

SAN LUIS OBISPO COLLEGE OF LAW

CRIMINAL LAW & PROCEDURE

FINAL EXAMINATION

SPRING 2021

Professors S. Wagner & C. White

Instructions:

There are three (3) questions in this examination. You will be given four (4) hours to complete the examination.

Questions 1 and 2 are Essays. Question 3 consists of 2 Short Answer questions and 10 MBE questions. Please answer the 10 Multistate Bar Exam (MBE) questions embedded on Examplify. Read each question carefully and choose the best answer. Review your answers for accuracy before you finish.

QUESTION 1

During their day shift officers Baker and Knox were on the lookout for stolen vehicles related to a rash of recent auto thefts. As the two officers drove past a convenience store, Baker said to Knox (the driver), "Hey turn around, I think I just saw one of the vehicles reported as stolen and I'm pretty sure that's Pinky Jones ("Jones") sitting in the driver's seat." Baker had numerous previous contacts with Jones and he knew that Jones was out on bail after being recently arraigned on an auto theft charge. The two officers then followed the vehicle as it exited the parking lot of the convenience store. As they were following the vehicle, a red Honda Civic, Baker noticed that several of the digits on the rear license plate were covered by some type of tape.

The officers decided to effectuate a traffic stop on the driver of the red Honda Civic. Both officers then approached the passenger side of the red Honda Civic and ordered both occupants to step out of the car and to sit on a nearby curb. Baker told Knox that the driver was Jones, but forgot to tell Knox that Jones had pending charges. Knox asked Jones for his identification, registration and proof of insurance. Jones responded, "I'm too tired fool. Why don't you get it yourself? They're in the glove box." Knox opened the glove box and retrieved a plastic baggie containing a white powdery substance and numerous pieces of mail all addressed to "Roger Smith." During Knox' interaction with Jones, Baker walked to the front of the stopped vehicle and noticed that the front license plate did not match the back license plate. While Baker kept an eye on the two men, Knox searched the vehicle. Inside the trunk, Knox discovered a binder that contained the alphabetized listings of names, addresses, dates of birth and social security

numbers of approximately 300 people. After discovering these items Knox looked over at Jones and his passenger, Riley, and said, "Looks like you guys have a little ID theft business going." In response to Knox' comment, Riley said "That's my census binder man. I'm doing some side-work for President Biden." Both Jones and Riley were arrested and taken to the police station for questioning.

1. Was the car driven by Jones lawfully stopped by the officers? Fully discuss all of the officers' observations and actions.
2. Was Officer Knox' retrieval of the items found in the glove box lawful or unlawful? Discuss.
3. Was the search and retrieval of the items in the trunk lawful? Is Riley's' statement to Knox legally admissible? Discuss.
4. Assume that Officer Knox administered proper *Miranda* warnings to Jones and that Jones waived his right to silence and to counsel. Is Officer Knox permitted to ask Jones about any criminal activity or must his questions relate only to the car stop and the items found in the car? Discuss.

Question 2

Ted recently learned that his spouse, Mara, had been cheating on him with a guy named Nick. Ted made this discovery after he viewed explicit text messages on Mara's smart phone. Ted became especially enraged after viewing some messages that described numerous sexual encounters between Mara and Nick. Ted used Mara's smart phone to call Nick. When Nick answered, Ted said, "Listen up Nick, this is Mara's husband calling and I know what's been going on." Nick responded, "You need to chill out. Mara says you just don't please her any more, get over it. Let's meet for coffee and talk it out." The next day, Ted and Nick met for coffee. As Ted and Nick were engaged in heated discussions, Nick showed Ted a visual recording of Nick and Mara having sex and said, "Look man, she's happier now." Ted then immediately stabbed Nick in the throat with a pocket knife that he pulled from his pocket, killing Nick instantly. Off-duty police officer, Drake, witnessed the stabbing. Ted ran out of the coffee house, got into his car and drove to his nearby apartment with Drake in close pursuit. Drake lost sight of Ted after Ted parked his car in the Number 12 Carport. Drake ran to apartment Number 12, kicked-in the door and tackled Ted. As Drake and Ted were struggling on the floor, Ted yelled out, "That piece of shit had it coming. He was having an affair with my wife."

Assume that Ted was arrested and that Officer Drake submitted a report outlining all of the above facts to the District Attorney's Office in a California jurisdiction.

1. Based upon the above facts, was Ted lawfully arrested? Discuss.
2. On what grounds, if any, can Ted challenge the admission of these statements? How should the court rule? Discuss.
3. Discuss all potential criminal charges that might be filed against Ted resulting from the acts described above. What defenses and/or factors in mitigation would likely be asserted by Ted?

End Question

Criminal Law & Procedure
Final Examination
Spring, 2021
Professors S. Wagner & C. White

QUESTION 3 - Short Answer Questions & MBE

Question 1

Duke was furious at his boss, Vince, so he decides to throw a stink bomb in Vince's house during the middle of the night. When the bomb goes off, Vince thinks his house is on fire. He runs out of the house and jumps into his unheated swimming pool. By the time emergency help arrives, Vince is dead. The coroner's report indicates that Vince died of hypothermia from the cold water. Vince was particularly susceptible to hypothermia because he was extremely underweight.

Assume that Duke has been charged with murder. In his defense, Duke claims he did not cause Vince's death. The trial judge has both sides for full briefing on the issue of Actual and Proximate Causation. Discuss:

Question 2

Allen Assault and Bob Burglary are two ex-cons who just got out of prison for a robbery they committed together. The two are driving around when Allen asks Bob if he feels like committing one more robbery before they retire from their life of crime—Bob agrees to commit one more robbery with Allen and begins to drive toward a convenience store known to have a poor security system. Two blocks away from the convenience store, Bob slows down and tells Allen, "I am not sure this is such a good idea." Allen, who has no time for such nonsense, gets out of the car and walks to the convenience store. Meanwhile, Bob flags down a police officer, Jane Justice, and informs her that Allen is likely going to rob the convenience store. Allen enters the store, waits for all of the other customers to leave before approaching the cashier. Allen walks up to the counter and reaches into his pocket just as Officer Justice enters the convenience store. Allen quickly pulls his hand out of his pocket and tries to act casual but Officer Justice apprehends, searches his pockets and locates a loaded firearm.

What crimes are Allen and Bob guilty of, if any?

FINAL EXAMINATION -SPRING 2021-CRIMINAL LAW & PROCEDURE-
PROF. STEPHEN F. WAGNER

Question 1

Issue Outline

#1)

Students are expected to articulate the general rule that arrests require proof of probable cause to believe that a crime was committed and that the arrestee either personally committed an offense or was involved in some manner. On these facts, the arrest takes place inside the home/apartment. The arrest was effectuated without an arrest warrant. Here, the officer would be basing his decision to arrest on his personal observations (witnessing the stabbing). These facts also give rise to a discussion re "fleeing felon," as Ted did commit a felony (Officer observed an ADW; the stabbing). The officer appears to have been in active or "hot pursuit" of Ted. These combined factors would justify the warrantless entry into the apartment. Conclusion: The arrest was lawful.

#2)

Ted's extrajudicial (and quite incriminating statement) would likely be deemed a voluntary admission/stm., as it is not the product of coercion and there was no questioning by Officer Drake. A brief "raise and dismiss" Miranda discussion would be warranted. The prosecution would likely seek to admit this statement as a Party Admission. Conclusion: Statement is admissible.

#3)

Most of the overall point value resides in this interrogatory, as it is testing Homicide/Murder/Mitigation/Voluntary Man. There is very strong support for arousal of extreme emotion here by virtue of Nick's overtures aimed at Ted. However, there is equal support for Premeditated, Deliberate ITK, as Ted went to the coffee house, armed with a concealed weapon (the knife). There is rich tension between what Ted will cast as "heat of passion" and what the prosecution will label as cool, calculated decisions by Ted. Nick's initial disclosure (the phone conversation) was provocative and badgering in nature and it most certainly would arouse extreme passion. However, one full day passes before the coffee house meeting (this was either "cooling-off" or plotting and deliberation time). While at the coffee house, Ted's passions were once again aroused (known as "rekindled" HOP). Acceptable "malice" theories would be Intent to Kill (Deadly Weapon Doctrine), Wanton, willful disregard and/or Intent to commit GBI. The 1st Deg. theory would be P/D ITK.

Conclusion: Close call between the above theories, yet likely stronger support for Vol. Man.

Question #2

Issue Outline

#1)

This raises the issue of a “pretext stop.” The bottom line is that all the officers need to justify the stop is a traffic violation and throwing objects from the car will qualify (littering, causing safety concerns for other motorists, placing impediments in the roadway. The stop would be deemed valid. The fact that officers had other motives relates to their subjective intent, which would be deemed irrelevant and would not get traction in the motion to suppress/challenge of the stop.

The actions of the officers re demanding that J and B exit the vehicle would be deemed valid under recognized detention protocol (officer safety concerns).

#2)

The retrieval of the items in the glovebox follows a rather odd verbal exchange between Off. Price and driver, Jones. The request for registration and proof of insurance is standard and permissible SOP. Typically, a stopped motorist would be the one to retrieve these items at the request of the officer. In this scenario, Jones appears to be granting permission to Off. Price (invectives notwithstanding). If this is deemed as consent, that consent extends only to the act of opening the glovebox. It can and should be argued that the 9 Mil. and the baggie qualify as Plain View observations (a recognized SW exception).

#3)

The trunk search would be deemed lawful under the Automobile Exception and the extension of the search from cabin to trunk would also be justified as there is sufficient PC to continue the search into places where the items (here, drugs) could be found. Note that “search-incident-to-arrest” is not a valid claim here as formal arrest has not been effectuated.

What about Jones’ statement in response to Off. Price’s comment? The facts indicate that Jones had pending charges and that he was arraigned on those charges. Therefore, Jones has 6th Amendment Rights intact, as adversarial proceedings had commenced. These rights are triggered automatically by operation of law and it does not matter that Price may not have known that Jones had been arraigned. With 6th Amendment Rights intact, the officers cannot question Jones on topics related to his pending charges (dope related). This rule does not appear to be offended because Off. Price’s comment did not relate to Jones’ pending charges. Note also that when this exchange occurred this was likely a detention setting, so no *Miranda* Advisement required.

#4)

Per the above #3 discussion, Off. Price must avoid questioning Jones about this pending charges and he should confine his questions to the discovery of the materials in the binder.

Short Answer Question

1. not available

2.

Allen Assault and Bob Burglary are two ex-cons who just got out of prison for a robbery they committed together. The two are driving around when Allen asks Bob if he feels like committing one more robbery before they retire from their life of crime—Bob agrees to commit one more robbery with Allen and begins to drive toward a convenience store known to have a poor security system. Two blocks away from the convenience store, Bob slows down and tells Allen, “I am not sure this is such a good idea.” Allen, who has no time for such nonsense, gets out of the car and walks to the convenience store. Meanwhile, Bob flags down a police officer, Jane Justice, and informs her that Allen is likely going to rob the convenience store. Allen enters the store, waits for all of the other customers to leave before approaching the cashier. Allen walks up to the counter and reaches into his pocket just as Officer Justice enters the convenience store. Allen quickly pulls his hand out of his pocket and tries to act casual but Officer Justice apprehends, searches his pockets and locates a loaded firearm.

What crimes are Allen and Bob guilty of, if any?

- Conspiracy
 - Formation of conspiracy as to Allen and Bob,
 - Renunciation analysis as to Bob
- Attempted Robbery
 - Analysis: Did Allen abandon attempt?
 - Analysis: Did approaching the cashier while reaching into his pocket (where a gun was located) constitute a “substantial step” beyond mere preparation?

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1)

Lawful Vehicle Stop? - Generally regarding Seizures and Fourth Amendment Implications

✓ The fourth amendment protects citizens in their affairs/possessions from unreasonable searches and seizures conducted by government officials, to be secure in their person, home, papers, and effects. A search must be authorized by Warrant, certified by oath affidavit and authorized by a neutral magistrate particularly describing the places to be searched and things to be seized. Absent a warrant, a search or seizure must be justified by probable cause in order to satisfy the constitutional requirement, based on one of the narrowly defined exceptions to the warrant clause.

In this case, the fact pattern indicates that the searches of the vehicle were done, not based on a warrant, so we should analyze this fact pattern based on warrantless search legal theory. Additionally, the stop of a vehicle and the passengers does require a fourth amendment analysis because those individuals and property have been seized.

Government Action v. Private Party

For fourth amendment protections to be implicated (as a threshold issue), the acts of search/seizure must be done by a governmental actor.

✓ In this case, we are provided in the fact pattern that the individuals conducting the search and seizure are police officers, and therefore will be considered government actors for the purposes of this analysis, requiring evaluating the fourth amendment.

Traffic Stop Justified - Specifically

Police may stop a vehicle without a warrant, if the officer has reasonable suspicion or probable cause to believe that a traffic law has been violated.

Did the police have reasonable suspicion or probable cause sufficient to justify the traffic stop?

Reasonable Suspicion

✓ Reasonable suspicion is a common-sense conclusion about human behavior upon which practical people are entitled to rely, which rises above an unarticulated hunch, but below probable cause. Reasonable suspicion is derived from a totality of the circumstances approach.

FA
⊕
In this case, reasonable suspicion is implicated before the traffic stop was effectuated when Officer Baker witnessed an individual known to him as being implicated in previous vehicle thefts, and while driving a vehicle that, based on his knowledge, may have been reported recently stolen. The police begin to follow the vehicle based on this premise, based on the foundation of Baker's subjective belief. The police are not required to justify this behavior based on reasonable suspicion, because they are free to use public road-ways, but this belief is what initiated this course of action. Given that the police are lawfully where they might be in order to effectuate their duties, the police still held this degree of rationale. In the chronology of the fact pattern, the police's factual foundation expands to justify a probable cause belief in criminal conduct (discussed below).

Probable Cause

Probable cause 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. Probable cause is based on the totality of the attendant circumstances by common sense evaluation. The question to ask is,

"would a reasonable officer, in those same circumstances, reasonably believe that there was evidence of criminal activity."

In any case, probable cause is the degree of justification required to stop a vehicle in order for police to conduct a traffic stop. In this case, probable cause is achieved when officer Baker noticed that the license plate was partially obscured by tape. Under a majority of jurisdiction's Vehicle Code, license plates must be displayed without obstruction. Based on this observation that there was, at minimum, a traffic infraction being committed, the police are justified in conducting a stop. In though in this case following the individuals, and then stopping them based on this infraction may be a pretextual justification, the subjective beliefs of the officers in this case (Baker's belief that the car was stolen, and driven by the potential thief), will not provide a basis of dispute over this interaction. The only determining basis is the objective understanding of the officers, the V.C. violation. In this case, that is sufficient to justify the officer's conduct of stopping the Honda.

Justified Traffic Stop - Analysis & Conclusion

✓ In this case, because the traffic stop was initiated while the police had probable cause to believe that a traffic infraction was occurring, the police were justified in effectuating a traffic stop because the requisite justification (probable cause) is present. Given the objective basis for the stop, the police are justified in conducting a traffic stop, however, the scope of this traffic stop may extend only so far as the objective basis of the stop extends, unless extended by additional probable cause raised during the course of the stop.

Police Retrieval of Items from Glove Box

Was there a search of the glove box?

The fourth amendment guards against unreasonable searches and seizures. To claim protection under the fourth, the suspect must show that the government engaged in a search. A search is defined as an encroachment upon an area in which a person has a reasonable expectation of privacy.

Did the suspects have a reasonable expectation of privacy over the glove box?

For fourth amendment protections to be implicated, a search must have occurred. A search is an invasion of an area in which a person has an objective and subjective reasonable expectation of privacy. Depending on the physical area, the objective expectations will be different. The objective expectation of privacy is that from society's perspective (what would a reasonable person expect?), while subjective expectation of privacy is that from the citizen's own perspective.

In this case, there is a reasonable objective expectation of privacy over the glovebox because a reasonable person would determine that there was, and that the privacy of a glove box is a socially expected thing. Additionally, the suspect should additionally have a subjective expectation of privacy, which requires that they would believe that they have such an expectation of privacy. As a result, the ^Efourth ^Aamendment is implicated because there is an expectation of privacy. There is however, an important exception to the warrants requirement indicated in this case, as well as the presence of consent (both discussed below).

Vehicle Search Exception to Warrant Requirement

Police, without a warrant but supported by probable cause, may search a vehicle, given the decreased expectation of privacy based on the mobility of vehicles (making evidence inherently more ephemeral), and the extensive existing government regulations of

vehicles. The scope of the search may extend to every place/person/item found in the vehicle, within the prescribed scope of the probable cause indices.

In this case, the police had probable cause sufficient to justify the temporary seizure of the vehicle in order to effectuate a lawful traffic stop. That probable cause, however, extends only so far as the indicies of the crime that the probable cause is suggesting extends - in this case, the violation of the Vehicle Code relating to an obscured license plate. As a result, the scope of any search of the vehicle would (at this point in the chronology) be limited merely to places that could reasonably hide evidence of that crime. (Given that the only evidence of the crime is on the outside of the vehicle, the police can not use the vehicle exception as a justification to search the vehicle. The police must turn to an alternative exception.)

*Trunk
Search
follows
the
glove box*

Consent to Search the Glove Box?

Consent is the voluntary relinquishment of a known right. A search conducted pursuant to valid consent, without a warrant, is acceptable. The police do not need to make the defendant aware of their ability to decline consent, and consent may be given by any person who has authority over the premises (or vehicle), or a person that the police reasonably and justifiably believe does have that authority.

In this case, the person that the police would reasonably assume is in control of the vehicle has provided a form of consent through the statement made to the officers ("I'm too tired fool..."). While not an explicit "I give consent" form of consent, any reasonable officer or citizen would interpret Jones' statement as voluntarily relinquishing their right to privacy over the thing to be searched, in this case, the glove box. Therefore, based on consent, Officer Knox was justified in opening the glove box and looking into it.

Plain-View

Police may seize evidence, without a warrant, when they are legitimately present on premises (or in the vehicle) and the item's nature is immediately apparent as evidence or contraband.

OK In this case, once the police received consent to open the glove box, they were allowed to be in the glove box. Given that the plastic baggie was immediately apparent as containing a white powdery substance, this immediately justifies the seizure of that evidence by the police. The nature of the contents of the plastic baggie will be confirmed as illicit given subsequent field testing or laboratory testing, but given that the police can immediately see that the baggie's contents (as a white powdery substance), this view raises the police's reasonable suspicion (defined above) to believe that the driver/passenger were in possession of contraband, based on the officer's training and experience dealing in narcotics, which justifies the police seizure of the items. Additionally, even though the substance may not be immediately known as illicit contraband (may be baking soda), the police are justified in retaining that substance based on another warrant-clause exception. Additionally, the police are able to likewise see and then seize additional evidence (letters w/ different addressees than the detainees). This additional evidence raises the officer's objective probable cause from a mere vehicle code violations into the realm of potential felony theft (either of mail, identity, or the vehicle).

Destruction of Evidence

Police may enter a property (or seize property) without a warrant when they have a reasonable belief that individuals are actively destroying evidence, or given the naturally ephemeral nature of certain illicit drugs/materials.

In this case, the police are not required to leave the unknown substance in the glove box. They possess probable cause to believe that the substance is illicit, and given the naturally

ephemeral nature of illicit drugs, the police are justified in seizing this item into evidence so that more examination may be performed.

Glove Box - Conclusion

Given that the police received the consent of the individuals that they had a rational objective basis to believe had a lawful possessory control over the glove box (a reasonable officer would believe that any driver of a vehicle was entitled to give consent to search the glove box), the officers were justified in opening the glove box. Based on the plain-view doctrine, the officers were likewise justified in seizing the indicies of other crimes, the glassine bag, as well as the envelope with another's address on it.

Search of the Trunk

Increased Probable Cause to Search

Police may only conduct a search that is defined by the scope of the probable cause that justifies that search.

Following the search of the glovebox, officers discovered that the front license plate did not match the rear license plate. Based on the training and experience of the officers, these police would likely interpret this discordance as being consistent indicies of criminal activity, such as vehicle theft. Indeed, given that Officer Baker has a personal knowledge of the suspect as a potential car thief the officer is justified in continuing the search of the vehicle. In addition to the discordant license plates, officers discovered potentially illicit drugs in the glovebox, as well as evidence consistent with other crimes (mail theft...). These three indicies allow the officers to enlarge their search of the vehicle to uncover other evidence relating to the factual basis of the crimes already uncovered. In the case of drugs, the police are now justified to search virtually every other space in the vehicle, given that drugs may be hidden in quite small spaces.

Given that the probable cause is expanded based on the justification of the drugs in the glovebox, the police were entitled to search the trunk of the vehicle because other evidences of the crime may be reasonably believed to be hidden there.

Riley's Statement

Given that Riley made a statement to police, the 5th Amendment and Miranda are implicated issues.

Miranda

✓ The 5th amendment protect's a suspect's rights against self-incrimination. In order to guard this right, the court has required that police officers must give arrestees Miranda warnings when the arrestee is in custody and being interrogated. Miranda warnings inform the defendant of his right to remain silent and have the right to an attorney present during such custodial interrogations, in order to protect the suspect against the inherently coercive nature of custodial interrogations, in order to protect the suspect's 5th, 6th, and 14th amendment rights. Miranda is purposed to protect suspect's volitionality by guarding against the inherently coercive environment of custodial interrogations.

Custody ?
In this case, the Miranda rights are implicated because the police engaged in a form of interrogation because the police engaged in conduct that was likely to elicit a response, whether the statement was incriminating or exculpatory. In this case, the police engaged in a form of questioning when Officer Baker stated "Looks like you guys have a little..." While not a direct question, this kind of statement is extremely likely to illicit a response by the suspect. Where the Miranda analysis in this case differs however, is the form of custody that is occurring. While custody is defined by whether a reasonable person in the detainee's shoes would feel free to leave (which is extremely unlikely given that the police are conducting a traffic stop and so is raised as a point of contention in this case),

Miranda is interpreted as being relevant to custodial detentions that are the functional equivalent to arrests. That is to say, a traffic stop under these circumstances are unlikely to rise to the level of a custodial arrest because a traffic stop does not rise to this degree based on two factors: (1) the presumable length of the traffic stop; and (2) the lack of inherently coercive environmental factors. Given that both of the suspects are on the shoulder of the road, in public, they are not exposed to the same inherently coercive factors that would typically require the police to give a Miranda admonishment.

The degree of coerciveness is a point of contention for the suspect's defense to raise. They may be able to extend the Miranda requirement to these circumstances because the suspects were no longer faced with a mere traffic stop, but when presented with the other indicies of their crime, the inherently coercive nature of the encounter is increased, thereby serving to weaken the volitionality of any statements made, or at least reasonably inferred.

Statement Made re Biden's Binders - Conclusion

In this case, given that the police engaged in behavior that was calculated to produce a response, but that the nature of the attendant circumstances that the suspect was subjected to (in this case, the side of the road), the statement is likely admissible without a Miranda warning given.

Scope of Questioning Following Miranda

In this case, the suspect Jones's questioning by officers in this case implicates the 6th amendment.

6th Amendment Defined - Offense Specific Examined

✓ The 6th amendment, under the Messiah doctrine, entitles every criminal defendant to an attorney, and this right attaches once adversarial criminal proceedings have begun and to all critical points in the proceedings. 6th amendment protections are offense specific. To determine if a case is offense specific, the crimes must not share functionally equivalent elements.

F/A
⊕ In this case, the 6th amendment is implicated because the suspect has already been arraigned in a criminal trial. The function of arraignment serves as the beginning of the defendant's right to counsel, which, under the Messiah doctrine, means that the police may not conduct questioning that relates to the defendant's criminal trial without a knowing waiver, or the presence of that attorney. That said, the 6th Amendment has been interpreted as being offense specific, meaning that the right will only attach to the charges that the defendant has been arraigned on. In this case, the defendant has been arraigned on charges both similar to those that Officer Baker may want to raise pursuant to the traffic stop. The arraignment is on charges relating to previous auto theft, rather than on the current potential auto theft that the suspect may have committed. *good*

Additionally, the other evidences of crime (the binder, drugs), may freely be questioned by the police in this instance, because these charges share no similar elements with the already charged offenses.

6th Amendment - Conclusion

Given that the 6th amendment requires counsel to be present (or presence of counsel knowledgeably waived), the police may be free to question the suspect on any of the offenses stemming from this instant case, so long as the police do not question the defendant on anything that could reasonably relate to the already arraigned charges.

Given that the defendant is arraigned on auto theft charges, the police may want to steer clear of this altogether, given the potential conflicts with the 6th amendment inherent in

those questions, but given that it is offense specific, they are technically free to ask questions relating specifically to the fruits of the traffic stop in this case.

END OF EXAM

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2)

Ted - T - stabbed Nick

Nick - N - stabbed by Ted

D - officer Drake

1. Was T lawfully arrested?

Does the fourth amendment apply?

The 4th amend protects people from unreasonable governmental searches and seizures and requires that warrants have probable cause, particularly describe the place or person to be searched or seized and be issued by a neutral magistrate. Judicial preference is for there to be a warrant however some searches are permissible under specific search warrant exceptions. Probable cause is determined by considering the totality of the circumstances. It requires concrete facts that point toward a 'fair probability' of criminal activity and requires more than a hunch. The 4th amendment is applicable when there is government action and a reasonable expectation of privacy.

to arrest
?

Was there a government actor?

Here, D is a police officer who witnessed the stabbing. D was off duty at the time this event occurred, however he would still likely be considered a government actor.

Did T have a reasonable expectation of privacy?

T was arrested in his house. A house has the highest level of privacy protections. T had a subjective and objective expectation of privacy in his home.

Was there justification for seizing T without a warrant?

A warrant is judicial authorization for police action, either to search a particular place or to arrest a particular person.

After witnessing the stabbing, T fled and D followed. D kicked in the door to apartment 12, tackled T and finally arrested him. This gives rise to multiple possible warrant exceptions.

Emergency warrant exception

The warrant requirement will be waived when there is an emergent reason to enter one's house and make an arrest. Here, D just watched T stab someone. D may not yet know the reason why T stabbed N so D would be justified in thinking the T may be likely to kill other people. T would then have an urgent reason to apprehend T and prevent more deaths.

Hot pursuit warrant exception

The warrant requirement will be waived when an officer is in hot pursuit. D was in hot pursuit of T when he broke into his apartment and arrested him.

Knock and Announce

The knock and announce rule requires officers to knock and announce on someone's door before entering. Officers are required to give reasonable time for someone to answer the door in order to preserve people's safety, privacy and dignity. There are exceptions to the knock and announce rule.

good | Here, D did not knock and announce, D kicked T's door in and ran inside and tackled T. D will be excused from following this rule though since announcing himself prior to entering would have been dangerous or futile. D knew T just killed someone. It would not be in D's best interest to give T time to prepare to possibly try to kill D. Also, T was fleeing after he just killed someone. If he heard police knocking at his door he would likely run or hide from them because he clearly does not want to be caught.

Conclusion

Under either an emergency or hot pursuit warrant exception, T's arrest would be found to be lawful.

2. How could T challenge the statements he made while struggling on the floor with D?

good | T's statements when he was struggling on the ground with D could be viewed as confessions or admissions to deliberation and premeditation or could prevent mitigation of murder charge. T will want to prevent admission of his statements if possible in order to help reduce his murder charge.

4th amendment / no

DP / Miranda

A confession or admission will not be permitted as evidence if it is not voluntary, or if it was given because of coercion.

Here, T and D had no direct interaction prior to D kicking in T's door and tackling T. From the facts, T's statements came as D and T were struggling on the floor which was likely almost immediately after they came together. This is a very short amount of time

DP/Vol.

and we have no evidence showing any sort of coercion during this short amount of time.
4th amend violation would not be a good argument for T.

5th amendment

The 5th amendments provides the privilege against self-incrimination. Miranda warnings will apply during custodial interrogations, when interrogation occurs during custody. Both custody and interrogation must be present in order for Miranda warnings to be required. Miranda warnings are not offense specific. If miranda warnings are not given when they need to be, any following statements made by the defendant may not be admissible as evidence

Custody

Custody is the freedom of movement, it occurs when a government agent denies a person of freedom in a significant way. A person is in custody if a reasonable person in their position at the time of interrogation would not feel free to leave. Inherently coercive pressures may give rise to custody if they give rise to the same pressures a person would find in a traditional police station interview.

Here, T had just been tackled and was struggling on the floor with a police officer. A reasonable person in this situation would not likely feel free to leave. T would likely be considered to have been in custody when he made the statements.

Interrogation

Interrogation may come in the form of express questioning or the functional equivalent. Express questioning occurs when a government agent asks express questions. The functional equivalent occurs when police use words or actions that they should know would be reasonably likely to elicit an incriminating response.

Here, D didn't ask any questions or make any statements to T. T just volunteered his statements without any prompt from D. Spontaneous and volunteered statements do not require miranda warnings. 5th amend violation would not be a good argument for T.

6th amendment

n/k The 6th amend provides the right to counsel during criminal proceedings. This right does not attach until criminal proceedings have begun which usually occurs with arraignment.

Here, T was not arraigned, he was not even charged. So 6th amend violation would not be a good argument for T.

Conclusion

T could try to challenge the admission of his statements under either the 4th, 5th or 6th amendments as discussed above. However, the court will not likely find in his favor for any of them.

3. T's criminal charges

Assault

Assault is putting someone in reasonable fear or apprehension of an eminent bodily harm. Mere words are not enough.

Here, T called N on his wife's phone to tell him he knew that he was sleeping with his wife. N was enraged and probably wanted to put an end to the affair. T would not likely be charged with assault for 2 reasons though: he only used words (prior to stabbing N) and he likely didn't put N in fear of immediate bodily harm.

Homicide

Homicide is the killing of one human being by another by an act or omission.

Causation

✓ In order to prove beyond a reasonable doubt that T is responsible for the death of N, a direct nexus between T's action and N's death must be proven. T's act must be the actual (but for) cause and proximate cause of N's death.

Actual Cause

To determine whether T's act is the actual cause of N's death, we can apply the but for test. But for T's act, would N not have been killed? Yes, N died immediately from T's act of stabbing him in the neck. T is the actual cause of N's death

Proximate Cause

Where N's death was a natural and probably consequence of T's conduct, T is likely the proximate cause.

Here, there are no intervening events or forces between T stabbing N in the neck. We know that N died immediately. T is the proximate cause of N's death.

Murder

Murder is defined as the unlawful killing of a human being with malice aforethought.

Malice is the mental state that is required for murder. There are 4 distinct mental states which are sufficient to satisfy malice aforethought. They are as follows: intent to kill, intent to cause serious bodily harm, depraved heart murder (or extreme reckless disregard to the value of human life), or the felony murder rule. 4

Intentional murders

✓ Intentional killings will be 1st degree, 2nd degree under an express malice theory, or voluntary manslaughter.

Here, it is ~~clear~~ that T intended to kill N. T pulled a knife from his pocket and stabbed N in the throat.

1st degree murder

There are 2 ways to get to 1st deg murder: a deliberate and premeditated murder or under the felony murder rule.

Felony murder rule

Under the felony murder rule, an unintentional killing that occurs during the intentional commission or flight from an inherently dangerous felony (burglary, arson, rape, robbery, kidnapping) will be murder.

Here, there was no felony occurring. T will not be charged under the felony murder rule.

Deliberate and premeditated

1st degree murder is the willful, premeditated, and deliberate killing of another.

✓ Premeditation is the planning of the killing, deliberation is the weight for or against the act of killing another Length of time is not a proper test for determining whether premeditation and deliberation occurred as it can occur quickly. Instead the law will look to the quality of reflection.

Here, the prosecution will try to show that T acted with premeditation and deliberation. The prosecution will argue that T knew of the affair and was very upset about it. T

Strong C

initiated the contact with N presumably to put a stop to the affair. Killing N would be a sure way to stop the affair. Additionally, T brought a knife in his pocket to meet with N. T would argue that the knife was only an everyday pocket knife that he always carries around with him. T would also argue that he agreed to the meeting on N's suggestion and the reason for which was to just "talk it out". T will argue he just wanted to convince N to stop. T may also try to argue that he didn't have time to plan the killing because he had just met with N intending to talk. But premed and delib does not require much time. T could have come into his coffee meeting with N with the premed and delib intent to kill N but was just waiting for the right time.

F/A
⊕

2nd degree murder - express malice

2nd degree murder is the unlawful killing of another human being with malice aforethought, done without premeditation and deliberation. Express malice is the intent to kill. DWD

Voluntary manslaughter

An intentional killing can be mitigated from murder to voluntary manslaughter by adequate provocation or imperfect self defense.

Adequate provocation

Adequate provocation will reduce a killing to voluntary manslaughter if D was (1) in fact provoked, (2) did not have sufficient time between the provocation and killing for a reasonable person to cool off, (3) T did not in fact cool off, (4) and the provocation was something that would arouse sudden and intense passion in the mind of an ordinary person that would cause them to lose self control. There is a subjective component that looks at the actual defendant and their situation and an objective component that looks at

the reasonable ordinary person and how they would have responded in D's situation.
Words alone are not enough to satisfy adequate provocation

Here, T may have adequately been provoked in order to mitigate his murder down to voluntary manslaughter. Element 1 is satisfied because T was in fact provoked. T was upset about N sleeping with his wife and T killed N immediately after seeing video of N sleeping with his wife. Element 2 is satisfied because the stabbing occurred immediately following T seeing the video. Element 3 is satisfied because T was very upset following the video and there are no facts even giving rise to the possibility of a cool off opportunity for him. Element 4 is satisfied because an ordinary person would be very upset if their spouse were cheating on them and would likely only become more upset if they saw a video of their spouse in the act of cheating on them. Additionally, the video was above and beyond mere words which makes it sufficient.

T has a good argument to reduce his killing to voluntary manslaughter via adequate provocation.

Imperfect self defense

A claim of imperfect self defense will reduce a killing to voluntary manslaughter when a person who kills honestly though unreasonably believes that they must do so in self defense.

There are no facts supporting any sort of self defense claim for T so this will not apply.

Conclusion

T will likely be convicted of voluntary manslaughter unless prosecution can successfully prove that he acted with premeditation and deliberation.

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END OF EXAM

SA 1 80

SA 2 85

3)

1. Actual and Proximate Causation of Vince's death

Actual Cause

A defendant's act is the actual cause of a victim's death if their death would not have occurred but for the defendant's actions. *Good rule statements*

In this case, Duke was the actual cause of Vince's death. Without Duke throwing a stink bomb into the house, Vince would not have thought the house was on fire and ran outside and jumped into his swimming pool. Without the stink bomb, Vince would have been asleep in his house, not jumping in his swimming pool in the middle of the night so he would have never died of hypothermia from the cold water. *Good "Chain of events" analysis*

Duke's action was the actual cause of Vince's death.

Proximate cause

A defendant's act will be considered to be the proximate cause of a victim's death if the death was a reasonably foreseeable result of their actions. If the harm results from the victim's special sensitivity this will not relieve the defendant of being found to be the proximate cause, even if the defendant did not know about the sensitivity. *Good rule*

The fact that Vince was particularly susceptible to hypothermia due to being underweight will not cut off Duke's potential liability, however, Vince dying of hypothermia is not the foreseeable result of throwing a stink bomb whether Vince was underweight or not. This chain of events was not within the realm of intended harm of Duke's actions, so he should not be held liable for these extraordinary results. It is not foreseeable that a stink bomb will make someone think their house is on fire, and it is not foreseeable that

discuss concept of a contributory fault on part of V.

explain what.

→ depends on type of explosion it creates.

Attempted Robbery

An attempted crime requires the specific intent that the crime be completed, and an overt act in furtherance of the completion of the crime. *good*

In this case, Allen had the intent to rob the store. He entered the store and approached the cashier while putting his hand in his pocket, likely to access his weapon to use in the robbery. If not for the officer entering the store, he likely would have continued with the robbery. The action of walking up to the cashier with his hand in his pocket can be considered an overt act for the purposes of this attempt. He was extremely close to completion and wouldn't have stopped on his own. *overt act must be act beyond preparation*

Allen will be guilty of attempted robbery. *good!*

Attempt to commit robbery on an accomplice liability theory.

The pinkerton doctrine states that all members of a conspiracy will be liable for crimes committed by co conspirators when they are foreseeable and committed in furtherance of the conspiracy.

Bob's liability for the attempted robbery will depend on if his withdrawal was deemed effective or not. If he withdrew effectively he may still be liable for the conspiracy, but not the further offense of the attempted robbery since that crime was completed after his withdrawal from the conspiracy. If his withdrawal was not considered to be effective due to his lack of clear notice to Allen, then he will also be liable for the attempted robbery due to the pinkerton doctrine. An attempted robbery was foreseeable and it was the target crime of the conspiracy.

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END OF EXAM