



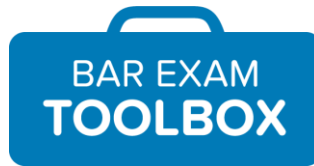
Lee Burgess: Welcome to the Bar Exam Toolbox podcast. Today, we have another episode in our “Listen and Learn” series – we are focusing on Criminal Procedure, specifically the Fourth Amendment to the Constitution and the limits it imposes on police action based on tips from anonymous informants. Your Bar Exam Toolbox hosts are Alison Monahan and Lee Burgess, that’s me. We’re here to demystify the bar exam experience, so you can study effectively, stay sane, and hopefully pass and move on with your life. We’re the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). Alison also runs [The Girl’s Guide to Law School](#). If you enjoy the show, please leave a review on your favorite listening app, and check out our sister podcast, the [Law School Toolbox podcast](#). If you have any questions, don’t hesitate to reach out to us. You can reach us via the [contact form](#) on [BarExamToolbox.com](#), and we’d love to hear from you. And with that, let’s get started.

Lee Burgess: Hello, and welcome back to the “Listen and Learn” series from the Bar Exam Toolbox podcast! Today we are focusing on Criminal Procedure, specifically the Fourth Amendment to the Constitution and the limits it imposes on police action based on tips from anonymous informants. The Fourth Amendment will show up in your Criminal Procedure class, as well as the MBE and essays of the bar exam, so it is important to know it well.

Lee Burgess: So when you’re faced with a question where the facts mention a tip from an anonymous informant, where should you begin? Well, you know that you’re most likely in the world of the Fourth Amendment and individual rights to be free from unreasonable government searches and seizures, which include arrests. If you know the Fourth Amendment well, you’re likely also aware that for an arrest, search, or seizure to be lawful, some justification is required, usually probable cause but sometimes just reasonable suspicion. The informant’s tip will almost always be part of this justification piece of your Fourth Amendment analysis.

Lee Burgess: Here are some rules to write down for probable cause: For an arrest, probable cause arises when the circumstances give a police officer, one, reasonable suspicion to believe that; two, a crime has occurred. Probable cause requires reliable information that evidence of illegality will be found at a particular location.

Lee Burgess: You might assume that “reliable evidence of illegality” requires personal knowledge on the part of the officer making the arrest or conducting the search. Spoiler alert: it does not. This is where information from informant comes into play. A police officer does not need firsthand knowledge to have probable



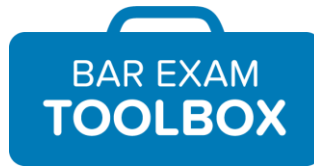
cause; it may be based on the firsthand knowledge of another person, such as a confidential or anonymous informant.

Lee Burgess: Courts apply a totality of the circumstances test to probable cause based on an informer's tip. This means that your analysis for an essay on this topic should use all the facts you've got, and identify arguments on both sides of the issue of whether an informer's information seems reliable. Often, the facts in your interrogatory won't give you a lot of information about the informer or his or her basis for knowledge. Still, state the rules and apply as many facts as you have for your totality of the circumstances analysis. If all you have is the tip itself, without more information about the informant, focus on what the tip says. You can talk about whether it has specific details, making it more likely to be reliable, or information that only someone with firsthand knowledge of the crime would likely know. Does it seem to be in conflict with other key facts you have? If so, explain that and draw a conclusion about reliability from that. And remember, an affidavit from an informant may be sufficient to establish probable cause, even though the reliability and credibility of the informer and/or his or her basis of knowledge are not established.

Lee Burgess: Ready for a hypo? Here we go. This one is loosely adapted from the [February 2004 California bar exam](#):

Lee Burgess: "A bank was robbed one morning by a man brandishing a shotgun. Two hours after the robbery, police received a call from an anonymous informant who described a man standing at a particular corner in the downtown business district and said the man was carrying a sawed off shotgun in his briefcase. Within minutes, a police officer who had been informed about the robbery and the informant's tip observed Dan holding a briefcase at that location. Dan fit the description given by the anonymous caller. The officer approached Dan with his service revolver drawn but pointed at the ground. He explained the reason for his approach, handcuffed Dan, and opened the briefcase. The briefcase contained the marked currency taken in the bank robbery. At trial, Dan moved to suppress the currency. How should the court rule on his motion?"

Lee Burgess: Looking at the interrogatory, we know that we are looking for ways for Dan to challenge the officer's conduct. Dan should start by arguing that by drawing his revolver as he approached Dan and handcuffing Dan, the officer effected a seizure of Dan. A seizure occurs when a reasonable person would have believed he was not free to leave. This is pretty much a slam dunk in Dan's case, what with the handcuffs and the officer's drawn gun. It's hard to imagine any reasonable person would feel they could walk away in that situation. The trickier question is whether the officer's actions qualify as a stop and frisk or a



search incident to an arrest. If the officer arrested Dan, he was also entitled to make a warrantless search of Dan and his “wingspan”, but probable cause is required to justify that arrest. If this was just a stop and frisk, meaning that the officer temporarily seized Dan, what’s required is a lesser justification – reasonable suspicion that criminal activity is afoot and that the suspect has a weapon.

Lee Burgess: Let’s turn now to the anonymous caller. In your essay answer, it’s important to analyze whether the informant’s tip meets the probable cause standard, as well as whether it is sufficient to establish reasonable suspicion to justify a stop and frisk. As I mentioned, the rule for probable cause is circumstances that give the police officer reasonable suspicion to believe that a crime has occurred. We know that it’s okay for the officer not to base probable cause or reasonable suspicion on his own firsthand knowledge. Firsthand knowledge of someone else is enough. We also know that courts look at the totality of the circumstances to evaluate whether an anonymous tip is reliable and credible.

Lee Burgess: So what are the circumstances here? Well, the tip was made relatively soon after the robbery – just two hours later. It seems to have been pretty specific, with a description of the man, a specific location, and identification of a specific weapon that doesn’t really have a non-criminal use (unlike, say, a knife). The weapon is also the same as the weapon used in the robbery. Accordingly, while we don’t know anything about the informant him or herself, looking at all the circumstances, the tip is likely sufficiently reliable to establish probable cause that a crime has occurred, and/or reasonable suspicion that criminal activity is afoot and the suspect has a weapon.

Lee Burgess: Alright, let’s tackle another hypo. This one is taken from Question 4 of the July 2021 California bar exam:

Lee Burgess: “Police officer Abby received a tip from an anonymous informant that Denise was involved in transporting cocaine. After Denise was lawfully in custody and had been advised of her Miranda rights, Abby asked her how she was transporting the cocaine. Denise responded, ‘If I had anything to do with it, I would use my car.’ When Denise refused to answer any more questions, Abby released her. She then issued an APB to all police officers describing Denise’s car and stating that it was believed to be involved in transporting cocaine. Later that same day, Officer Bob heard Abby’s message and saw the car Abby described. He stopped the car after it ran a red light and ordered the driver, who turned out to be Denise, to get out of the car. Bob then did a pat down search of Denise and found a cell phone in her pocket. When Bob looked at the phone, he saw a message stating, ‘The cocaine is in the trunk; deliver it to the



warehouse.’ Denise is arrested and charged with transportation of cocaine. How is the court likely to rule if she moves to suppress the text message?”

Lee Burgess: This question illustrates how little information you may be given about the reliability of an informer or the informer’s tip. Because the bulk of the points on a question like this will come from other issues, like exceptions to the warrant requirement for Bob’s pat down search of Denise, or seizure of the phone, you shouldn’t spend a ton of time on the informer’s tip. However, you do need to analyze it as a basis for probable cause. So, let’s do that.

Lee Burgess: Remember that probable cause for a search requires reliable information that evidence of illegality will be found at a particular location. We know that Bob does not have firsthand knowledge that Denise has cocaine in her car. But he doesn’t need that; the informant’s tip may be sufficient. We need to analyze whether the informant’s tip appears to be reliable based on the totality of the circumstances. We don’t know anything about the informant, so we’ll focus on the tip itself. The language of the tip is pretty vague – it says that Denise was involved in transporting cocaine, without any specifics as to how. This makes the tip seem a little less reliable than if there were more detail.

Lee Burgess: However, we know that Denise told Abby that she would use her car if she had anything to do with transporting cocaine. This doesn’t correlate with the informant’s tip, per se, but the fact that Denise did not deny involvement makes the tip seem more credible. Therefore, we can probably conclude that the tip was sufficiently reliable to support probable cause, given the fairly low bar. Regardless of which way you come out on the issue, the key for maximizing your points is to go through the totality of the circumstances analysis, making arguments on both sides.

Lee Burgess: We won’t spend a lot more time on this hypo because the rest of the issues are outside the scope of this podcast. Generally, though, you’d want to continue your essay by doing your IRACs for the other issues, which are whether any of the exceptions to the warrant requirement, such as the automobile exception, stop and frisk, and the exception for searches incident to lawful arrests, apply to make Bob’s pat down of Denise and seizure of the phone valid. Though two of those require probable cause, you can still analyze them effectively, even if you’ve concluded that the informer’s tip was not sufficiently reliable. Just explain that while you don’t believe the court will find the informer’s tip sufficiently credible, if the court did find it to be, the exception would or would not apply.



Lee Burgess:

And with that, we'll wrap up our podcast for today. If you enjoyed this episode of the Bar Exam Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at [lee@barexamtoolbox.com](mailto:lee@barexamtoolbox.com) or [alison@barexamtoolbox.com](mailto:alison@barexamtoolbox.com). Or you can always contact us via our website [contact form](#) at BarExamToolbox.com. Thanks for listening, and we'll talk soon!

**RESOURCES:**

["Listen and Learn" series](#)

[Private Bar Exam Tutoring](#)

[The Brainy Bar Bank: Streamlining Bar Study](#)

[California Bar Examination – Essay Questions and Selected Answers, February 2004](#)

[Podcast Episode 141: Listen and Learn – The Fourth Amendment](#)

[Podcast Episode 154: Listen and Learn – The Exclusionary Rule \(Criminal Law and Procedure\)](#)