **(2012)** definition of a search].
3. Ownership of the property seized does not automatically convey a reasonable expectation of privacy in the area searched. *Rawlings v. Kentucky* (1980).
    a. Rawlings had no reasonable expectation of privacy in female's purse, when shortly before police arrived Rawlings asked her to hold his drugs in her purse.
    b. *Rawlings* does not preclude standing for less precipitous, more ordinary bailment relationships.

4. Ownership of the property does convey a right to challenge the seizure of the item, even if there is no reasonable expectation of privacy in the area searched. Outline pp. 394.
    a. But if PC supports the seizure of the item once viewed by police (plain view), establishing ownership will not result in suppression, because there was no search conducted against the D--no REP by the D against police viewing of the item--which led to the seizure. In effect, as far as D is concerned, the item was seized by police in plain view.
        i. Contraband will never be suppressed on this point if PC to seize exists when viewed by police.
5. Standing to challenge the seizure of one's person is governed by the *Mendenhall/Drayton/Hodari* substantive 4th A definition of a seizure.
    a. Under *Brendlin v. California* (2007) passengers in car have standing to contest an illegal stop. If the stop is illegal, passengers may successfully exclude evidence obtained in a subsequent search of the car as fruit of the poisonous tree. If the stop is illegal, the passengers need not show a REP in the area searched under *Rakas* (see discussion of derivative evidence below).

++++Analysis: Added to the other evidence discussed above, before the trunk search Jones also discovered a roll of $20 bills in the possession of the passenger. If there was PC to arrest for bank robbery, there was PC to search the trunk of the suspect vehicle. If there was only RS to detain the passenger and the roll of bills was lawfully seized during a Terry pat, then finding potential fruits of a robbery likely conferred PC to search the trunk. Further, before the trunk search the teller identified the suspects. The teller was "pretty sure" the two men robbed the bank, PC is less than a preponderance, and "pretty sure" is more than a preponderance, especially in light of the other evidence including flight, and the toss of an object from the BMW. Even if there was not PC to search the trunk, the prosecution could argue the passenger has no REP/standing there, although the facts provide little to analyze. If there was no RS for the show of authority which resulted in a detention, then the fruits of the trunk search may be poisonous and unattenuated, and if so are excluded unless saved by the good faith exception. The passenger need not have a REP in the location of derivative evidence of a 4th A violation, and passenger has standing to challenge an illegal stop under *Brendlin*. However, the prosecution would argue the teller's ID is an intervening circumstance, and any mistake regarding reasonable suspicion for the show of authority was neither purposeful nor flagrant, and therefore the search of the trunk was attenuated from any previous 4th A violation under *Utah v. Strieff*.

3. The handgun found next to the freeway exit

++Issue: Even if there was no RS supporting the show of authority (activating emergency lights), no detention had occurred when the passenger tossed the gun, so the gun is admissible. No 4th A protection attached when the passenger tossed the gun.

++Rule:

1. In addition to the *Mendenhall/Drayton* show of authority, **the suspect must also submit to the show of authority or, if not, there must be a physical touching**. *California v. Hodari* (1991).
    a. If there is no physical touching and suspect does not submit and runs, it's not a detention. If D thereafter tosses evidence, it is admissible even if the officer lacks reasonable suspicion.

b. *Mendenhall* stated a necessary but not sufficient condition for a seizure. It left out the requirement that the suspect must also submit.

+Analysis: The handgun found next to the freeway exit is admissible because the driver did not submit to Jones' show of authority, so Jones had not seized the passenger (or the driver), and therefore there was no 4th A trigger at the time passenger tossed the handgun.

4. All identification testimony by the teller

Issues:

++1. Did the suggestive show-up violate the Due Process clause of the 14th A?

++2. Is the teller's testimony about the show-up fruit of the poisonous tree of a 4th A violation?

++3. Assuming either a DP violation or a 4th A violation, is the teller's testimony that passenger robbed the bank excluded as fruit of the poisonous tree?

Rules:

+++**Due Process** precludes admission of evidence of an identification at trial if it is poisonous fruit of an impermissibly suggestive pretrial police procedure which created a substantial risk of mistaken identification under the totality of the circumstances. *Manson v. Braithwaite* (1977). Due Process regulates all identification procedures, whether or not the 6th A has attached and whether conducted pre or post indictment. Where a Due Process violation occurs, all evidence of the identification is excluded at trial.

1. The Due Process test is triggered only when the suggestive ID procedure results from improper police conduct. *Perry v. New Hampshire* (2012).
    a. A primary aim of the rule is police deterrence. If there is no police conduct to deter, then the issue is one of fact for the jury to determine based on proof beyond a reasonable doubt that the D committed the crime, and there can be no Due Process violation.
2. DP test: **All evidence of the identification** will be excluded at trial when:
    a. The pretrial ID procedure was impermissibly suggestive; and
    b. It was unnecessary; and
    c. The identification is unreliable under the totality of the circumstances, which occurs when there is "**a very substantial likelihood of misidentification**" at trial; and
    d. The suggestive ID procedure results from improper police conduct.
    e. D has the burden to prove all 4 prongs.
3. The central question is usually whether under the totality of the circumstances the ID is sufficiently reliable even though the pretrial confrontation procedure was suggestive.
4. Necessary lineup procedures do not violate Due Process: One person show-ups immediately after the commission of a crime (before attachment of the 6th A) usually conducted while the suspect is detained on the street, are not impermissibly suggestive because they are necessary due to exigency of detention. *Stovall v. Denno* (1967); *Simmons v. United States* (1968).

Ø

++Exceptions to the 4th A exclusionary rule (see also other exclusionary rule credit above, given once):

1. **Independent source**: When discovery *also by legal means unrelated to original illegal conduct*, evidence admissible. *Murray v. United States* (1988). Applies to 4th, 5th (Due Process) and 6th A violations (but not Miranda). **But the subsequent search or seizure cannot be the result of (caused by) the previous illegal conduct.**
2. In-court identifications are not tainted by illegal arrests, as long as the witness's testimony is based on independent recollection of the initial encounter with the perpetrator (independent source), rather than from an identification procedure that is poisonous fruit of an illegal arrest or detention. *United States v. Crews* (1980).
    a. Defendant illegally arrested and photographed. V ID'd D in photo array compiled using defendant's booking photo from arrest. D then charged and brought to trial. At trial V ID'd D as the assailant that robbed her.
    b. It is extremely unlikely that a V would ever testify that her identification of her assailant was based on a non-suggestive identification procedure rather than her recollection of the crime.
    c. This is an issue separate from whether an identification procedure violates the 6th A or Due Process (see subsequent ID Procedures Outline).

++++Analysis: Under DP, <u>all</u> evidence concerning the identification (show-up + teller's ID testimony that D was the man who robbed the bank) is either admissible or inadmissible as a group. A show-up is permissible under Due Process because it is necessary. Therefore, there is no 14th A violation on these facts. The only issue is whether assuming a 4th A violation for an illegal arrest of the passenger, the teller's testimony about the show up or robbery itself is fruit of the poisonous tree of the 4th A violation. If there was no RS or PC (see above discussion under evidence item #1), the teller's testimony about the **show-up procedure** (and police testimony about it) would be excluded as fruit of the poisonous tree, unless saved by the good faith exception. However, even assuming a 4th A violation, the teller could testify to the **passenger's participation in the robbery**, as long as that testimony is based on the independent source of teller's recollection of the robbery, rather than rendered from the teller's recollection of a show-up that is fruit of the poisonous tree of an illegal arrest or Terry pat of the passenger.

+ ½

Extra credit:

208513

QUESTION 2 ANSWER OUTLINE[1]

Credit ranges from ½ to ++++; ½ = half of a +

No credit = Ø

1. Karen's confession to Beretta

++Issue 1: Did Karen invoke her Miranda right to counsel?

Rules:

1. **+Custody + Interrogation triggers Miranda rules:**
2. **+Interrogation** defined: Express questioning or its functional equivalent by police reasonably likely to elicit an incriminating response. *Rhode Island v. Innis* (1980).
3. **++++** Miranda **invocation must be clear and unambiguous**. *Berghuis v. Thompkins* (2010**)**.
    a. If any doubt, the questioning may continue.
    b. Both an invocation of right to silence or an invocation of right to an attorney must be unambiguous.
    c. Bright line rule that avoids difficulties of proof and provides clear guidance to officers.
    d. Interrogators have no legal obligation to clarify an ambiguous statement that might be an invocation. *Davis v. United States* (1994).
    e. Objective standard: A reasonable police officer must understand the suspect is requesting an attorney or wishes to stop talking. If a reasonable police officer would understand only that suspect might be invoking, it is not an invocation. *Davis v. United States* (1994).
    f. "Maybe I should talk to a lawyer" is not an invocation because it is sufficiently ambiguous. *Davis v. United States* (1994).
4. **+Miranda Exclusionary Rule: T**he primary evidence (the confession itself) is always excluded.

+++Analysis/conclusion: "It would be better if I had an attorney" is not a conditional statement. It is less ambiguous than stating "maybe" I should have an attorney. If a reasonable officer would understand "better" to be an invocation of the right to counsel, it is an invocation. This is likely an invocation, although it differs from a clear invocation, "I want an attorney." The prosecution would argue that Karen was merely analyzing the benefits of counsel, rather than requesting counsel, and a reasonable officer would understand her statement this way.

---

[1] The outline is designed to assist professors in grading exams and as a key for students to identify issues and the applicable law. This outline is not a model answer because it may not include model analysis (a complete and thorough application of the law to the facts by both sides) and may not offer a conclusion. However, the rule statements are exhaustive and beyond model. Full credit will not be awarded for rule statements not tethered to their relevant issue. Also, it is not possible due to time constraints to obtain all credit available. Better answers address major issues thoroughly where more points are available. Points will be deducted if an answer addresses minor issues without spotting central issues, or for failure to use IRAC.

++**Issue 2: Was Karen's confession involuntary under core 5thA/DP?**

Rules:

++Core 5th A/DP trigger:

a) Confession must be involuntary—the defendant's will overborne—and the product of:

b) Coercive police misconduct.

+Relationship with Miranda: Core 5th A/DP analysis does apply even if a D has validly waived his Miranda rights and decides to talk. Therefore, even with a valid Miranda advisement and waiver, a D's statement can be coerced and considered involuntary.

++Inducements by police which can render a confession involuntary:

1) "Tell us the truth and we will release you tonight."

2) "Tell us the truth and we will reduce your sentence," or "the prosecutor or judge will go lighter on you."

3) Confession involuntary where police told D that if she confessed to marijuana sales she would not be prosecuted. D confessed and her statements were used to convict her. *Lynumn v. Illinois* (1963).

+Exclusionary rule: **The confession (primary evidence) is always excluded if involuntary.**

++Analysis/conclusion: Promising a benefit to Karen's boyfriend is likely the promise of a benefit to Karen because of her close relationship to Ken. If so, it is a core 5th A/DP violation which renders her confession to Beretta inadmissible. The prosecution should argue that the possibility of leniency is not a promise of leniency (the charges "could" go away).

2. The diamond ring

++**Issue 1: Is derivative evidence of a Miranda violation admissible? Yes.**

+++Rule: Miranda exclusionary rule--derivative evidence: Although the primary evidence (the confession itself) is always excluded, derivative evidence of a Miranda violation is always admissible unless police use deliberately coercive or improper tactics in obtaining the initial voluntary statement, or violate Miranda for tactical reasons in bad faith. Aside from this bad faith exception in obtaining the inadmissible statement, fruit of the poisonous tree analysis never applies to a Miranda violation. Physical evidence as fruit of Miranda violation admissible:

a. Where D discloses location of gun and consents to search after Miranda violation, gun admissible. *United States v. Patane* (2004).

+Analysis/conclusion: If Karen invoked her Miranda right to counsel, that invocation does not render derivative evidence of the violation inadmissible.

++Issue 2. Is the ring derivative evidence of a core 5th A/DP violation, and therefore inadmissible?

Rules:

++5th A/DP exclusionary rule: Fruit of the poisonous tree applies to derivative evidence of an involuntary confession: Derivative evidence is excluded if it is fruit of the poisonous tree of the involuntary confession. If so, both the confession and derivative evidence are excluded.

++++Fruit of the poisonous tree attenuation doctrine: The exclusionary rule may apply to fruits of illegally obtained evidence. However, the **attenuation doctrine renders evidence admissible when the connection between illegal police conduct and the evidence is remote or has been interrupted by some intervening circumstance so that the constitutional interest violated would not be served by suppression of the evidence obtained.** *Utah v. Strieff* (2016). This doctrine also applies to 5th and 6th A violations.

1. **Attenuation factors** [*Brown v. Illinois* (1975); *Utah v. Strieff* (2016)]:
    a. Temporal proximity between unconstitutional conduct and discovery of evidence.
    b. Were intervening circumstances present?
    c. Purpose and flagrancy of official misconduct.

+++Analysis/conclusion: There is no attenuation between Karen's involuntary confession and police discovery of the diamond ring. Beretta recovered the ring at the pawn shop because Karen told him the location of the ring. Going there is not an intervening circumstance, and the core 5thA/DP violation was likely clear, purposeful, and flagrant. The constitutional interest violated is not remote from the recovery of the ring and is served by suppressing the ring. Karen's confession was the only factor disclosed by the facts which led Beretta to the ring. The ring is fruit of the poisonous tree, if Karen's confession to Beretta was involuntary in violation of Karen's core 5thA/DP right. The prosecution is left to argue that this inducement was not particularly flagrant, but the other attenuation factors favor suppression, so the prosecution has a weak argument.

3. Karen's confession to Jones that she committed a Carmel burglary

++Issue: If Karen invoked her Miranda right to counsel during the Beretta interview, does Edwards exclude her confession to Jones?

Rules:

1. **++Miranda is not offense specific:** Once Miranda is invoked, interrogation about a different crime is prohibited. Invocation of right to counsel or silence applies to all charges and cases even if police do not know about former invocation.
2. **+++Custody** defined: Formal arrest or functionally equivalent limitation on freedom of movement (to a reasonable person under the circumstances). *California v. Beheler* (1983); *Minnesota v. Murphy* (1984). Objective test.
    a. Would a reasonable person under the circumstances believe he or she was under arrest or subject to some functionally equivalent limitation on their freedom of movement?
    b. Essentially the same definition for arrest as 4th A definition.

c. Miranda custody is a term of art specifying circumstances presenting a serious danger of coercion; it is a necessary but not sufficient condition that a reasonable person would not feel free to terminate the interrogation and leave. *Howes v. Fields* (2012). Miranda custody **also requires formal arrest or the functional equivalent.**

d. Totality of the circumstances test. *Howes v. Fields* (2012).

e. **Consent to interview in home that lasts three hours is not Miranda custody/arrest.** *Beckwith v. United States* (1976).

3. **++Re-interview after Invocation: Miranda Right to Counsel**

   a. Police may not re-initiate contact and seek a Miranda waiver after invocation of right to counsel until there is a break in custody of 14 days. *Edwards v. Arizona* (1981); *Maryland v. Shatzer* (2010).

      i. Reasoning: Miranda said interrogation must cease until an attorney is present. If D invokes right to counsel, he needs legal assistance before the law will allow police to ask if he has changed his mind.

4. ++Once Miranda right to counsel invoked, *even if suspect has consulted with counsel*, police may not re-initiate contact and seek a Miranda waiver, until there is a break in custody of 14 days. *Minnick v. Mississippi* (1990). Unless D initiates further communication, counsel must be present during interrogation.

   b. It is irrelevant whether questioning officers know about the previous invocation. Even if they do not, *Edwards* will bar D's statement even after subsequent Miranda warning and voluntary waiver.

5. ++However, it is likely that there must be a Miranda trigger for the subsequent interrogation. So if D released for one week only and police question D **without placing D in Miranda custody** (thus no trigger), the Edwards prophylactic may not apply. But *Shatzer* is not clear on this point.

6. +Invocation is NOT offense specific: Police cannot question D about a different crime unless there is a break in custody of 14 days. *Arizona v. Roberson* (1988). The invocation applies to all crimes; therefore, there is no offense specificity limitation.

+++Analysis/conclusion: Although there was no 14 day break in custody, because Karen was not in Miranda custody there is no Miranda trigger for Jones' questioning. Therefore, there is probably no Edwards prophylactic that applies to Jones' questioning. No 6th A issue because 6th A is offense specific (see below) and the 6th A had not attached to the Carmel burglary. However, if Edwards applies, the confession is inadmissible. Edwards should not apply to exclude Karen's confession to the Carmel burglary, because Karen was not in Miranda custody.

4. Karen's confession to Jones that she had more stolen jewelry from the Monterey burglary

++Issue: Did Jones violate Karen's 6th A Massiah right to counsel?

Rules:

1. ++The 6th A prohibits the government from deliberately eliciting incriminating information from a defendant after the initiation of adversary judicial proceedings in that case only, in the absence of counsel. The 6th A provides a right to counsel at all critical stages of the proceedings once the 6th A right attaches to a case. Police questioning is a critical stage. *Massiah v. United States* (1964).

2. +Attachment: US Supreme Court uses term "formal charges" to mean "initiation of adversary judicial proceedings," which requires an indictment or an initial appearance before a magistrate.
3. +6th A is offense specific. It only attaches to the formal charges that trigger the right.
    a. Police may question a D about any crime other than one to which 6th A attaches, as long as the statements are not used in the defendant's trial for the crime to which the 6th A has attached.
    b. Attachment does not extend to closely related charges. *Texas v. Cobb* (2001).
        i. Although 6th A attached to burglary and counsel appointed, it did not attach to the murders that D committed after entering residence with the intent to commit a felony.
4. +Waiver: Once 6th A right attaches, D may waive 6th A and submit to questioning. *Montejo v. Louisiana* (2009).
    a. Police are free to contact D and seek a waiver. D need not initiate. No right analogous to 5th A *Edwards* rule.
    b. Waiver must be voluntary, knowing, and intelligent. *Montejo v. Louisiana* (2009).
5. +The exclusionary rule applies to a statement taken in violation of the 6th A.
    a. A *Massiah* violation occurs at the critical stage which produces the confession.

+++Analysis/conclusion: The 6th A attached to the Monterey burglary since Karen had been arraigned on that charge. Therefore, Jones' questioning violated Karen's Massiah right to counsel. Jones did not seek a Montejo waiver. Possibly students will analyze whether this confession is also fruit of the poisonous tree of Beretta's 5thA/DP violation. But the 6th A violation clearly resolves the issue in Karen's favor, so there is little practical need to spend time on this much more tenuous issue, although credit will be awarded.

5. The diamond pendant

++Issue: Is the pendant derivative evidence that is fruit of the poisonous tree of a 6th A violation?

++Rule: 6th A Exclusionary Rule Derivative evidence: Fruit of the poisonous tree applies to derivative evidence of a 6th A violation. *Nix v. Williams* (1984).

++Analysis/conclusion: The pendant is derivative evidence which is not attenuated from the 6th A Massiah violation. It is not attenuated because Karen provided Jones the ring contemporaneous with her confession which violated the 6th A. It is therefore poisonous fruit.

Extra credit:

1)

1. the role of $20 bills

issue: did officer jones have reasonable suspicion to activate his emergency lights? (show of authority ??)

rules: in terry v. Ohio the court held an officer must have RS that crime is a foot. RS is less than a probable cause but more than a hunch, it is looked at through an objective lens and valid facts that support the seizure or exigency must be found. cant stop for crimes that happened in the past. must be objective not subjective.

Analysis: here officer jones had RS for his show of authority and activating his emergency lights. the defense will point out that the color of the BMW was not exact. the prosecution will states that this is true, however, it was very close. all together it was still a BMW that had the same number of people in it, driving the same direction, on the same highway. all together, looking at the totality of the circumstances there was enough facts for office jones to have RS and activate his emergency lights. RS does not rule out a reasonable explanation, but it also does not take away from officer jones. In arvisu v. California a man was driving a mini van with his family and activated mental detectors crossing the border. the officer had RS because mini vans were common for smuggling drugs. he ran the license plates and found that the driver lived in a high crime area. the court found that this was enough evidence and the totality of the circumstances must be taken into consideration when asking whether a police office had a particularized and objective basis for stopping the vehicle.

it was reasonable for office jones to suspect that an on going crime was happening with the BMW.

in navarrete v. California a caller identified a license plate of a trunk that had a drunk driver, based on the tip an officer stopped the vehicle when he found in. the officer then smelled

weed inside the car. the court found the weed to be admissible because the reasonable suspicion standard allows a cop to depend on not only evidence that he saw directly but also on the tips provided. Just like navarrete officer jones relayed on mostly the description given to him to suspect that crime is a foot.
Conclusion: office jones had RS to activate his siren. his show authority is not one of police misconduct.

issue: did officer jones have PC to arrest the passenger ?
rules: PC is less than a preponderance, it is a fair probability or a reasonable ground to believe that the person or place is guilty.
Analysis:authority for a custodial arrest occurs even if the arrest is for a minor offense which doesn't usually put you in jail. in Atwater v. city of lago vista , it was found that officers had discretion to arrest or to issue a citation. the officers did not need another police officer or court to conduct a reasonable balancing inquiry. (because this is a bright line rule) after an officer arrests a suspect then the search is valid and any evidence pertaining to the arrest is admissible. it is important to note that just because office jones could arrest the driver does not mean he has the right to do the same for the passenger. OFFICER JONES STILL NEED PC THAT THE PASSENGER ROBBED THE BANK (INFRA)

here, office jones used his experience as a police officer, the totality of the circumstances, and common sense to determine whether or not the passenger should be arrested.

in Illinois v. gates the police received a letter outlying specific details about gates drug trafficking. following the tip, the totality of the circumstances, and their own knowledge, the police officers were able to get a search warrant (or arrest warrant??). just like gates it was

reasonable that officer jones believed he had the bank robbers because all evidence suggested so. like the rule states PC is less than a preponderance so there could have been an innocent explanation still. however, this does not make officers jones PC invalid.

the defense will state that the BMW was going the speed limit when officer jones activated his emergency lights. however the prosecution will say that there was other matching evidence and that the BMW fled as soon as they saw the lights, suggesting they're guilty. also officer jones saw evidence being thrown out of the window (infra).
Conclusion: looking at all of these collaborating pieses of evidence, the totality of circumstances leads to PC in arresting the bank robbers.

issue: did officer jones lawfully conduct a pat search incident to the arrest of the passenger?
rules: bright line rule -- a police officer may conduct a search of the vehicle of its recent occupants after their arrest if they have reason to believe that the arrestee might access the vehicle or might bare fruit of evidence of the offense of the arrest.

a detention occurs when a reasonable person would not feel free to leave. united states v. Mendenhall and also requires either physical touching to effect the seizure or a show of authority and a submission (California v. hodari) also, if the detention occurs with the driver for a traffic stop , then the passenger inside the car is detained as well (brendlin v. california)
Analysis: in Arizona v. gant the court held that police may search the passenger compartment of the vehicle, incident to an arrest and without a warrant only if it reasonable to believe that the arrestee will access the or or that there is valuable evidence inside. Here, it was reasonable for officer to jones to believe that they had evidence on them and that they were dangerous and could flee or access the car because it was an armed robbery.

Conclusion: officer jones lawfully conduct a pat search incident to the arrest of the passenger.

issue: are items all fruit of the poisonous tree -- talk about 4th amendment here and the exclusionary rule too..
rule: brown v. Illinois attenuation factors, is there a proximity of unconstitutional police misconduct and the discovery of evidence?
Analysis: officer jones had good faith and a preponderance of evidence.
Conclusion: no detention occurred until the BMW was pulled over when the driver submitted after the show of authority and activation of emergency lights

2. The handgun and cash in the trunk.
issue: did officer jones have probable cause (PC) to search the trunk?
rules: there are only a few expectations to warrantless searches, one of which is the automobile exception (AE) which allows a police officer to search a vehicle without a warrant as long as the officer has PC.

in Chambers v. maroney, the court held an officer must have PC to search a vehicle but is not required to have a warrant, show exigency factors, or risk of evidence destruction.

In a Arizona v. gant , the court held that an officer could search the interior and containers of a vehicle incident to arrest if they had reasonable suspicion (RS) that there was evidence related to the crime for which the suspect was arrested for.

Analysis: In Arizona v. gant , gants vehicle was searched after he was arrested for a suspended license the supreme court held that police may search the vehicle after an arrest only if the office had a reasonable belief that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense. there are only a few expectations to warrantless searches because they violate our Fourth Amendment rights.. in order to determine if officer jones had probable cause cause to search the trunk we must look at the totality of the circumstances. First officer jones handcuffed the two robbers at gun point. Second office jones found $20 bills on the persons of the robber after a pat search. However, after an interior search of the BMW he found no further evidence. Keeping these two facts in mind, officer jones also had knowledge that this was an armed robbery. Therefore, for safety reasons, it was reasonable for officer Jones to have PC that the two robbers were armed and dangerous. Since he only found the cash, officer Jones had probable cause to search the trunk for further evidence such as weapons.

it was likely that the weapons and other evidence pertaining to the robbery would be stored in the trunk. There also may be an exigency due to the destruction of evidence because officer jones saw what could be evidence being thrown out of the vehicle. However. that is not required for the automobile exception.

he then searched the trunk and a hand gun and cash. Since officer Jones had PC to arrest the two for an armed robbery, he also had PC to search the Trunk.

Conclusion: Yes, officer Jones had probable cause to search the trunk. therefore the court will most likely find the handgun and cash admissible

3. The handgun found next to the freeway exit

issue: was there reasonable suspicion (RS) to support officer jones show of authority?

was the passenger of the vehicle detained when he was observed tossing an object as the BMW exited the freeway??

rules: In Mendenhall v. united states, the court found a detention occurs when a reasonable person feels as if they were not free to leave.
Also see Hodari rule (INFRA)

Analysis: Office jones had RS to support his show of authority i.e.: activating in emergency lights. Although the color of the described vehicle that fled from the scene of the robbery did not match, there were contributory factors such the model and make of the vehicle. Officer Jones was reasonable to suspect that this was the same vehicle that was reported because it was headed southbound one mile from the scene of the crime. the defense will argue that the passengers were going the speed limit at the time. However, prosecution will argue officer Jones had a reasonable suspicion and that does not rule out the possibility of innocent conduct.

a detention had not yet occurred when the passenger tossed the gun. Although officer Jones had already turned on his emergency lights, there was no detention because there was no physical and thee passenger did not yet submit. In Mendenhall v. united states, a lady was search in an airport because she exhibiting guilty like behaviors of a drug dealer. Here the court held that an officer had to have RS and that a detainee must not feel free to leave. However, this case lacked a crucial point: a detainee must also submit to the show of authority. in this Hypothetical, the passenger was still on the run, fled, and did not submit to the show of authority.ergo, no detention.

in California v. Hodari, the court found not only must there be a show of authority but there must also be a submission or if the suspect does not submit to the show of authority,

there must be a physical touching. Here the gun was tossed before the passenger submitted to officer Jones show of authority .. emergency lights..... During this time they fled and started to speed so until they pulled over, there was no seizure. Thus making the handgun found on the side of the freeway fair game and admissible.

Conclusion the handgun found on the side of the freeway exit is admissible because the passenger of the BMW was not yet detained when he threw the gun out of the vehicle. Also, office Jones had reasonable suspicion to turn on the emergency lights and show his authority.

4. identified testimony by the teller.
issue: was the show up legal or illegal?
issue: was the show up suggestive?
issue: was the testimony admissible?
issue 4: was the teller's testimony given under duress or was it suggestive in any way?
rules: Due process requires that all evidence of identification be excluded at the trial if the pretrial id procedure was impermissibly suggestive, unnecessary, or unreliable under the totality of the circumstances.

In manson v. braithwaite the court found that witness identification or show-ups must be subject to a multiple factor test. the factors to be considered include the opportunity of the i witness to view the criminal at the time of the crime, the degree of attention paid by the witness, accuracy of the prior description, level of certainty and the time between the crime and the confrontation

every suspect has a right to due process and all identifications must be regulated so. if a due process violation occurs, all evidence of the identification must be excluded at the trial. if

the re trial show up was suggestive in any way or created a a substantial risk of mistake in identification, it must be precluded.

Another primary rule was found in perry v. new Hampshire where the due process test was triggered by the improper police misconduct. this tule was said to be put put in place to deter improper police misconduct. if there is no improper police misconduct to deter, then the issue is one of fact for the jury to determine based on the proof beyond a reasonable doubt that the defendant committed the crime, and there can be no reasonable doubt.

Analysis: the passengers due process rights were not violated because there was no improper police misconduct. although the defense will argue the show up was aggressive, suggestive because the suspects were already handcuffed to the police car, it was necessary due to the exigency of the detention. the identification was reliable because the victim was told do not assume the person you will be seeing is the perpetrator merely because you are being asked to look at him". the prosecution will argue that on top of the above statement there was no pointing or misleading. it is likely that the victim did not feel like she had identify the men by her answer of uncertainty. therefore, the defense will have a hard tim proving the pre trial show up was unnecessary because the police officer was one mile away and the crime occurred a short time before (making it even more important).

also, it is important to point out that this all happened before their sixth amendment rights were triggered.

In stovall v. denno show ups were found to be admissible and not impermissibly suggestive because they are considered a necessity due to exigency factors that occur during a detention.

Conclusion: overall, the identification is reliable under the totality of the circumstances because there is no substantially likelihood of misidentification, and there was no outrageous police misconduct. .

END OF EXAM

85

2)

Question 2

Two burglaries = two trials.

1. Karen's (K) confession to Beretta (B):
Pros will argue that Karen was lawfully arrested on PC, properly Mirandized and knowingly, intelligently and voluntarily waived her rights to silence and counsel. All this is stipulated in the facts, so its not in dispute. Miranada advisement is required anytime there is custiodial interrogation (as there was in this case. Karen was arrested and questioned w intent to elicit incriminating statements)

Defense will argue that K invoked her right to counsel, and Pros will argue that she did not. An invocation of Miranda rights must be clear and unambiguous. K's statment "it would be better if I had an attorney" would probably be seen as ambiguous as to whether or not she was saying that she would not answer any more questions without a lawyer.
Interrogators have no obligation to clarify an ambiguos invocation. They can just keep on questioning. Pros will argue that B had no duty to clarify and she was allowed to continue questioing without violating Miranda.
If police lie to obtain a Miranda waiver, it may be seen as vitiating the voluntariness of the waiver. However if police lie to obtain a confession after a valid Miranda waiver, this may be permitted. Defense will argue that B lied about being able to "make Ken's mj beef go away" to get the confession. But Pros will argue that this tactic is in fact permissible.

While this may not be a violation of Miranda. We may be dealing with a 5A /Due Process violation.

Generally if the police use any violence, threats of violence, psychological coercion, deprivation, or even promises to protect from violence, in order to obtain a confession, the confession will be seen as involuntary.
Under the 5A, involuntarty statements and their fruits are not admissible for any reason, not even to impeach the D at trial or during sentencing (as excluded evidence may be used for under the 4A and 6A exclusionary rules). valid Miranda advisement and waiver do not excuse these forms of coercion, and confessions obtained this way are core 5A /DP violations.
Defense will argue that B's offer to protect Ken from prosecution (a form of state violence often seen as legitimate) was sufficient to make K's confession involuntary. - WHY?
I think the court may likely rule that the statement was involuntary and therefore inadmissible.

2. Diamond Ring

I doubt it would, but If the court decided that K actually did invoke RTC, then her confession to B would be a Miranda violation since B was obligated to cease questionig at that time (and scrupulously honr the right, only re-intiating and seeking a waiver after a reasonable time). The violation of Miranda would be inadmissible. Karen arguable told B where to find The diamond ring because of the confession, and so the ring would be derivative evidence of the confession. However, as Miranda is merely a prophylactic requiring no actual proof of a 5A violation, Fruit of the P Tree analysis does not apply to Miranda. That is, derivative evidence IS admissible. SO the ring would be admissible even if there was a Miranda violation.

It is more likely that the confession was coerced and therfore involuntary, and if the court sees it this way, then the ring would be derivative evidence /fruit of the involuntary

confession and therefore inadmissible (bc FotPTree does apply to core 5A DP violations = involuntary statements).

Cat out of the bag?

3. Karen's confession to Jones that she committed Carmel burg:

After Karen was arraigned, the 6A right to counsel attached automatically. She was at that point not to be quesiotned by police w/o the presence of her appointed attorney. She was released from custody, and within 14 days, quesiotned by Detective Jones.
Defense will argue that the Edwards presumption appllies because, defense will argue, Karen invoked her right to counsel under Miranda by saying "it would be better if i had an attorney." If a Defendent invokes the RTC under Miranda, police may not question D for the Entire period of pre=trial confinement plus 14 days after a break in custody. If police do custodially interrogation within that time, even with 14 days after release from custody, even with a valid Miranda advisement and waiver, the statements are inadmissible.
Defense will argue that Karen was protected by Edwards and that she was within the 14 days, so K's confession to Jones is inadmissible.
Defense will further argue that, since protection under Miranda invocations are not case specific, Jones was not permitted to question Karen about another crime (her Edwards protection would keep police from quesioting her about any crime. but if she only had 6A protection after formal charges, police could question about another crime as long as one element different - Blockburger test).

Pros will no. Nope. Karen never invoked RTC under Miranda. Therefore K is not covered by Edwards. Further, when Jones quesiotns Karen, it was not custodial. Karen actually invited Jones into her home and voluntarily answered questions. It was all consenual and voluntary, and none of the requirements for Edwards were present. Further, even though

karen's 6A rights had attached, Jones was still allowed to question Karen about other crimes as 6A is case-specific.

Defense will argue that since Jones told karen that she knew she had committed the Carmel burg, etc, karen might have thought she was under arrest at this point. So defense may argue that custodial interrogation was present and Miranda advisement therefore required. Therefore karen's confession to the Carmel burg was obtained by violation of Miranda and therfore inadmissible.

Pros will argue that Jones' accusations did not create a situation where K thought she was arrested (felt not free to leave, submitted to show of authority, physical touching - Mendenhall / Hodari) therefore not custody. Pros will argue that the whole encounter with Jones was consenual and that it was a different crime so Jones was authorized to ask about it.

The court will likley agree with the Pros that Edwards was not at play and Miranda was not required because not custodial interrogation.

4. Karen's confession to Jones that she had more stolen jewelry from the Monterey burg:

the same basic analysis from karen's confession to the Jones about the cArmel burg applies here.
wellll....
except that since karen's 6A rights had attached as to the Monterey burg, police were not supposed to be questioning karen in the absence of karen's attorney.
6A rights are triggered by attachment at formal charges plus deliberate elicitation of incriminating statements. since Jones was not authorized to question karen about the

specific case to which her 6A right to counsel had attached, the defense may successfully argue that the confession to jones are more stolen jewelry should be excluded.
court will likely argee.
Jones was clearly trying to elicit statements from Karen when she said she knew karen had more stolen jewelry.

5. the diamond Pendant:

OF WHAT?

derivative evidence of core violation = excluded
derivative of miranda vilation = admitted

cat out of bag?
If the court decides that the intitial confession to the Monterey Burg was involuntary, then karen's handing over the diamond pendant could be seen as fruit of that p tree based on a cat out of the bag analysis. Defense will argue that, since the karen figured she had already confessed to the monterey burg, she might as well just hand of the pendant bc the cat was already out of the bag.

END OF EXAM

(15)

Karen Admission

(1) Invoc. of Rt to Counsel (M)
- custody / interrog.
- clear + unambiguous

(2) Voluntary? 5th D/P.
- coercive
- Inducement

(3) exclusion of statement

(4) Exclusion of RING
- not FOR (M) Viol
- yes if not Voluntary - viol of 5 D/P

(5) Karen's confession to Jones -
CARMEL case
- Edwards violation?
- custody -?
NOT offense specific

(6) Karens confession - Montejo Case
- MASSIAH -
- arraigned - yes - Applic
- Deriv. evid excluded - probably