

NOVINS Law Prep

Application of the Pro/Con Essay Outlining Method for Question 4, NY February 2007

(A) Was Archie's arrest lawful?

Yes (bad for D)	No (good for D)
Carol's statement that Archie was "getting out of the country" (possible emergency exception and possible exception evanescence where the evidence could be lost)	Anonymous tip (probable cause, but warrant required)
	Jacket and note (probable cause for warrant and police failed to get warrant before entering house)
	Police entered D's home without warrant (4 th Amendment; need warrant to make arrest in home unless exception applies)
	Door at home slightly ajar (emergency exception would not apply)

(B) Should the note be admitted?

Yes (bad for D)	No (good for D)
Police saw dead person in car on public street (not a violation of 4 th Amendment because not an unreasonable search)	
Police found jacket in car with Archie's name on it (not a violation of 4 th Amendment because needed to identify dead person)	
Jacket found in dead person's car (no reasonable expectation of privacy and no standing to contest)	
Note found in jacket (no reasonable expectation of privacy and no standing)	

(C) Was the line-up proper?

Yes (bad for D)	No (good for D)
Line up was done pre-charge/before arraignment (6 th Amendment and NY Rule Indelible Right to Counsel not triggered)	In custody (5 th Amendment triggered so Miranda necessary if there was interrogation)
No questioning during line up (5 th Amendment not triggered)	

(D) Is Archie's statement admissible?

Yes (bad for D)	No (good for D)
Waiver was freely given (waiver valid under 5 th Amendment if it is knowing and voluntary)	Statement given after arraignment (6 th Amendment and NY Rule Indelible Right to Counsel attach)
	Waiver given outside presence of counsel (invalid waiver because violates NY Rule Indelible Right to Counsel)

Model Answer B, Question 4 February 2007

A. Assuming the police had probable cause, Archie's arrest may be lawful if the court finds exigent circumstances present. The issue is when the need for an arrest warrant is required. Under the Fourth Amendment, a person cannot be lawfully arrested unless the police first obtain an arrest warrant. An arrest warrant must issue from a detached, neutral magistrate on a finding of probable cause. There are certain exceptions to the requirement of an arrest warrant. For example, if there are exigent circumstances, or if the arrest is in a public place, then police can make the arrest without first obtaining a warrant. In this case, if the police can prove that there were exigent circumstances present such that taking the time to obtain an arrest warrant would result in Archie having the time to flee, then they may be able to overcome the warrant requirement. However, the facts suggest that the circumstances were not of an immediate nature. To begin with, the police received the anonymous tip the night before they actually found the body. Then, when they found the body and came across evidence suggesting Archie's involvement in the crime, they did not go straight to a magistrate but continued to investigate. Once they received corroboration from Carol, the police proceeded to Archie's house. That being said, based on Carol's testimony of Archie "getting out of the country," the police may be able to demonstrate that that fact gave them the emergency situation that would allow an officer to forego the warrant requirement for the sake of making an actual arrest of Archie. In other words, the police will argue that any minute spared to obtain a warrant would have been time wasted in arresting Archie. If the court finds this argument persuasive, then Archie's arrest will be lawful. Notably, the fact that Archie's door was

open is likely not enough to allow the police to overcome the requirement for a warrant. Whereas in a fully public place, police can generally proceed to arrest on just probable cause (not a warrant), Archie's house was not a public place nor were the police invited in. The fact that the door was open will not affect the lawfulness of the warrant-less arrest.

B. (1) The court's ruling on the note found in Archie's jacket is correct. The issue is whether Archie has standing to object to the note found in his jacket pocket. Under the Fourth Amendment, a person is granted protection from government searches and seizures of things where there is a reasonable expectation of privacy. Whereas someone's personal property might be inherently private in nature, the fact that Archie's jacket here was found in Bernard's car takes it out of the realm of privacy that is expected. In other words, because the jacket was in Bernard's car, which Archie did not own, and more importantly, because Archie was not in the car with the jacket, he cannot reasonably expect to have the jacket itself be free of any government search. Because Archie has no expectation of privacy, he has no standing to object to the jacket, and therefore it comes in as evidence.

(2) The court's ruling on the line-up is correct. The issue is whether the Fifth Amendment attaches to line-ups. Under the Fifth Amendment, a person is free from giving testimonial evidence that may tend to incriminate them. The rights under the Fifth Amendment attach after a person is in police custody - meaning when a reasonable person would not feel free to leave. Here, Archie's Fifth Amendment privileges had clearly attached as he had been arrested, and was therefore in police custody. That being said, a line-up will not violate a person's Fifth Amendment right to be free of self-incrimination because it is not testimonial in nature. Also, Archie has no claim to keep the line-up out under his Sixth Amendment right to counsel because he had not yet been formally charged. He may be able to assert an argument under New York's right to counsel (see *supra* Section 4(b)(3)). However, he would first have to prove that there was substantial governmental interference such that a right to counsel was necessary. In this case, the court's ruling was likely correct as line-ups are non-testimonial in nature and therefore the Fifth Amendment does not apply.

(3) The court's ruling in regards to Archie's statement was likely incorrect. The issue is whether Archie's waiver was valid. Under the Sixth Amendment, a person's right to counsel attaches once a formal charge has been brought against the defendant. In this case, Archie's right to counsel likely attached after his arraignment. Under the federal rules, a waiver is valid if it is knowing and intelligent and voluntary. This means that the defendant knew the right he was giving up and did so voluntarily – without any coercion by the police. Under the federal rules, Archie's confession here would likely be admissible as he gave a knowing and intelligent and voluntary waiver of his right to counsel. Therefore, the police were allowed to question him in regards to the alleged crime. However, New York has a much more defendant-protective right to counsel. By statute, New York provides for an indelible right to counsel which attaches not just when there is a formal charge, but whenever there is substantial government interference such that a defendant may benefit from the presence of counsel. Clearly, an arraignment

qualifies as such an instance and therefore New York's right to counsel attached in Archie's case. One protection under New York's right to counsel is that a voluntary and knowing and intelligent waiver must be made in the presence of counsel. Thus, in order for Archie's confession to be valid, it would have to have been made while his counsel was still present. Here, it was not; therefore it is invalid. Indeed, Archie's waiver, the police questioning, and his subsequent confession were all made outside the presence of counsel. As such, his confession can be said to be a fruit of the poisonous tree and should therefore be excluded under the exclusionary rule. The court was therefore incorrect in denying Archie's motion to suppress.