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**1. Fourth Amendment and a Motion to Suppress Evidence.**

The **4th Amendment** (and the 14th Amendment which extends to the States) allows persons to be free from unreasonable searches and seizures of their Person, Property or Things by the Government.

**Government Actor** Here, Officer Ava and/or Officer Bert are both police officers, and the activity took place during their course and scope of employment as police officers as such considered Government Actors and Ike would be entitled to the protections under the 4th/14th Amendment.

**Exclusionary Rule** - Evidence that is obtained in violation of the 4th Amendment, will be excluded at Trial. The defendant must prove that the evidence was obtained due to an unlawful search/seizure by a government actor. For Don to have the evidence Suppressed he will need to prove by the preponderance of the evidence that the search/seizure of the items was unlawful.

**Search and Seizure** - Generally Police Officers need a valid warrant based on probable cause to search and seize a person or item. Unless an exception to the requirement of a warrant applies (see *infra*). The constitution provides that no warrant will issue unless upon probable cause, by an oath/affirmation of the officer.

Requirements for a **Valid Warrant to issue**: **Probable Cause**, which is the reasonable believe that the fact make it more probable than not that a crime has been committed, is in the process of being committed or is being planned for the future. The warrant must describe the Person/Place/Thing to be searched with **particularity**. A warrant may not be facially valid, if the item is not described with particularity, although many warrants will include a catch all phrase of all fruits, reasonable ascertainable to pertain to the item (i.e. drug paraphernalia.) The warrant must be **signed by a Neutral Judge or**

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**Magistrate**, (not a police officer or commissioner) the person cannot have a personal stake. Warrants are most often issued by clerks or judges. The warrant must be granted **based upon oath or affirmation of the officer** requesting the warrant that a good faith belief that probable cause exists and; it must be **executed within a reasonable amount of time**, to allow for the probable cause not to be stale.

Here, Officer Bert went to obtain the warrant from the court house. The facts state that Bert arrived at Don's later with the warrant authorizing the "search of Don's home for Claire". The facts are silent regarding what information Bert offered the court to obtain the warrant, but presumably that there was probable cause, based on the information provided to the officers by a regular reliable informant, that a female child was missing, and that Don was looking for a little girl to kidnap to raise as his own. Whether or not the facts are reasonable will be up to the judge to decide. Evidence obtained by an invalid warrant that lacks probable cause may still be admitted, if the officers relied in good faith on the information. Here, it appears that if the evidence was not enough to rise to the level of probable cause, that the officers acted in good faith in relying on it.

The warrant describes the location to be searched as Don's house (likely sufficient) the item to search for Claire (likely sufficient) as the facts don't state otherwise. The facts are silent and therefore it is presumed that it was signed by a neutral magistrate after Bert offered affirmation to the information. It also appears that the warrant was to be executed in a timely manner and therefore the probable cause is not stale.

**Exceptions to Warrant:** There are several exceptions to the requirements of having a Warrant, such as **Search incident to Lawful Arrest** (the immediate area around the Defendant, if the defendant moves, the Wingspan area may continue to be searched. A **Protective Sweep** if reasonable believe other persons present and could present danger to the officers during the search.. **Inventory Search incident to Lawful arrest, Exigent circumstances**, the exception occurs with there is a risk to police/public or risk evidence being

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destroyed. **Terry Frisk**, which is a pat down frisk for weapons or contraband to protect the officer. The frisk may be extended if either are found during the plain feel, **Voluntary Informed Consent** of the Defendant, **Searches incident to incarceration** of the person/ and their possessions. **Automobile Exceptions** and the **Doctrine of Plain View**.

Because, Ava decided to rush to Don's house and not wait for the warrant, perhaps Ava was trying to use an exception to the warrant requirement to search for Claire. It appears that Ava was hoping by telling Don when he answered the door that a life is at stake, and a child was missing, that perhaps Don would have **voluntarily consented** to the search, but such was not the case. Since, there was no **voluntary consent** for her entry the prosecution will likely argue that Ava, fearing for the child's life may have then attempted to used the following exceptions: **Exigent Circumstances**, because the little girl was just recently reported missing, and her life maybe at stake, which would justify Ava's entry into the home to search for the little girl, as waiting for the Warrant may allow Don time to harm her, or destroy evidence. Eva may also try to state that her forced entry into the home qualified as a **Protective Sweep** to look for accomplices or other persons in the home that may present a threat to officer safety. Although the facts state that she searched the home thoroughly. The fact that Don did not consent to Ava being in his home, and therefore was not lawfully there, would rule out any evidence being admitted under the Doctrine of Plain View exception. The fact that Don stepped aside and allowed her to enter does not rise to the level of full voluntary consent on the part of Don, rather that he likely didn't want to have a physical altercation with Ava, which could lead to further exceptions to the warrant search.

**Fruit poisonous tree** - Items located as derivatives of either an invalid search warrant or unlawful search are generally excluded as "Fruit of the Poisonous Tree" and will not be admissible against the Defendant at trial (but maybe used for impeachment of the Defendant) The exception to the Fruit of the Poisonous Tree rule is that the taint my be purged by either independent information or the inevitable discovery of the item, thus redeeming the item, and making it admissible against Defendant.

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***Standing: Reasonable Expectation of Privacy or Substantial Ownership interest***

For the 4th Amendment to apply, a defendant must have standing. To have standing the person must have a reasonable expectation of privacy in the area/item searched or a substantial ownership interest.

Here, Don has a reasonable expectation of Privacy in his home, this is unlike when someone holds information out to the public, or an item is within plain view. Don doesn't need to own the home, he just needs to live there and the facts do not assert and contrary information that this is not Ike's home.

**1(a) How should the court rule on the Motion to suppress the Bomb?**

A lawful search must be limited to is limited based on reason. "You can't find an elephant in an ice box" But you may be able to find a child in a closet. A bomb measuring 2x2 feet would certainly fit in the same general area that a 4 yr old would. Searching of the closet either under the warrant, or as an exception to the warrant requirement would be reasonable. While the bomb is not reasonable ascertainable to pertain to Claire, if the search is not ruled as unlawful, the Bomb, likely will be admitted against Don. As it is illegal, and that is discernible by it's appearance. The Bomb was also in plain view once the closet was opened.

**1(b) How should the court rule on the Motion to suppress the Cocaine?**

Here, the Warrant was limited to "Search of Don's home for Claire", The facts do not state that any catch all phrase was used to include other fruits reasonable ascertainable to pertain to the item, so it's difficult to determine if Ava's search of the medicine cabinet was reasonable. Obviously Claire couldn't be hiding in the medicine cabinet, however, Don may have hid cloroform, or other drugs to sedate her, or have other items related to the care/wellbeing of a child in the medicine cabinet, if Don truly was going to 'keep her and raise as his daughter" i.e. kids toothbrush, children's tylenol, hair accessories, and other things that a single adult male wouldn't normally keep

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as daily grooming. If such items existed, they may have been taken to show Don's intent. Those items however were not present, but Cocaine was.

If, either the Warrant was valid, or if ultimately Ava was able to search the home under a warrant exception, the cocaine would likely be suppressed based on the fact that it's not a fruit reasonably ascertainable to Claire (as the thing to search for) unless it is considered a tainted fruit, that has been purged, by either independent information (no) or inevitable discovery (no).

**1(c) How should the court rule on the Motion to suppress the Map?**

So although looking under the bed, would be a reasonable place to find a missing child, opening a plain, sealed envelope to reveal of the contents of the envelope is not likely reasonable. Here, the evidence does infer that Don may have had a plan to either kidnap Claire or do something else to Claire/Claire's family by the fact the the document inside was a a map with a highlighted rout from Don's house to Claire's.

Based on the generic description of "Search Don's home for Claire" on the warrant, it is not likely that the Map would be admissible. There again lacks any catch all wording, looking for other items corresponding to Claire. Further, the envelope was plain, unmarked, and sealed. It does not appear that any cures or exceptions would apply to allow the map in.

However evidence obtained from an unlawful search may be used in grand jury hearings, and as evidence to impeach Don, so the Map, could likely come up in the trial of Don for Attempted Kidnapping.

**2. Can Don be found guilty of attempted kidnapping?**

Kidnapping is the taking as asportation, or the sequestering of a person though force, fear or fraud. In the act of kidnapping a child, consent to going with the person is immaterial and cannot be used as a defense. All parties to the crime of kidnapping are treated as principals in the first degree.

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Here, the facts do not substantiate that Don took Claire, or had anything to do with her going missing, or that he was in any way sequestering her.

Attempt Crimes - for an attempt crime some substantial steps must be taken towards the facilitation of the crime. Here we have Don and his map highlighted with the route from his home to Claire's. Whether or not this would be a substantial step, or preparation would be a fact for the jury to decide. That would also depend on whether or not the evidence would get in front of the jury, based on the discussion supra regarding suppression.

Question #4 Final Word Count = 1897

**END OF EXAM**