

CRIMINAL PROCEDURE
FINAL EXAMINATION
PROFESSOR RONALD J. RYCHLAK
FALL SEMESTER, 1992
Three Hours

C4

INSTRUCTIONS - PLEASE READ CAREFULLY

The examination is to be answered in the blue books provided for you. Please be neat; neatness may affect your grade. Write on only one side of each page (except to add ideas you come up with later).

Put your EXAMINATION NUMBER ONLY on each blue book. You should have obtained an examination number during registration. DO NOT PUT YOUR NAME ON YOUR EXAM PAPERS. Number your blue book to show how many you used in which order (e.g. "1 of 2" and then "2 of 2").

The goal of this exercise is for you to demonstrate that you can apply the principles and concepts studied this semester to the issues suggested by the facts given in the questions. It is important for you to delineate the issues clearly and support your conclusions with principles of law. If there is more than one approach to the issue, please explain. Also, if you disagree with or question the reasoning behind any principles, please explain in your answer.

Unless otherwise indicated, you are expected to discuss common law principles as well as rules derived from modern codes; you should note any important differences.

If you feel that you need more facts to answer any part of the question, state the facts that you are assuming and proceed with your answer.

Expositions concerning principles that bear no reasonable relation to issues presented by the facts given will receive no credit and may affect your grade in a negative manner. Neatness and organization will be counted in determining your grade.

When you complete the exam, please place the exam and your blue book(s) on the podium at the front of the room.

If you want your grade in advance of receiving grades from the registrar, please leave a stamped-self addressed envelope or post card with anyone in the front office.

BY PLACING YOUR NUMBER ON THE BLUEBOOK(S) AND SUBMITTING THEM FOR A GRADE, YOU ARE CERTIFYING THAT YOU HAVE NEITHER RECEIVED NOR GIVEN ANY AID THAT WOULD VIOLATE THE HONOR CODE.

Question 1. (15 points; suggested time 15 minutes)

Assume that a warrant is obtained to search Professor Myers' home for illegal drugs, the search is conducted, and a large quantity of cocaine is found hidden amongst a pile of ungraded bluebooks. Myers, however, challenged the affidavit that was reviewed by the magistrate who issued the warrant.

- a. What must Myers show to prove that the warrant should not have been issued?
- b. Assume that the court concludes that the search warrant should not have been issued. Myers is charged with unlawful possession of cocaine in state court. Would the cocaine seized be admissible at Myers' trial? Explain.

Question 2. (25 points; suggested time 30 minutes)

- A. Officer Featherstone has concluded, based on his intuition as an officer with thirty years' experience, that cocaine is being sold out of Apt. 3 at 10 Main Street. Does he have probable cause to search?
- B. Officer Featherstone, while undercover, observed a white powdery substance on the kitchen table in Apt. 3 at 10 Main Street. He further observed several persons sniffing this powder and appearing to get high. They paid large amounts of cash to the tenant in return for plastic bags of the powder. Based on his first-hand observations, as well as his long experience with narcotics (primarily in a professional capacity), Officer Featherstone has concluded that the substance is cocaine. Does he have probable cause to seize the powder and arrest the participants?
- C. The police assert that they have "received reliable information from a credible person and believe that narcotics are being stored" at a particular location. Do they have probable cause to search?
- D. An informant reported to the police that one David Shipley, traveling from Chicago, would arrive at the Denver train station on either September 8 or 9, carrying a tan zipper bag, which would contain heroin. The informant, who had previously provided "accurate and reliable information" to the police regarding narcotics violations, presented a detailed physical description of Shipley and the clothing he would be wearing (blue & green polyester plaid coat) and reported that he would be walking very fast. Police officers staked out the train station, and on September 9 they observed a man precisely fitting the description given disembark a Chicago train and

proceed to walk quickly toward an exit. Is there probable cause to arrest?

Question 3. (5 points; suggested time 8 minutes)

Police officers on routine patrol observed a man standing on a corner apparently urinating. When he saw the cruiser, he turned and ran. The officers followed the man around the corner and drove alongside him for a short distance. As they did so, the officers observed the man pull a number of packets from his pocket and discard them on the ground as he ran. The police retrieved the packets, examined them, and found pills, which appeared to be contraband. The man, who turned out to be Bill Champion, was then stopped and placed under arrest. Champion was later charged with narcotics possession and moved to dismiss the charges on the ground that he had been unlawfully seized during the initial police pursuit preceding his disposal of the packets. Did this pursuit constitute a seizure within the meaning of the Fourth Amendment?

Question 4. (15 points; suggested time 15 minutes)

- a) A man armed with a pistol robbed Carolyn Staton's Convenience Store. Staton (the fearless proprietor), armed with only a baseball bat, pursued the perpetrator on foot and chased him until he entered a nearby house. She then called the police from a telephone booth outside. Officers soon arrived, and after hearing Carolyn's story and getting her description of the perpetrator, they entered the house and arrested the robber, Robert Khayat, cowering under a bed. In the absence of either an arrest or search warrant, is this action lawful?
- b) Assume instead that the day after the robbery, the police observed a man meeting the exact description of the perpetrator standing on the sidewalk. They attempt to arrest him, but he flees inside the house. May they pursue him inside and make a warrantless arrest?

Question 5. (52 points; suggested time one hour)

a. John Robin Bradley was seen with blood stains on his shirt and pants, as he left the scene of a murder. The police arrested him on suspicion of homicide and transported him to the police station. He is fifty years old, dropped out of school in the ninth grade, and has an extensive criminal record. Bradley suffers from

diabetes, requiring him to take medication twice daily and to eat at regular intervals. He arrived at the police station at 9 P.M., was given his Miranda rights, and was interrogated in a small room for four hours by Officer Tom Mason. Although he originally indicated a desire to talk to the officer, Bradley finally said that he was tired and wanted to invoke his right to remain silent so that he could go to bed. He was taken to a cell in which a padded cot fastened to the wall served as a bed. Bradley was not able to sleep. At 7 A.M. he was taken again to the interrogation room where he was left alone to wait for two hours before Officer Mason appeared and resumed questioning. At 11:30 A.M., tired and hungry, he confessed orally to involvement in the homicide. During the entire time at the police station, Bradley received only coffee and water. There were doughnuts available to him, but he did not eat them

due to his diabetic condition. He neither requested nor was offered other food or medication. Could Bradley prevent this statement from being admitted as evidence at trial?

b. Suppose that Officer Mason reported Bradley's statement to the prosecutor, who used it to obtain an indictment. Shortly after it was filed, Officer Mason decided that there was something that Bradley was holding back. He went to Bradley's cell, gave Bradley his Miranda rights, and Bradley agreed to answer a few more questions. Would these answers be admissible?

c. Suppose that Bradley had refused to submit to the later questioning (the part noted in section b.). Officer Mason then got undercover officer Joseph Antone to pose as Bradley's cellmate. Officer Antone pretended to become Bradley's friend and, without asking any direct questions, was able to get Bradley to confide in him. Bradley told Antone that he had not been completely honest with Officer Mason. In fact, Bradley told Antone that he (Bradley) had been hired to commit this murder and that he had committed another murder the month before. Antone was especially interested in this earlier murder, since it was still an open case and the police had no leads. Would these statements be admissible?

d. Suppose that Officer Mason, upon making the initial arrest of Bradley, but before reading him his rights, had asked him how he got blood on his shirt. Bradley had responded that had been in a fight with the murder victim over a debt that the victim had owed to Bradley. Later, at trial, Bradley testified that the victim had attacked him for no reason. A second witness also corroborated this story. Would the original statement be admissible to contradict this testimony? Would it make a difference if the statement had been made prior to the arrest?

Question 6. (15 points; suggested time 15 minutes)

Bob Weems is arrested pursuant to an indictment for armed robbery of his old hang-out, Opal's bar. The police also suspect him of an unsolved robbery of a nearby gas station.

- a. If the police wish to display an array of photographs including Weems' photo to customers who were at the bar at the time of the crime, must counsel be present?
- b. If the police wish to display Weems in a lineup to the witnesses of the gas station robbery, must counsel be present?
- c. If the police violate Weem's right to have counsel present at an identification procedure, what is the remedy and what is the impact at trial? Explain.

Question 7. (5 points; suggested time 7 minutes)

Donna Adler was observed driving erratically by officers on highway patrol. She was pulled over and required to perform several sobriety tests, including balance and coordination tasks as well as a recitation of the alphabet (she always had trouble with this). Donna's unimpressive performance was videotaped by one of the officers and is now offered against her at trial. Would admission of the evidence violate Donna's Fifth Amendment Rights?

Question 8. (25 points; suggested time 30 minutes)

One afternoon, Officer Hoffheimer was on cruiser patrol in a neighborhood that had experienced several daytime burglaries. Hoffheimer's attention was drawn to a car in a driveway. The car's trunk was open, exposing several large green trash bags, which appeared full and were of the type reportedly used to remove the loot in the recent break-ins. Hoffheimer made a U-turn and pulled into the driveway. The driver had closed the trunk and was beginning to back out, but the police car now blocked her exit. The driver got out of the car and, appearing quite nervous, asked Hoffheimer to move his car. Hoffheimer responded instead by asking her for identification, which she produced. The identification indicated an address on the other side of town. At that point Hoffheimer patted her down, took the keys to her car that he had felt in her pocket, opened the trunk and the trash bags inside. Finding TVs, stereo components, jewelry, and cash, Hoffheimer placed her under arrest. It was later determined that the items had been stolen from a nearby residence. The driver-now-defendant, Connie Parham, moves to suppress the items. Was Hoffheimer's action justified? Discuss.

Criminal Procedure, Fall 1992

1. a. Deference is shown to magistrate [2]
Did he have a substantial basis [3]
to find probable cause? [2]
- b. Normally the exclusionary rule [3]
but reliance [2]
good faith [3]
2. A. No. [1]
need articulated facts & circumstances [2]
reasonable person reach same conclusion? [1]
- B. Yes [1]
No credibility problem [2]
facts & circumstances fairly clear [3]
- C. No [1]
not enough facts regarding credibility [2]
nothing on basis of knowledge [3]
test is totality of circumstances [3]
- D. Yes [1]
Tip, on its own, not enough [2]
But, Draper's self-verifying detail analysis [3]
3. No. [2]
Hodari D. case. [3]
4. a. Exigent Circumstances? (yes) [3]
probable cause [3]
hot pursuit [3]
- b. Yes [0]
Arrest in public w/o warrant (w/ p.c.) okay [3]
fleeing to house doesn't change (like hot p.) [2]
Impound? [1]
- 5.a. No 6th Am. - crim. proceeding not started [2]
- 5th Am?
custody [2]
interrogation [2]
okay to come back, [2]
esp. here where sleep seems key [1]
But, should have gotten new warnings [2]
and, is this a "significant period of time?" [2]
- Voluntary? [2]
Police misconduct? [2]
(prob. not) [1]
Free will overridden? [3]

- b. Yes, waiving Miranda waives 6th Am. [4]
- c. No questioning, no Miranda [1]
 Does not appear involuntary [1]
- 6th Am? [2]
 Criminal proceedings have started [2]
 4 ways - inform. indict. p.h. arragn. [2]
 Deliberately elicit? [2]
 not if passive ear [2]
 yes, if more [2]
- Offense specific so E of other crime admissible [4]
- d. It would be admissible to impeach D [3]
 not admissible to impeach other W [3]
 Statement before arrest would be admissible [3]
6. a. No, no right to be at photo show [3]
 b. No, no right to be at pre-indictment lineup [3]
 c. This I.D. is excluded [2]
 In-court I.D. may be admitted, if independent [2]
- Due process issue (reliability is linchpin) [3]
 identify factors: [2]
 (opportunity, attention, accuracy, certainty, elapsed time)
7. Sobriety tests are not testimony [3]
 Closer Q on ABCs, but probably not [2]
8. Okay to ask questions [2]
- Blocking car (& not moving) = stop? [2]
 need Reas. suspicion [2]
 seems not to have it [2]
 her (later produced) I.D. doesn't matter [1]
- Pat down not permitted [2]
 no reason to fear [2]
 Moreover, scope of pat-down is limited [2]
 but mention cert. grant case. [2]
- No justification for opening trunk or bags [3]
 no probable cause [2]
- No p.c. to arrest [2]
 no basis to think items were stolen [1]