

Crim Pro I
Fall 2009
MOSKOVITZ

EXAM #

1 of _____ total books

Course

Semester

Instructor

GOLDEN GATE UNIVERSITY

**School of Law
Examination Book**

Exam Score



Paper Contains a Minimum of 30% Post-Consumer Waste

$$I \ 12 \times 2 = 24$$

$$\text{II} \ 15 \times 1 = \frac{15}{39}$$

(A)

Best exam

an

statement 1: "I do ^{not for a while, but} take a little puff now and then."

The first piece of evidence the PD will try to suppress is this statement made by Dan. Evidence (including statements) will be excluded if it's the fruit of an illegal search or seizure.

(Mapp v. Ohio) However, cops are expected to have regular exchanges with people during the course of an investigation (Mendenhall) so not every interaction with an officer is a search or seizure.

Here, Cop walked over to the car to speak with D. This

would probably qualify as a "Terry stop" which is an

investigative stop, not an arrest. ~~and order to be arrested~~

~~reasonably~~ C walked up to the car (where D has a

lower expectation of privacy than in a home) and asked if he

"Could please get out... I'd like to talk..." These sound like

requests as opposed to commands, so D was probably free

to ignore the requests. However, most people don't ignore requests of officers in patrol cars so D may have felt that C was ordering him out, either way he has not been arrested yet, or in custody \rightarrow this is just a Terry stop. For a Terry stop to be valid the cop needs a reasonable suspicion that the person he's ~~stop~~ stopping is involved with a criminal activity. The cop needs to point to specific and articulable facts to show that he had a reas. suspicion, a mere hunch or intuition is insufficient. Here, the elderly woman had approached him on the street to inform him that D was selling pot. At this point she is presumed reliable as a witness/citizen informant. The fact that she ~~was~~ later may turn out to be an underworld informant (after all she may have been buying the pot) is irrelevant to establishing reas. susp. We

only look at what the cop knew at this point. And it was reasonable for C to presume that the witness was just a sweet elderly concerned citizen. So C's initial approach and Terry stop of D was reasonable. Next, C smelled the pot as D stepped out of the car. This was not a search (intrusion on a justifiable expectation of privacy) because C merely detected the scent by the use of his regular senses. At this point he asked D if he'd been selling pot. D might argue that there was a Miranda violation and that C should have told ~~in~~ him his rights. But Miranda is only required for custodial interrogations and at this point C has done nothing more to suggest that D is arrested or in custody, it's still just a Terry stop. So I conclude that this first statement will probably

be admissible.

Statement 2: "She bought some dope from me..."

Next, D will try to suppress the incriminating statement that he sold pot to the elderly lady. If this statement was the fruit of a previous unreasonable search or seizure, the exclusionary rule would apply. Since there is no previous violation, it doesn't. At this point, C had put D under arrest. In order to make an arrest in public, it must be based on probable cause (PC). PC is established on a case-by-case basis and means that there was about a (75% suspicion) that the person was involved in criminal activity. Here, we have C smelling the pot, ~~as a witness~~ a witness who brought the crime to the attention of the officer, and the statement by D. Although D's previous statement denied that he

And he further implicated himself by admitting that he sold pot to the old lady!

currently sold pot, he did confess to smoking sometimes. Based on these facts, the court will probably find that D's arrest was reasonable. However, we do have a potential Miranda violation here. Now D was definitely in custody, so if C's comment was an "interrogation" then Miranda was required. Interrogation is something the cop says or does that is reasonably likely to elicit a response. This doesn't count for physical evidence, only for testimonial. C said that the "neighbors have been complaining about you." I will argue that this was simply a comment, not a question and therefore not likely to elicit a response.

But a comment like this is more akin to an accusation and it's reasonable to presume that a suspect will say something to defend himself. Therefore, I think the court will probably find that this was a Miranda violation.

It should be noted however that a miranda violation doesn't automatically mean the evidence is excluded (Elstad) and even if ~~the~~ the statement is suppressed from the case-in-chief, it could still be used to impeach D, should he take the stand.

Marijuana

D next attempts to suppress the pot found in his pocket. Even if there was a prior miranda violation, the exclusionary rule will not keep the pot out. (Elstad) When C put his hand into D's pocket he ~~searched~~ committed a search because D has a justifiable expectation of privacy of things in his pocket. (could have medication, ^{etc.} ~~personal~~ ~~social security~~)

A search without a warrant is unreasonable unless one of the exceptions exists. Here, we have a search incident

to a valid arrest (SIVA). Search of pockets, already established.

Incident occurred right after D was placed under arrest.

And if it was a valid arrest based on probable cause, then

the entire search of the body, for weapons and/or drugs,

is permitted. At this point, ^{cop} finds out that the witness

was a criminal so if PC was ~~based~~ based on her testimony than

this may be unreasonable. But because the court will probably

find the arrest was reasonable and probable cause was established

by the cop smelling the pot, the ~~search~~ SIVA of D's pockets

was permitted and the marijuana will not be excluded.

COKE

The final piece of evidence that D wants to suppress is

the vial of cocaine on the backseat of the car. Although the

facts state that the coke was in a clear plastic vial on

the back seat, there's no evidence that it was in "plain view."
If it was just in plain view, it would not be a search, as there
is no justifiable expectation of privacy in things you leave out for
~~others~~ people passing by to see. The facts state that C "went
through the car" so the coke was probably hidden from view and
therefore was a search because you do have a justifiable expect.
of privacy in the backseat of a car. After all, you could have
personal effects like photos or taxes hidden from view. If this
was a search one of the exceptions needs to apply since it
occurred without a warrant. SIVA - as already mentioned D was
already arrested at this point so SIVA might apply. Under Bolton
and Thornton the cops were given a bright line rule that
if the arrestee was a recent occupant, then a search of
the interior of the car was OK. After all, they could potentially

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"lunge" in to get a weapon or stash evidence. Here, D was already hand-cuffed and in the back seat so there wasn't a threat that he could lunge into the car. However, under the recent Gant decision, even if the suspect is cuffed, if there's a reasonable suspicion that evidence of the crime he's arrested for is in the car than it's permissible to search the interior. Here, the cop smelled the marijuana and although he found a baggie already in D's pocket, it's reasonable that there would be more in the car, especially because ~~he~~ he was suspected of selling it. ~~Therefore~~ so, according to the supreme court, this was probably a reasonable search under the SIVA exception.

This could also be a reasonable search under the Automobile Exception. In order to have a valid search under the

Act except. There needs to be probable cause that evidence of a crime is in the car. (No need for exigent circum. in car)

Here, D was suspected of dealing drugs and ^{← from his car} evidence has already been found on his person, so there may have been

probable cause to search the car. Either way, the coke

will probably be admitted into evidence as well.