

## QUESTION 6

Ivan, an informant who had often proven unreliable, told Alan, a detective, that Debbie had offered Ivan \$2,000 to find a hit man to kill her husband, Carl.

On the basis of that information, Alan obtained a warrant for Debbie's arrest. In the affidavit in support of the warrant, Alan described Ivan as "a reliable informant" even though Alan knew that Ivan was unreliable.

Alan gave the arrest warrant to Bob, an undercover police officer, and told Bob to contact Debbie and pretend to be a hit man.

Bob called Debbie, told her he was a friend of Ivan and could do the killing, and arranged to meet her at a neighborhood bar. When the two met, the following conversation ensued:

**Bob:** I understand you are looking for someone to kill your husband.

**Debbie:** I was, but I now think it's too risky. I've changed my mind.

**Bob:** That's silly. It's not risky at all. I'll do it for \$5,000 and you can set up an airtight alibi.

**Debbie:** That's not a bad price. Let me think about it.

**Bob:** It's now or never.

**Debbie:** I'll tell you what. I'll give you a \$200 down payment, but I want to think some more about it. I'm still not sure about it.

When Debbie handed Bob the \$200 and got up to leave, Bob identified himself as a police officer and arrested her. He handcuffed and searched her, finding a clear vial containing a white, powdery substance in her front pocket. Bob stated: "Well, well. What have we got here?" Debbie replied, "It's cocaine. I guess I'm in real trouble now."

Debbie has been charged with solicitation of murder and possession of cocaine.

1. How should the trial court rule on the following motions:
  - a) To suppress the cocaine under the Fourth Amendment? Discuss.
  - b) To suppress Debbie's post-arrest statement under *Miranda*? Discuss.
2. Is Debbie likely to prevail on a defense of entrapment at trial? Discuss.

**6) Please type the answer to Question 6 below. (Essay)**

## CA Proposition 8

Under the California rules of evidence as amended by Proposition 8, relevant evidence is admissible in criminal trials unless otherwise prohibited by the Constitution.

1a. Motion to Suppress Cocaine

The Fourth Amendment as incorporated prohibits unreasonable searches and seizures, except as provided by a court warrant. Persons retain a reasonable expectation of privacy to their secured private property, but not to items in plain view. If a law enforcement agent has reasonable suspicion to believe a person is carrying evidence of a crime, they may briefly detain that person to frisk for that evidence. Persons may only be arrested when there is probable cause to believe they have committed a crime. Officers may perform a limited search incident to those arrests for safety reasons.

In the case at hand, D has moved to suppress the vial of cocaine. She can claim that it was the fruit of an unconstitutional search, arguing that the warrant for her arrest was based on a police officer's falsification, or that he was not within his rights to search her after she was already handcuffed. If she can successfully prove that the arrest warrant was invalid and B's subsequent arrest of her was invalid, she may succeed in her motion. Otherwise, the motion will likely be denied as officers have some discretion to search incident to an arrest.

## Standing/Reasonable Expectation of Privacy

A defendant may only move to suppress evidence under the Fourth Amendment if they assert a reasonable expectation of privacy over the searched or seized item.

The prosecution might unsuccessfully argue that D could only move to suppress the cocaine if she admitted to its ownership, or that she could not assert a

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property right over contraband. However, the analysis here will be whether she had a reasonable expectation of privacy to her pocket as well as the vial within. Accordingly, D has standing to bring this motion.

#### Fruits of the Poisonous Tree

The poisonous fruits doctrine provides that evidence found as a result of an unconstitutional search or seizure may not be used in the owner's prosecution, unless that evidence would have been found independently of the unconstitutional search or seizure.

#### Arrest Warrant

The arrest warrant is unconstitutional as A had deceived the court into thinking there was probable cause D had committed a crime.

Accordingly, a motion by D to suppress the cocaine as an inadmissible fruit of the unconstitutional search warrant would not likely succeed.

#### Bar Arrest

But B does not necessarily arrest her incident to the warrant. Instead, he engages D in conversation while undercover until he believes he has probable cause to arrest her. That voluntary conversation seems to reset the foundation of the poisonous tree, as B could have had the same conversation with D while off duty.

Thus when D provides B with a \$200 down payment to kill C, B has sufficiently independent grounds to arrest D.

Accordingly, D would not likely succeed on a motion to suppress the cocaine as a fruit of an unconstitutional arrest.

#### Warrantless Search

Law enforcement officials may not search individuals without their consent or within the scope of a warrant. Search warrants will only properly issue when probable cause is shown that evidence of a specific crime is located on a person or secured private property, and even then will be limited in scope for the alleged crime and based on the places where the evidence may reasonably be found.

In the case at hand, there is an arrest warrant for D's arrest, but no search warrant.

#### Search Incident to Arrest

Individuals have a constitutional right of privacy to their person, and may not be searched without a warrant with few exceptions. One such exception is a search incident to an arrest, in which police may search for weapons or dangerous items for their safety.

This is the strongest argument the prosecution will be able to bring, as D had just provided money in furtherance of killing her husband and admitted contemplating it. If the arrest is found constitutional, B was within his rights to search D incident to the arrest for any weapons or dangerous items on her person. D might unsuccessfully respond that she was not likely to have a weapon on her.

#### Evanescent Evidence

Another exception to the search warrant rule is for evanescent evidence, or evidence that is in immediate danger of being destroyed.

Though typically applied to substances like cocaine, the danger of the cocaine at hand disappearing was not great once B had handcuffed D. This would not be the best grounds for the prosecution to argue upon.

#### Terry v Ohio

Pursuant to *Terry v Ohio*, police may briefly detain a person they reasonably suspect of a crime and feel the contents of their pockets for weapons or evidence of that crime. They may not conduct a complete search of the individual. However, *Terry v Ohio* is not applicable beyond that detention and does not extend to arrested individuals.

1b. Motion to Suppress Post-Arrest Statement

Miranda Rights

Once police have arrested a suspect, or "seized" them in such a manner that they have no means of leaving, they must inform the arrested individual of their right to remain silent and their right to counsel. The person may waive these rights and volunteer information to the police. However, the police may not interrogate them without such a waiver. Any statements or admissions in violation of the Miranda doctrine are unconstitutional and inadmissible against the speaker.

Arrest

Once B placed D under arrest, he was obligated to read D her Miranda rights before he could constitutionally interrogate her.

He did not do so, instead searching her and asking her "What have we got here?" after finding the cocaine.

Interrogation/Voluntary Statements

In order to determine whether a Miranda violation has occurred, the court will have to find whether B's question constituted an interrogation. That would require B to have pressured D to provide information she otherwise would not have volunteered if not under criminal threat.

The court may not find "What have we got here?" to be sufficiently interrogatory

to be a Miranda violation. Accordingly, it may not grant D's motion to suppress her admission.

#### Poisonous Fruits from Miranda Violation

Any argument from D that the cocaine was a physical fruit of her Miranda violation would succeed neither factually nor legally, as B was able to see the substance through the plain view of the clear vial and did so before he asked D about it. Even under reversed factual circumstances, D cannot suppress physical evidence obtained from information in violation of Miranda.

#### 2. Entrapment

A valid defense to a criminal charge is entrapment, that there was no reasonable likelihood the defendant would have performed the crime if not for the law enforcement's involvement.

Since the crime at hand is "solicitation of murder," D would have to show that there was no reasonable likelihood she would enlist the help of another to carry out the crime of murder.

#### Reasonable Likelihood without Police Involvement

Since D immediately admits to B that "[she] was" looking for someone to kill her husband, there is a possibility she had completed all the elements of solicitation in the past, though her admission is insufficient evidence of such an occurrence. But at the bar, told B that she has changed her mind because of the risks.

This may very well suffice to show that there was no reasonable likelihood she would complete all the elements of solicitation without B's persuasion. When D says she is no longer considering carrying out the crime, B tells D, "That's silly... I'll do it... It's now or never." Here the police's role in furthering the crime substantially outweighs anything D does. Although D does furnish a \$200 down

payment, she says that she not sure whether she wants to proceed.

D could successfully show that she is essentially being convicted of a guilty mind, but the monetary payment is nevertheless an act which substantially furthers the murder of C.

#### Attempt v Solicit

Ultimately, the prosecution faces the burden of proving that she solicited murder beyond a reasonable doubt. They are unlikely to be able to do so -- they might be able to show that she attempted to solicit murder, but not that she completed the solicitation. As such, she is likely to prevail on a defense of entrapment at trial.

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Question #3 Final Word Count = 1398

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