

**ID:**

**Exam Name:** CrimPro\_LS1\_(Calhoun)\_Final\_F08

**Instructor:** Robert K. Calhoun Jr

**Grade:** \_\_\_\_\_

1)

DD: Desmond Defendant

JJ: Jason Junkie

OJ: Officer Jones

PP: Pauline Partner

SS: Sammy Snitch

### I. DD's Confession

DD's lawyer will argue that his confession that he was "dealing crack" with JJ was an unlawful fruit obtained as a result of a violation of his 4th Amendment protection against unreasonable searches and seizures. For an arrest to be reasonable, there must be probable cause, a warrant, or a warrant exception. Probable cause to arrest exists when there is a fair probability that a crime has been committed and that the person to be arrested is the one who committed the crime. It is a flexible standard that takes into account all the circumstances. DD's lawyer will argue that OJ did not have PC to arrest him because the tip that led to his arrest was from an unknown caller. Anonymous callers are unlikely to establish probable cause because there is no way to determine the basis of their knowledge. But OJ had caller ID and knew this caller's identity. DD will argue that it could have been someone else using SS's phone, but OJ knows SS and the voice sounded like him, so a judge could find that this was not an anonymous caller after all. Although there is nothing that indicates that SS has provided reliable information in the past, this caller provided information that OJ was able to corroborate with a little investigation of his own. DD's clothing matched the description the caller provided: he was wearing a red hat and black shirt as predicted. DD will argue that this is innocent behavior unrelated to a crime, but even innocent details can be used for corroboration purposes. DD will point out that Gates's "fair probability" standard suggests a preponderance standard, and from these facts, he is right to conclude that the mere fact that a man was standing where a potentially unknown informant said he would be standing was not enough to establish probable cause that a crime has been committed.

The prosecution will point out that OJ only asked to talk to DD and therefore PC was not necessary as he was not making an arrest at that point. To determine what level of suspicion was required at this point, the judge must first determine the nature of the encounter between OJ and DD. A consensual encounter requires no suspicion, but this exchange did not amount to a consensual conversation because OJ had to tackle DD to the ground. This seems to be more in the gray area between a stop and a full blown arrest. A stop or detention occurs when a reasonable person would not feel free to

ignore the police and go about their business, and this is certainly the case here given the degree of force used by OJ with the tacking and the drawing of the weapon. This also requires that the suspect submit to the authority, which occurred here because OJ made a successful tackle.

A detention only requires reasonable suspicion, and this existed here because DD began to run when he saw OJ. While flight alone is not enough, considering that they are in the heart of the the Tenderloin, the highest crime area in the city, this is sufficient to establish reasonable suspicion in this case, so this is a lawful stop. DD will try to argue that this was more than a stop here, and that he could be considered in custody so that his Miranda rights will become applicable. He can suppress the statement if he was subjected to custodial interrogaion without receiving the proper warnings and procedural safeguards. This arguement has merit, because although OJ did not make a formal arrest until after DD's confession, the intense ophysical encounter combined with the use of a weapon could lead a judge to find that DD was already under arrest when he was told to put his hands on his head, and an arrest will be considered custody here. His freedom and liberty were severely constrained.

Slnce this is probably custody, OJ's question "what were you doing on the corner" is sufficient to make DD's 5th Am. rights apply. This is because it is interrogation in the absence of a warning. Because OJ had not given a warning and Miranda allows for per se exlusion of violations, DD will likely succeed in having this statement suppressed.

#### DD's 4 Bundles of Crack

The exclusionary rule prevents admission of evidence obtained in violation of the 4th Amendment. DD will argue that the drugs were the result of an illegal search. But attendant to a valid arrest, an officer may contemporaneously search the suspect's person and items within his immediate control without a search warrant. If this arrest is considered lawful, then for safety reasons OJ could validly search DD's person to protect the officer from weapons the suspect may be concealing. Since this occurred after the formal arrest, DD's argument that separate suspiscion was required for the search would fail, as no separate suspicion is required for a search incident to valid arrest.

But DD will argue that the arrest was not lawful and that the frisk rule applies, which does require reasonable suspicion that the suspect is armed and dangerous. There is nothing that would indicate DD had a weapon, and OJ should have stopped at the outer clothing. A frisk is a patdown which should not include pockets. But it is possible that the bundles may have felt like a weapon from the outside, which would justify in OJ's continued search for safety reasons.

Although the informant did not establish probable cause, it existed when DD admitted to selling crack, so the search incident to arrest doctrine should apply here, rather than the frisk rule, so DD will not succeed in having the drugs suppressed.

#### JJ's Confessions

An arrest in the home requires a W, even for felonies. This requirement is excused when there is valid consent to enter. When the officers asked to enter JJ's home, it appears that he voluntarily let them in, so the officer's are lawfully present.

For the confession to be suppressed, JJ's lawyer could try to argue it was taken in violation of his Miranda rights. But because they are in his home, it is not likely that JJ can be considered in custody. He might analogize to a case where a suspect was found to be in custody in his own bedroom in order to have his Miranda rights applicable.

He has a better chance for success if he argues that the confession was taken in violation of his 14th AM which protects against involuntary confessions.

A confession is involuntary if it is coerced under the totality of the circumstances. These officers did engage in coercive behavior. By telling him he couldn't even use his own phone until he answered questions, his confession is unlikely to be considered voluntary. Furthermore, by telling him they had video of him engaged in illegal activity, this adds to JJ's argument of coercion because it is similar cases where it was unacceptable to lie to a suspect about lab reports and other physical evidence. False promises or threats are other signs of involuntary confessions, which these officers engaged in when they promised not to prosecute. Because this is coercive, JJ will probably succeed in getting the pre-warning confession suppressed.

JJ will argue that his second confession after the Miranda warning should also be suppressed, because he probably wouldn't have given it if he had not already made a previous confession. But they told him that he didn't have to confess again, would be a reason to find that this should not be suppressed as a knowing waiver of his Miranda rights. Waivers must be express, knowing and voluntary. But it looks like these cops are using a routine practice in violation of Miranda/Elstad, so the second confession should be suppressed as well, although normally Miranda is an exception to the FOPT doctrine.

**END OF EXAM**