

Issue Spotting a Criminal Case For Potential Constitutional Violations

- I. Is there a state actor?
 - a. Generally, the fourth protects only against governmental conduct—n/ against searches by private persons
 - b. Factors
 - i. Motivation of private actors
 - ii. Ties btwn individual and government
 - iii. When was contact made?
 - iv. What is benefit individual is receiving?
 - v. Level of participation by government
- II. Does D have standing to raise a Fourth challenge to the specific item of evidence in q?
 - a. To have standing to challenge a search under the 4th, a person must have a legitimate expectation of privacy in the item searched. The SC has held that a person has standing to raise a fourth claim anytime:
 - i. The person owned or had a right to possession of the place searched,
 - ii. An individual has standing to challenge the search of his apartment
 - iii. The place searched was in fact the person's home whether or n/ the person owned or had a right of possession to it (grandson living in the house owned by his grandmother), or
 - iv. The person was an overnight guest of the owner of the place searched
 1. Limited to portion of house where he is staying (i.e. bedroom)
 - b. An individual does n/ have standing if they are merely aggrieved by introduction of damaging evidence (Alderman)
 - i. It is n/ enough for standing merely that a person was harmed through introduction of evidence obtained from an allegedly unconstitutional search of a third person's property
 - ii. Rakas: Ds, who were passengers in a car in which a sawed-off shotgun was found, but who did n/ claim ownership of the shotgun or the car, lacked standing to complain of a search of the car
 - c. Factors in determining whether an individual can claim privacy
 - i. Transaction engaged in is n/ purely of a commercial nature
 1. They were there for business purposes rather than social purposes and there is a lesser expectation of privacy in commercial settings
 - ii. Examine the duration of the transaction
 1. Overnight=reasonable expectation of privacy
 2. A few hours negates any reasonable expectation of privacy in apartment

- a. D's spent a relatively short period of time on premises—2 hours (MN v. Carter)
 - iii. Examine the previous connection btwn respondents and householder
 - 1. D's only knew owner in a cursory way so no reasonable expectation of privacy
 - d. Factors in determining whether individual has a reasonable expectation of privacy depend on
 - i. Length of relationship
 - 1. If D has just recently met the person then there is no way he could expect that that person would be able to exclude others
 - 2. But if there is a husband/wife relationship then husband and wife trust each other to maintain each other's privacy
 - ii. Individual's right of access
 - iii. Right to exclude other's access
 - iv. Nature of transaction
 - e. Example
 - i. Every individual has a reasonable expectation of privacy in himself and thus has standing to challenge the search of his person
- III. Did the police activity in q implicate a person, house, paper, or effect?
 - a. If "no," the Fourth does n/ apply
- IV. Did the police activity constitute a search?
 - a. Examine individual's expectation of privacy for "search" under standing
 - b. Test for whether or n/ area is protected by fourth and thus whether imposition will violate the fourth:
 - i. A person has exhibited an actual subjective expectation of privacy AND
 - ii. That the expectation be one that society is prepared to recognize as reasonable
 - c. N/ a search
 - i. Open fields
 - 1. Flyovers
 - ii. Garbage placed outside the curtilage of house
 - iii. Dog sniffs
 - iv. Installation of a beeper in a container of chemicals w/ consent of original owner doesn't constitute a search or seizure when container is delivered to a buyer having no knowledge of the presence of the beeper
 - d. Is a search
 - i. House—most protected area we have
 - ii. Squeezing luggage
 - iii. Thermal imagers under Kyllo

1. Obtaining by sense enhancing technology any information regarding the interior of the home that could n/ otherwise have been obtained w/o physical intrusion into a constitutionally protected area
 - iv. Monitoring of a beeper falls w/in the ambit of the Fourth when it reveals information that could n/ have been obtained through visual surveillance
- V. Was the search reasonable or unreasonable?
- a. Did the police have adequate grounds to conduct the search?
 - i. The police must have pc for searches and seizures, but many searches and seizures are permitted on the lesser ground of reasonable suspicion. Look at the particular search and/or seizure in q, and determine whether it is the type for which pc is req'd, or whether it is the type for which reasonable suspicion is sufficient, or whether this is one of the few cases in which the police may act at random. Then, assuming some level of cause is req'd, determine whether the police possessed pc or reasonable suspicion
 - b. Did the police act on the basis of a search warrant and/or arrest warrant?
 - i. If answer is "no," the sub-question is: "Did the police have a valid reason for failing to obtain a warrant?"
 1. To answer this question go to the exceptions
 - ii. If "yes"—a warrant was issued—a number of sub-issues may arise:
 1. Warrant Req't: Generally, a warrant is req'd before a search or seizure may be conducted. Searches conducted w/o a warrant are unconst'l unless they qualify under one of the six exceptions
 - a. was the warrant based on pc?
 - b. was the party issuing the warrant a neutral and detached magistrate?
 - c. did the warrant satisfy the const'l particularity requirement by particularly describing what is to be search and seized?
AND
 - d. did the police execute the warrant properly?
 2. PC requirement: A warrant must be based on an adequate showing of pc
 - a. What constitutes pc? Subst'l probability that certain items are the fruits, instrumentalities, or evidence of crime and that these items are presently to be found at a certain place
 - b. What constitutes adequate showing? Information is provided to the magistrate by affidavit or sworn testimony. This information must enable the magistrate to make an

independent evaluation of whether probable cause is present. Affidavits or sworn testimony must allege facts, n/ mere conclusions. Aguilar two-pronged test (deficiency in one prong can be made up for by a surplus in another prong):

- i. Basis of knowledge
 - 1. must set forth underlying circumstances to enable magistrate independently to judge validity of informant's information (must give magistrate enough to work w/ so he has sufficient knowledge to act on tip—the more detail the better)
- ii. Veracity
 - 1. must attempt to support claim. Tipster's information must be credible and reliable.
 - a. If tip states that someone is somewhere then no good! Under Upton the more detail provided the more likely we have probable cause
 - b. If it just explains the suspect's daily routine then insufficient
 - c. Facts must provide some evidence that informant is working on the inside
- c. Affidavits based on hearsay—totality of the circumstances: A warrant may issue based on affidavits that are entirely hearsay. The affidavit must show by a totality of the circumstances that there is a fair probability that contraband or evidence of crime will be found in a particular place
 - i. Rules governing informants: The validity of a warrant based on an informant's tip is determined by a totality of the circumstances test. It is n/ fatal to the issuance of a valid warrant based on such a tip that the reliability and credibility of the information cannot be established. All that is req'd of an affidavit based in part on an informant's tip is that all the allegations in the affidavit, taken together, permit the magistrate to make a common sense evaluation of pc

- ii. Identify of informant: Generally, the informant's identity does n/ have to be revealed except if he is a percipient witness
 - iii. Reliable informant: An allegation in the affidavit that the informant has provided credible information on several prior occasion is sufficient to establish the informant's credibility
- d. Challenging the warrant: A search warrant is invalid if D makes a subst'l showing by a preponderance of the evidence of all of the following facts:
 - i. A false statement was included in the affidavit by the affiant;
 - ii. The false statement was necessary to find pc; and
 - iii. The affiant knowingly or recklessly included that false statement
- 3. Preciseness Requirement: A warrant must describe w/ reasonable certainty the place to be searched and the items to be seized
 - a. Exception—plain view: An item n/ described in a warrant may be seized if it is immediately apparent that it is incriminating evidence or contraband
- 4. Disinterested magistrate requirement: A warrant must be issued by a neutral and detached magistrate
 - a. Magistrates don't have to be lawyers,
 - b. Can't work on contingency,
 - c. Can't magistrate shop
- 5. Caveat—third-party premises exception: Searches of property belonging to persons n/ suspected of a crime are permissible as long as pc exists to believe that evidence of someone's guilt will be found
- 6. Rules governing warrant execution
 - a. Police execution requirement: Only the police may execute a warrant
 - b. Announcement Requirement: Generally, an officer executing a search warrant must knock and announce her authority and purpose and be refused admittance before using force to enter the place to be searched. However, no announcement need be made if the officer has reasonable suspicion, based on facts specific to this particular entry, that knocking and announcing would be dangerous or futile

or that it would inhibit the investigation b/c it would lead to the destruction of evidence. Must be made on a case-by-case basis based on the facts know to the police at the time. The fact that property damage will result from a no knock entry does n/ require a different std.—reasonable suspicion is sufficient

- i. Sufficient of delay: If the officers executing a warrant have a reasonable fear that evidence, such as cocaine, will be destroyed after they announce themselves, a limited 15-20 second delay before entering a house to execute a warrant is sufficient
- c. Search specification requirement: A search warrant does n/ authorize the police to search persons found on the premises who are n/ named in the warrant. A person's mere proximity to others does n/, w/o more, give rise to pc to search that person
 - i. Distinguish—pc to arrest: If officers have pc to arrest a person found at the place to be searched, the person may be searched incident to the arrest
- d. Detention during search permissible: When executing a search warrant, the police may detain those persons who are present on the premises to be searched while the search is conducted. Detention of persons present serves the governmental interest in preventing flight, ensuring officer safety, and facilitating the orderly completion of the search
- e. Time of service requirement: A search warrant should be executed w/o unreasonable delay or w/in a reasonable time of procurement of the warrant. Statues often require that generally search warrants be executed during daylight hours unless night searches are specifically authorized
 - i. Wait four weeks then too late
 - ii. Wait few days then okay
 - iii. Distinguish—arrest warrants are valid indefinitely
- f. Scope of search: The scope of the search may n/ exceed the premises described in the warrant, and the search is limited to locating the items described in the warrant
 - i. Caveat—seizure of items n/ described in warrant: When executing a warrant, the police generally may

- c. Officer's partner's observations,
 - d. Direct statement from victim
- 2. What is prompt under Gerstein?
 - a. A jurisdiction that provides judicial determination of pc w/in 48 hours of arrest will comply w/ the promptness req't of Gerstein. If seized w/o warrant then w/in 48 hours of arrest must comply w/ the promptness req't
- iii. Arrest warrant n/ req'd except for home arrests: Police need n/ obtain a warrant before arresting a person in a public place even though there was time and oppy to do so (Watson—Rule: Warrantless public arrests based on pc are authorized)
 - 1. Arrests in public places: Arrests may be made w/o a warrant under the following circumstances:
 - a. Felonies: An officer may arrest a person in a public place w/o a warrant when the officer has reasonable grounds to believe that a felony has been committed and that this particular person committed the offense
 - b. Misdemeanors: An officer may arrest a person in a public place w/o a warrant for a misdemeanor if
 - i. Committed in the presence of the officer and
 - ii. The offense constitutes a breach of the peace
 - 2. Arrests in the home: Warrantless, in-home arrests are unreasonable and therefore invalid under the Fourth unless
 - a. exigent circumstances are present or
 - i. if officers have pc to arrest a person, and the person retreats into his home, a warrantless entry into the person's home is permissible if it is necessary for the police to act quickly to prevent the suspect's escape or the destruction of evidence
 - b. the arrestee consents
 - c. Announcement requirement: An officer must announce her authority and purpose before using force to enter a home to make an arrest. Generally, failure to make such an announcement renders the arrest unlawful, although most jurisdictions recognize exceptions to this req't
 - i. Sufficiency of delay: same as search
 - d. Third-party premises: Absent exigent circumstances, officers executing an arrest warrant may n/ search for the person named in the warrant in the home of a third party

w/o first obtaining a separate search warrant for the third-party premises

b. Did the police act on the basis of an arrest warrant?

- i. To obtain an arrest warrant, a complaint must set forth facts showing the commission of an offense and the accused's responsibility for the act. In the form of an affidavit. PC must be demonstrated before a valid arrest warrant may be issued by a judicial officer

VIII. Assuming that the preceding qs justify the conclusion that the police conducted an unreasonable search in violation of D's rights, the evidence in q probably is inadmissible. And the violation may taint evidence obtained later in the criminal investigation. However, in order to determine admissibility, the following qs should be asked and answered:

a. Did the police conduct the search on the basis of a warrant later declared to be invalid

- i. If yes, this implicates the "good faith" exception to the exclusionary rule, which requires determination of whether the officers executing the warrant acted on the basis of an objective good faith belief that the warrant was valid. If they did, the evidence is admissible, notwithstanding the invalidity of the warrant. If they did n/ act in objective gf, the exclusionary rule applies

1. Four exceptions to gf reliance on a defective search warrant. A police officer cannot get the benefit of the gf exception if:

- a. The affidavit on which the warrant was issued was so lacking in pc that no reasonable officer would have relied on it;
- b. The warrant is defective on its face;
- c. The affiant lied to or misled the magistrate; or
- d. The magistrate has wholly abandoned his judicial role.

ii. Assuming the exclusionary rule applies, ask: Is there evidence that is a FOPT, i.e. was other evidence obtained due to the initial illegality?

1. If yes, FsOPT are also inadmissible, subject to

- a. Inevitable discovery doctrine; AND
- b. Attenuated-connection doctrine

2. Scope of exclusionary rule: Under the exclusionary rule, all evidence that has been illegally obtained must be excluded. In add'n, other evidence that has been acquired, directly or indirectly, as a result of an illegal search or seizure (called the tainted FOPT) must be excluded from evidence as well, unless the gov't can break the link bwn the illegally obtained evidence and the other evidence

- a. FOPT: In determining whether evidence is tainted FOPT, cts. are to ask “whether the evidence being objected to was obtained through exploitation of the illegally obtained evidence, or “instead by means sufficiently distinguishable to be purged of the primary taint” (Wong Sun)
- b. Dissipation of the taint: Evidence otherwise n/ admissible may be allowed if the prosecution demonstrates that the taint has been removed. This may be accomplished by:
 - i. Inevitable discovery: If the police would have discovered the evidence regardless of their illegal conduct, it may be admitted under the inevitable discovery exception to the exclusionary rule. The burden is on the gov’t to demonstrate by a preponderance of the evidence that the item the prosecution is seeking to introduce ultimately would have been discovered by lawful means
 - ii. Independent source: If the police obtained the evidence from an independent source n/ connected to the illegal search or seizure, the evidence is admissible

I.