

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

Information and evidence obtained in violation of the 4th, 5th, or 6th amendment cannot be held against a defendant. Further, the fruit of the poisonous tree doctrine finds that evidence derived from an unlawful incident is unlawfully tainted unless the evidence would be discovered by an independent source or would have inevitably been discovered anyways.

1)

**a) Fourth Amendment**

The 4th Amendment is incorporated through the 14th amendment and provides that individuals are to be protected from unreasonable searches and seizures by the government. State action is satisfied in this instance because an officer is the one conducting the search. A search is unreasonable if it violates a person's reasonable expectation of privacy. A person has a reasonable expectation of privacy in their person and home. Generally the standard for conducting a search is probable cause.

**Informant**

An informant is one that works with the police in order to obtain "inside" information from criminals. Informants are often granted immunity from prosecution if they agree to help the police. However, an officer cannot rely on an unreliable informant. Here, I is an informant that has proven to be unreliable. Informant told A that D had offered Informant 2k to find a hit man to kill her husband. However, since the informant was unreliable, A should not have used this information to obtain an arrest warrant.

**Solicitation**

Solicitation is a crime in which a person asks another to help or assist them with a crime. Here, the informant claims that D solicited him to find a hitman to kill her husband. Thus, D is likely guilty of solicitation

### **Conspiracy**

Conspiracy is a specific intent crime that requires that two individuals conspire together to commit a crime. Both parties must intend to commit the conspiracy and take substantial steps to further the conspiracy. Here, D and B planned to kill D's husband. However, B did not possess the intent to conspire with D because he was a police officer and had no intention of really killing D's husband. D did pay B 200 as a down payment to kill her husband, however, this is likely not enough of a substantial step. Plus, the intent on B's part is not there. Thus, D is not guilty of conspiracy.

### **Arrest Warrant**

An arrest warrant must have the correct information pertaining to the individual named on it. An officer can enter a home with an arrest warrant if he reasonably believes the individual is in the home. Here, A used the informant's unreliable information to obtain an arrest warrant for D. In the affidavit in support of the warrant A described the informant as "a reliable informant" even though A knew that he was unreliable. D will argue that A's reliance on an unreliable informant makes the arrest warrant invalid. If A was aware that the informant was unreliable then he should not have listened to him. A will argue that he did rely on the information because he believed Ivan had first hand knowledge in this situation which bolstered his reliability in A's mind.

If the court agrees with D, then the arrest warrant for D was invalid. However, she made incriminating statements to B when B met with her. Those incriminating statements were enough for B to arrest her. Thus, the arrest warrant is likely valid.

### **Warrant**

An officer must obtain a search warrant to conduct searches that interfere with a person's reasonable expectation of privacy. If a search is conducted without a warrant, it is unconstitutional. Here, B did not have a valid search warrant when he searched D's pockets. Thus, the search is unconstitutional unless a warrant exception applies.

### **Warrant exception**

If a search is conducted pursuant to a warrant exception, then it will be valid. Here, B did not have a search warrant when he arrested D.

#### **Search Incident to a lawful arrest**

If an individual is lawfully arrested, the officer may search the individual for drugs or weapons. Although there is some contention to the validity of the original arrest warrant, B obtained probable cause through his interaction with D. Ivan arranged for B and D to meet at a neighborhood bar to discuss the killing. Once there, the two discussed the idea. D allegedly changed her mind about the killing, but was tempted by the low price offered by B. Once she handed the money over to B he had probable cause to arrest her. Probable cause is a low threshold and exists when an officer has reason to suspect unlawful activities. B suspected that D was guilty of solicitation, thus he had probable cause.

Once an arrest is lawful, then an officer may search the person's wingspan for any drugs or weapons. Here, B found a clear vial containing a white powdery substance in D's front pocket. He found this item incident to a lawful arrest. Thus, this search is constitutional.

#### **Plain View**

If the item is in the plain view of the officer, then the search is lawful. Here, the vial was in D's front pocket. It is possible that the officer could see the vial imprinted on her clothing. However, the vial could contain anything, so the

fact that it was in her front pocket does not mean it was in plain view. Thus, the plain view doctrine is not applicable here.

**b) Miranda**

The 5th Amendment protects against self incrimination. During a custodial interegation, an acused person has the right to remain silent and can request to speak to a lawyer. An individual can knowingly waive their rights by continuing to talk. An individual must explicitly invoke their right to counsel and once that happens, then all interogation must stop. Miranda warnings are offense specific, so the officer can question the individual about other charges.

**Arrest**

An arrest happens when a reasonable individual would feel they are not free to leave. This generally happens once someone is in handcuffs. Here, B placed D in handcuffs after she handed him the money. A reasonable person would not feel free to leave once placed in handcuffs. Thus, D was under arrest.

**Custodial Interegation**

Once arrested the officers must inform the individual of their Miranda rights. Once D was placed in handcuff's B should have informed her of her Miranda rights. He should have read her the miranda rights prior to searching her pockets. When he stated, "well, well. what have we got here?" that question can be construed as a custodial interegation because D was not free to leave. D responded "it's cocaine. I guess I'm in real trouble now." This response would have to be stricken because it was gained in violation of Miranda.

**Independent source**

The cocaine could have been tested to reveal it was cocaine. Thus, D's statement that the powder was cocain does not matter. It would have been inevitably discovered. Therefore, D's statement will not be supressed under Miranda.

## **2. Entrapment**

Entrapment happens when the police unduly influence an individual into committing a crime.

Here, D told B that she had changed her mind about killing her husband because it was too risky. B then told D that it wasn't actually risky and gave her a price and assured her of an alibi. D said let me think about it and B responded "it's now or never." Since B acted with such persistence he seemed to force D to agree with his proposal. An officer is supposed to allow a suspect to make the incriminating statements and not pressure them into making them. In fact, D did not even say she wanted to take B up on the offer, she stated she would think about it.

B will argue that he did not coerce D into paying him, but that is not the standard.

Thus, D will likely prevail on a defense of entrapment at trial.

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Question #3 Final Word Count = 1306

**END OF EXAM**