

CRIMINAL PROCEDURE
FINAL EXAMINATION
PROFESSOR RONALD J. RYCHLAK
SPRING SEMESTER, 1995
Two and a Half Hours

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.

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Question One (one hour and 15 minutes).

You are working the day security shift at the Nettletown airport. You've just gotten some stale cheese crackers sandwiched around a dry layer of peanut butter from a vending machine when your walkie-talkie begins to crackle --

Airport [AP]: Johnson, are you there? Over.

J: This is Johnson. I'm in the ticketing area of Eastwinds Airlines near the Skylift Lounge. Over.

AP: Johnson, this is Memphis Police Officer Davis. Be on the lookout for an adult white male medium height, 5'11", about 170 pounds, brown overcoat carrying blue garment bag with a red stripe. He was dropped off about ten minutes ago at Eastwinds' departures by a man believed to be intoxicated on narcotics. Stop, identify, and question the suspect as he may be involved in drug traffic. Do you copy? Over.

J: I copy. Over and out.

You survey the ticketing area. No one fitting the description is in view. After checking the Eastwinds' departure schedule, you head towards gate 11 where the next scheduled departure is to Los Angeles at 4:15 p.m. While standing in the boarding area, you see a man in his early-forties coming out of the men's room. The man is closer to 5'9" than 5'11", and his garment bag has two thin red stripes, not one, but otherwise he fits the description. As he advances toward you on his way to the boarding area, you have to make a decision--

- (a) Can you initiate the contact with the suspect passenger? If so, what can you do and what can you say?
- (b) What should you inform the passenger? Why?
- (c) Can you ask for identification?

Suppose that the person produces identification indicating that his name is Bryn Vaaler and he has a plane ticket issued in that same name. You call this in to the Memphis police and are told to wait until you hear back from them.

- (d) Can you try to delay Vaaler? For how long?
- (e) Could you question him without giving him his Miranda warnings?
- (f) It's starting to get uncomfortable standing in the middle of the airport...probably beginning to become a bit embarrassing for Vaaler, too -- might be better to wait in the security office. The "change of scene," however, will take a little more time, which you do not mind, since you are still waiting to hear back from the police, but the flight will take off soon. What legal problems, if any, are involved in taking Vaaler to the security room?

You decide to take Vaaler to the security room, and while you are there (and hoping to hear back from the Memphis police), you decide to run his license through the computer. Vaaler objects, noting how soon his plane will take off. He then asks whether he is being held under arrest. You respond, "No, Mr. Vaaler. This will only take a couple of minutes. You don't have anything to hide, do you?"

- (g) Is your continued holding of Vaaler justified?
- (h) What about the computer check?

The computer check turned up nothing, and you still have not heard from the police. Being in the small room with Vaaler is starting to make you uncomfortable. You decide to frisk the suspect. At the same time, you hear a voice boom over the loudspeaker, "Flight 703 will begin boarding in three minutes..."

J: Just one last thing, Mr. Vaaler. You won't mind if I pat you down for weapons, will you?

Vaaler: Officer, you've checked my ticket and run my license through the computer already. Isn't that enough?

J: Is there something you don't want me to find, Mr. Vaaler? That is your real name -- Vaaler -- isn't it?

Vaaler: I've nothing to hide.

You proceed to pat Vaaler down. In his right inside suit pocket you feel a flat solid object, about 2" x 4".

- (i) Can you remove this object from his pocket?

You reach in and pull out a box-like object wrapped in paper. Unwrapping it, it turns out to be a cassette tape with a hand-drawn map wrapped around it. Not feeling any of this significant, and wanting Mr. Vaaler to catch his plane, you start to hand back the tape and map. As you do, three hand-rolled cigarettes fall from the paper. One is half-smoked; and as you retrieve and inspect the cigarettes, you realize from your training and experience that they contain marijuana. You immediately place Vaaler in custody, seizing the cigarettes, tape, and map. You then call the police who arrive a few minutes later, arrest Vaaler, and take him and the evidence away.

- (j) Was your search legal?
- (k) Would the police be justified in searching through Vaaler's baggage when they pick him up?
- (l) Would any of the statements made by Vaaler prior to being placed under arrest be

admissible against him at trial?

- (m) Assume that the court determines that there was a Miranda violation at the airport. Would there be any way to use a statement taken in violation of Miranda at trial?
- (n) Still assuming that there was a Miranda violation, would the prosecution be able to "cure" the error and take a later statement from Vaaler, or are they forever barred from taking such a statement?
- (o) Suppose the map you found on Vaaler has directions to a known "crack house." Would the map be admissible at Vaaler's trial?

Section Two (Short Answers - 45 minutes)

(a) Baria sold heroin to Galloway. Galloway was later stopped by the police for speeding. The police searched Galloway's car and found the heroin concealed under the rear seat. Baria is charged with illegally selling heroin.

Will Baria's motion to prevent introduction of the heroin into evidence be granted or denied, and why?

(b) Hack and Hendrix were charged with robbing a bank. They hired DeWees to be their lawyer. At trial, Hendrix shifted the blame to Hack, who was convicted. Hack tells you, "look, they probably would have convicted me anyway, but I'm really hacked-off at DeWees. She didn't make half of the objections that I told her to make at trial."

Advise Hack about any claim he might make relating to DeWees.

(c) Hopson was convicted of robbery and sentenced to 10 years in the penitentiary, but the conviction was set aside on appeal. The case has been remanded for a new trial. It was originally thought that Hobson had not hurt anyone during the robbery, but it was recently discovered that a stray bullet from the robbery caused a tire to blow out on a passing car and though no one died, there were many injuries. Hopson has been offered a plea agreement under which the state will recommend 10 years if he pleads guilty to aggravated robbery (a more serious crime than robbery). Would you recommend that he accept? Why or why not?

(d) The police were called by paramedics to the scene of an apparent shooting. Upon arrival they found the victim in the bedroom and a 16-year-old boy standing outside the room. In response to the officers question as to what happened, the youth stated that the victim had fallen and hit his head. After one of the officers discovered a spent bullet next to the victim, the boy and his mother were taken to the patrol car and seated inside. The boy was confronted with the bullet and asked again what had happened. He changed his story and stated that he had accidentally shot the victim. When the youth was charged with homicide, he sought to suppress both statements on the ground that they were obtained without the Miranda warnings. What result?

(e) Evaluate this statement: If Czarnetsky had been indicted by a grand jury which had

considered a statement he previously made under illegal police questioning he could have the indictment quashed on those grounds.

- (f) State narcotics officers have rented a hotel room next to a room in which they have probable cause to believe a major narcotics sale will take place. May they, without a warrant, place a device on the wall of their room and thereby overhear conversations in the next room.
- (g) In the situation described in the question above, may the officers, without a warrant, have one of their men disguise himself as a room service waiter and thereby overhear the conversations.
- (h) Sparks, while in his jail cell, calls a deputy sheriff over to the bars and begins to tell the deputy how he, Sparks, committed a homicide. Must the deputy give Sparks his *Miranda* warnings?
- (i) Leggett was indicted for robbery and then apprehended. She was compelled to participate in a lineup at which Morgan, the robbery victim, identified her as the perpetrator. No attorney was provided for Leggett, and she did not waive her right to counsel. Can Morgan testify at trial that he identified Leggett at the lineup.
- (j) Under the facts of the question above, may Morgan under any circumstances, testify that he now (in court) can identify Leggett as the robber?

Question 3. (30 minutes)

Officers of the Oxford Police Department received a call from an anonymous female who told them there was a motor home "full of stolen stuff" parked in front of George Cochran's house. The caller described items she had seen that matched some of those taken in prior burglaries. She added that Cochran was about to move the motor home because he said "the fuzz were getting much too close." (Fuzz, by the way, is a 1960's slang term for police).

The informant refused to identify herself because she said she feared Cochran would kill her, but she finally admitted in response to the officer's guess that she was Cochran's former girlfriend, Karen Green. She told the officer that they had recently broken up and that she wanted to "really burn him bad."

- a. The officer, after verifying that a motor home was parked at the address stated by the caller, applied for a warrant to search it for items stolen during the burglaries. Is there probable cause to search the motor home?
- b. Suppose Karen had offered to let the police into the motor home with the key Cochran has given her when they were an item. Would any seized evidence be admissible against Cochran?

- c. Suppose that Cochran goes to trial. Due to the animosity between Green and Cochran, Cochran's attorney decides to use all preemptory challenges to exclude women jurors. What can the prosecution do and what are the likely results?
- d. Can the prosecution argue that it has a constitutional right to a fair cross section of the community on the jury?