

Question 6

Deft saw Oscar, a uniformed police officer, attempting to arrest Friend, who was resisting arrest. Believing that Oscar was arresting Friend unlawfully, Deft struck Oscar in an effort to aid Friend. Both Friend and Deft fled.

The next day, as a result of Oscar's precise description of Deft, Paula, another police officer, found Deft on the street, arrested him for assault and battery and searched him, finding cocaine in his pocket. After Paula gave proper Miranda warnings, Deft said he wanted to talk to a lawyer before answering any questions. Paula did not interrogate him. However, before an attorney could be appointed to represent Deft, Paula placed him in a lineup. Oscar identified Deft as his assailant. Deft was then charged with assault and battery of a police officer and possession of cocaine. Thereafter, he was arraigned.

The next day Paula gave Deft, who was without counsel, proper Miranda warnings, obtained a waiver, and interrogated him. He admitted striking Oscar.

How should the judge rule on the following motions made by Deft at trial:

1. To suppress the cocaine? Discuss.
2. To suppress Oscar's identification during the lineup? Discuss.
3. To suppress Deft's admission that he struck Oscar? Discuss.
4. For an instruction to the jury that Deft's assault was justified on the basis of defense of another? Discuss.

Answer A to Question 6

6)

1. **Deft's Motion to Suppress the Cocaine**

The Fourth Amendment of the Constitution protects individuals from unreasonable searches and seizures by government officials. If a defendant's Fourth, Fifth, or Sixth Amendment rights are violated in connection with a criminal prosecution, the exclusionary rule, a judge-made doctrine, requires the exclusion of all evidence obtained in violation of such rights and all derivative evidence, or fruit of the poisonous tree.

Government Conduct

To make a Fourth Amendment claim, there must first be government conduct. Here, Larry was searched by Paula, a police officer, which qualifies as government conduct.

Standing – Reasonable Expectation of Privacy

A defendant also must have standing to challenge government action, which occurs if the defendant has a reasonable expectation of privacy in the item or place searched. Because Larry's body was searched, this clearly qualifies Larry to contest the act since he had a reasonable expectation of privacy in his own body.

Requirement for Probable Cause and a Valid Warrant

Generally, a search will be considered unreasonable unless the officer has probable cause to conduct the search, and the search is supported by a valid warrant. However, a number of exceptions to the requirement for a search warrant exist.

Search Incident to a Lawful Arrest

Paula did not have a valid search warrant. However, one exception to the warrant requirement is for searches incident to a lawful arrest. A lawful arrest can be made in public, without a warrant, if the officer has probable cause to believe that the defendant has committed a felony.

Paula was making a lawful arrest because she knew that Oscar had been assaulted and battered and that Deft fit the description of the perpetrator. Thus, she had probable cause to believe that Deft was the perpetrator of these felonies. Because Paula made a lawful arrest of Deft, her search of his body was also lawful. Thus, the court should deny Deft's motion to suppress the cocaine.

Hot pursuit

Paul[a] might also be able to argue that her search of Deft was lawful because Deft was a suspect who might get away. Her better claim, though, is that the search was incident to a lawful arrest.

2. Deft's Motion to Suppress Oscar's Identification During the Lineup

A defendant has a Fifth Amendment privilege against self-incrimination, which includes the right to counsel if the [the] defendant does not waive his right to such counsel. This right attaches whenever there is custodial police interrogation. A defendant also has a Sixth Amendment right to counsel, which attaches once the defendant has been charged with a crime. Here, Deft had not been charged with assault and battery by the time the lineup was conducted; thus, his Sixth Amendment right to counsel had not attached.

The facts show that Deft did not waive his Fifth Amendment right to counsel because he stated that he "wanted to talk to a lawyer before answering any questions." The question is whether the lineup even violated Deft's Fifth Amendment right.

A defendant is in custody when a reasonable person would believe he was not free to leave. Deft had just been placed under arrest; as such, he was in police custody at the time of the lineup.

Interrogation occurs whenever the police make a statement that is likely to elicit an incriminating response. During the lineup, there is no evidence that the police made any statements likely to elicit an incriminating response from Deft. Thus, Deft cannot be said to have been under interrogation during the lineup. For this reason, Deft's Fifth Amendment right to counsel was not violated by the lineup.

Even if Deft's Fifth Amendment right had been violated, the identification would likely still be admissible under an exception to the exclusionary rule, which allows evidence if it would have been discovered anyway. Oscar clearly saw Deft, his assailant, when Deft was committing the crime. Thus, the government can show that it would have had an independent source for the identification. Thus, the court should deny Deft's motion to suppress Oscar's identification.

3. Deft's Motion to Suppress Deft's Admission that He Struck Oscar

The issue is whether Deft's Fifth and Sixth Amendment right to counsel were violated by Paula's interrogation of Deft the day after Deft was arraigned. Paula did give Deft proper Miranda warnings, but she also obtained a waiver. A waiver of Miranda rights is valid if the defendant knowingly, voluntarily, and intelligently waived his rights. There are no facts to indicate that the waiver was not knowing, voluntary, and intelligent, so Deft's Fifth Amendment right to counsel was not violated, even though he was subject to custodial interrogation.

A defendant's Sixth Amendment right to counsel applies to all post-charge proceedings.

The question is whether Paula's interrogation of Deft was a post-charge proceeding. Because Deft had been charged and arraigned, his Sixth Amendment right to counsel had attached. Once this right attaches, a defendant cannot be questioned about the crime charged without the presence of the defendant's attorney, unless he explicitly waives his right to counsel. Although the facts show that Paul obtained a waiver of Deft's Miranda rights, they do not clearly show that Deft explicitly waived his right to counsel. Thus, the court should grant Deft's motion to suppress the admission. If, however, Deft testifies for himself in the criminal trial, then his admission can be used to impeach him on cross-examination.

4. Deft's Motion for a Jury Instruction that Deft's Assault Was Justified on the Basis of Defense of Another

A defendant may have a valid defense if he acts with reasonable force, with a reasonable belief that such force is necessary for self-defense or the defense of another. For the defense of others, courts are split on whether the defense exists in a situation in which the person being "defended" by defendant does not himself have the privilege of self-defense clothes against his "attacker." For example, if an officer in plain clothes conducted a lawful arrest of another, a third party "defending" the arrestee might not have the privilege to assert the defense since the arrestee also did not have the privilege against the officer.

Here, however, Oscar, the party making the arrest[,], was not a plain clothes or undercover officer; rather, he was wearing a uniform when he attempted to arrest Friend. Deft clearly knew that Oscar was a police officer.

A person also can lawfully resist an arrest if an officer clearly does not have lawful basis to make an arrest. This privilege, however, is very limited even as to the person being arrested and would only attach where there is no basis whatsoever to make an arrest of the person. This privilege does not extend to onlooking third parties who witness the arrest. These rules are necessary to protect society and to assist officers in the enforcement of the law for the conduct of a lawful and orderly society.

The facts do not show the circumstances behind why or how Oscar was making the arrest. It would seem that Deft might have a defense if, for example, Oscar were conducting the arrest in an extremely physically abusive manner and was unwarranted in doing so. In plainer terms, if Oscar were "beating the crap" out of Friend for no reason, then Deft might be entitled to assert a privilege of defense. However, there are no facts to indicate that Oscar was acting unreasonably; further, because Friend was resisting arrest, this weighs in favor of not extending the privilege, even if Oscar did have to resort to some physical means to complete the arrest.

In Deft's situation, absent additional extenuating facts just described, it simply was not reasonable for Deft to strike Oscar in an effort to aid Friend, even if Deft believed, reasonably or unreasonably, that Oscar was arresting Friend unlawfully. Accordingly, the court should deny Deft's motion to instruct the jury that Deft's assault was justified on the

basis of defense of another.

In short, the judge should deny all of Deft's motions except for his motion to suppress Deft's admission, which the court should grant.

Answer B to Question 6

Deft's Motion to Suppress Cocaine

The issue is whether Paula properly seized the cocaine from Deft's pockets. The Fourth Amendment protects individuals from unreasonable searches and seizures by government agents. It only applies to evidentiary searches when the individual has a reasonable expectation of privacy. Deft has a reasonable expectation of privacy in the contents of his pockets. Therefore the question is whether the government can show that Paula's search satisfied the requirements of the 4th Am.

Warrantless Search

Paula searched Deft's pocket without a warrant. Thus, the gov't must show that Paula executed the search pursuant to a valid warrantless search exception.

Search Incident to Lawful Custodial Arrest

An officer may search a suspect as a consequence of a lawful custodial arrest. In order to fit within this exception, the underlying arrest must be lawful. An officer may not arrest a suspect for a misdemeanor without a warrant unless the officer saw the suspect commit the misdemeanor. An officer may arrest a suspected felon if the officer had probable cause to believe the suspect committed a felony.

The first issue here is whether Paula had probable cause to believe Deft committed a crime. She based her arrest on Oscar's precise description of Deft. Since she knew Deft had assaulted Oscar the day before and because she was relying on Oscar's "precise" description, Paul[a] had probable cause to believe Deft had committed assault and battery. Probable cause is satisfied if an officer has trustworthy facts that lead to the probability that a suspect committed a crime. Oscar's description sufficed.

The second issue is whether Paula had probable cause to believe that Deft had committed a felony. In many states assault and battery are misdemeanors. However, battery is generally elevated to a felony when directed against a police officer under aggravated battery statutes. As long as this state makes battery of a police officer a felony. Paula's arrest of Deft was lawful because she had probable cause to believe he had committed a felony. Under the SILCA doctrine, the judge should deny Deft's motion to suppress the cocaine.

Other Warrantless Search Exceptions

If a judge determines that Paula's arrest of Deft was unlawful, the judge must suppress the cocaine because no other warrantless search exceptions apply to these facts. The other exceptions are: plain view, consent, auto searches, searches in hot pursuit or to seize evanescent evidence, and pat down searches performed with reasonable suspicion

that a suspect is armed. There are no facts to support any of these doctrines.

2. Deft's Motion to Suppress Oscar's ID

The issue is whether Oscar's pre-arraignment identification of Deft can be suppressed.

6Am Right to Counsel

Deft may argue that the identification should be suppressed because he did not have counsel present for it. Under the 6th Amendment, defendants have a right to counsel at all 'critical stages' of litigation following indictment/arraignment. Courts have ruled identification lineups are 'critical stages' under the Sixth Amendment.

Deft's arguments must fail here because the lineup occurred before his arraignment. Therefore, his 6th Amendment right to counsel had not attached. This is true even though Deft properly invoked his right to counsel after being given his Miranda warnings. The 5th Amendment provides Deft with a limited right to have counsel present during custodial interrogation. It does not apply to Deft's presence in a lineup because his physical appearance is not testimonial in nature.

Unnecessarily Suggestive

The only other argument that Deft may offer to suppress the identification is that the lineup was unnecessarily suggestive and resulted in a substantial likelihood of misidentification. Deft must pose this argument under the due process clause of the 14th Amendment, and a court would consider the suggestiveness of the lineup in the totality of the circumstances. There are no facts to suggest the lineup was unnecessarily suggestive, so Deft will likely lose this argument.

Thus, a court should not suppress Oscar's identification of Deft.

3. Deft's Motion to Suppress His Statement

This issue is whether Deft's admission should be suppressed. It should be suppressed under both the 5th & 6th Amendments.

5th Amendment

On the day of his arrest, Paula gave Deft Miranda warnings and he unambiguously invoked his 5th Amendment right to counsel by saying he wanted to talk to a lawyer before answering questions.

Once a suspect invokes his 5th Amendment right to counsel, the police may not question that suspect on that charge or any other charge until the suspect has spoken with an attorney. The facts that new charges were brought against Deft and that Paula readministered Miranda warnings and obtained a waiver do not change this analysis. Deft's invocation of the 5th Amendment right to counsel operates as a complete bar to questioning until he has spoken with an attorney.

The proper remedy for testimony obtained in violation of the 5th Amendment is suppression except for impeachment. Therefore, the court should suppress Deft's statement from the prosecution's case[-]in[-]chief.

6th Amendment

As discussed above, defendants have the right to assistance of counsel at all "critical stages" of litigation after indictment/arraignment. Here, Deft's admission came a day after he was arraigned. Therefore, his Sixth Amendment right to counsel had attached. The only issue is whether interrogation is a 'critical stage'.

Courts have ruled that interrogation is a critical stage of litigation under the Sixth Amendment's right to assistance of counsel. Thus, Deft had a right to have counsel present when he admitted striking Oscar.

The proper remedy for a statement gained in violation of a suspect's 6th Amendment right to counsel is suppression of the statement. Thus, the court should suppress Deft's admission under the 6th Amendment.

4. Jury Instruction re: Defense of Another

The issue is whether the court should provide a jury instruction on the defense of defense of [sic] another. A defendant may justify a battery on defense of another when he acted out of a reasonable belief that another person had the right to use force in his own defense. A defendant asserting a justification of defense of another cannot use force that is excessive in the circumstances.

Here, the first issue is whether Deft had a reasonable belief that Friend could use force in resisting arrest by Oscar. An individual may use nondeadly force in order to resist an unlawful arrest by a uniformed police officer. Here, we are told that Deft believed Oscar was unlawfully arresting Friend. We do not know why Deft believed the arrest was unlawful. However, if Deft had a reasonable basis for his belief then he had the right to use nondeadly force in Friend's defense. This right stemmed from the fact that Friend has the right to use nondeadly force against a uniformed police officer making an unlawful arrest.

The second requirement is that Deft used reasonable force. We are told that he

struck Oscar. As long as this was a reasonable amount of force to use in the circumstances, then Deft can invoke the justification of defense of others.

Based on this analysis, the court should offer the jury instruction[s] on defense of others.