

CRIMINAL PROCEDURE
SECTION B

Final Examination
May 7, 1992

Two and 1/2 Hours
1:30-3:00

THIS EXAMINATION MUST BE RETURNED WITH YOUR BLUEBOOKS



OPEN BOOK
Instructions

The three problems are of unequal weight. They will be graded in proportion to the suggested time limits. Budget your time accordingly.

Answer all the questions reasonably raised in each problem even though your resolution of a prior issue in the same problem may technically make decision of the other issues immaterial. If you believe that you need more facts than are presented to adequately resolve an issue, indicate specifically what facts you believe you need and why.

Specific citations to cases are welcome but not as a substitute for thinking, i.e. do not use citations instead of clearly stating the relevant point of law.

I.
(60 minutes)

Amtrak trains travelling east from Los Angeles temporarily stop in Albuquerque, New Mexico. As part of a drug interdiction program, Albuquerque Police (APD) and Drug Enforcement Agents (DEA) routinely conduct investigative drug sweeps aboard these trains and on the station premises. As the trains pull into the station, disembarking passengers are scrutinized by armed, but plain-clothed, APD and DEA agents. As part of this drug interdiction program, Kevin Small, a DEA agent and APD officers board the trains and randomly question passengers and solicit permission to rummage through luggage in the hope of finding drugs.

As a result of the frequency of these sweeps, Agent Small developed a working relationship with the train personnel who interact with the passengers and their luggage during the journey from Los Angeles to Albuquerque. Amtrak personnel provide him with the train manifest, containing the names and seating of the passengers, and other documents reflecting the destinations, points of departure, prices, method and time of payment for tickets. In return, Small offers rewards to informants and train personnel for tips leading to successful drug seizures.

On Saturday, February 23, 1991, Small received a tip from a confidential informant about possible drug couriers on the coach section of the Amtrak train arriving in Albuquerque from California. While other enforcement officers investigated this tip, Agent Small proceeded to the sleeper section of the train to undertake his typical investigation.

Small testified that before he boarded the sleeper section of the train, a part-time Amtrak employee ("informant") who had previously acted as a confidential informant for Small, told him a person he should talk to was carrying blue luggage and pointed to the Defendant, whom Small later learned was Charlie Armijo. Small also testified this informant was reliable because on two previous occasions he had volunteered information leading to successful drug seizures. The informant testified Small had requested information from him on at least ten previous occasions.

The informant reported Armijo to Small because he was a young, well-dressed Hispanic wearing a gold watch and gold ring travelling in the first class section. The informant testified that since young Hispanics rarely travelled first class, he suspected this Hispanic was a drug courier.

Small tailed Armijo from the station platform to the parking lot where he observed Armijo hug his mother and load his luggage into the trunk of her car. Small then approached and asked Armijo about the weather, whether he was on the train that had

arrived, where he was travelling from, and whether he still had his ticket. Armijo responded he was travelling from Pasadena and he no longer had his ticket with him. During these questions, the trunk of the car was closed and Small testified Armijo did not appear nervous.

Mrs. Armijo then asked Agent Small who he was and why he was asking so many questions. Only then did he identify himself as a DEA agent investigating the transportation of drugs from California aboard Amtrak trains. Subsequently, he requested Mr. Armijo's identification. After Mr. Armijo provided some identification, Small compared it with the train manifest. Since Armijo's name did not appear on the manifest, Small asked Mr. Armijo whether he travelled under an assumed name. Mr. Armijo, now appearing somewhat nervous to Small, answered no.

Agent Small then told Mr. and Mrs. Armijo he believed the bags Mr. Armijo loaded into the trunk contained marijuana and asked Mr. Armijo if he would consent to a search of the contents of his luggage and the car. Mr. Armijo unequivocally declined.

Agent Small persisted and told Mr. Armijo he would detain the car and Mr. Armijo's mother while he secured a warrant, unless Armijo surrendered the bags and agreed to permit a search of the car. Thereupon, Mr. Armijo surrendered the bags and agreed to allow Small to search the car. Agent Small then issued a receipt to Mr. Armijo for the bags and briefly looked through the car, finding a small amount of marijuana under the front passenger seat.

Small took the luggage back to his office and subsequently subjected it to a canine drug sniff. The dog alerted to both pieces of luggage, but a subsequent search revealed only one piece contained drugs, specifically cocaine.

Cf. United States v. Armijo, 781 F. Supp. 1551 (D.N.M. 1991).

Mr. Armijo has been charged in federal court with possession of cocaine. His mother, Mrs. Armijo, has been charged with possession of marijuana. You are a new assistant federal public defender in Albuquerque. Having recently arrived and having spent your first two weeks on the job learning how to spell Albuquerque, you have now been assigned a new task: file a suppression motion on behalf of both the Armijos. What are your arguments? How do you think the U.S. Attorney will respond? How successful will you be? Why?

II.
(60 minutes)

On the evening of September 13, 1989, Officer Heywood of the Philadelphia Police Department, while conducting an undercover investigation relative to the possible sale of narcotics, approached a North Gratz Street residence. When she reached the front of that building, the officer came into contact with an unnamed male who asked her if she would like to purchase some cocaine. After Officer Heywood replied in the affirmative and gave him twenty-five dollars, the man entered the residence. Several minutes later, he returned with five plastic packets of cocaine.

Following the completion of the drug transaction, Officer Heywood obtained a warrant to search both the residence and all persons therein engaged in either the destruction or concealment of evidence. Subsequently, after the male was arrested on a nearby street corner, several officers entered the house where they observed Wanda Lindsay attempting to conceal a brown paper bag between herself and the baby that she held. One of those officers, Corporal Gurski, removed the bag from her possession and discovered vials and packets of cocaine. He thereupon placed Lindsay under arrest and gave her Miranda warnings.

Lindsay responded that she wanted to see her lawyer. Gurski responded: "OK, you can see your lawyer down at the station house. What do you want us to do with your baby?" Lindsay replied: "I'll give you my mother's number to call and she'll come get her." Gurski: "I'm not turning this baby over to some doper. She's got to go to a foster home." Lindsay: "No. No. Don't do that. Don't worry, my mother don't do dope like I do."

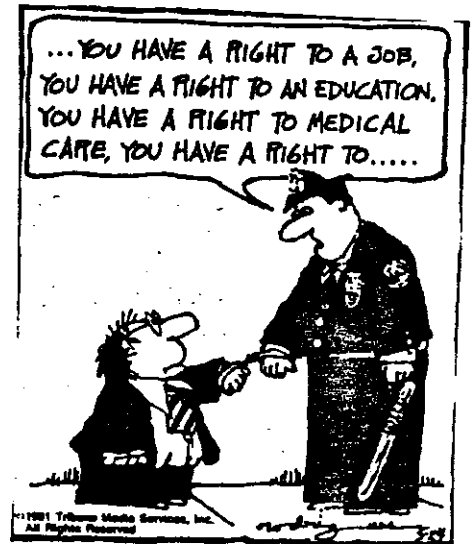
Subsequently, after Lindsay was taken to the station house, she received another complete set of Miranda warnings, to which she responded: "Look, I can't help it if I do dope, get me a lawyer to get me out of here so I can get home to my baby."

Cf. Commonwealth v. Lindsay, 595 A.2d 86 (Pa. Super. Ct. 1991).

Because you were bad in a prior life, you now find yourself employed by the Philadelphia District Attorney's Office. You have been assigned the prosecution of Wanda Lindsay for possession of cocaine. Lindsay's defense counsel, also a recent graduate of Pitt Law School (Section A), has indicated that she will file a motion to suppress the cocaine and both of Lindsay's statements that she "does dope." What specific arguments do you anticipate defense counsel will make? How will you respond? Who is likely to win? Why?

III.
(30 minutes)

Defendant X was being tried before a 12-person jury for the crime of rape in North Dakota state court. Midway through the prosecution's case, three of the jurors became ill from food poisoning (Watch those courthouse tuna sandwiches!) and were excused by the judge. The prosecutor and X's defense counsel, Y, stipulated that the trial could continue with the remaining nine jurors. Ultimately, the jury convicted X of rape on an 8 to 1 vote. (Assume that: (1) North Dakota requires 12-person juries in criminal cases unless the parties stipulate to fewer jurors; and, (2) that the North Dakota Constitution permits convictions on a 10 to 2 vote.) X now claims that her counsel, Y, was ineffective for stipulating to completion of the trial with only nine jurors. Discuss the likelihood that X will or will not prevail on this claim.



Charlie happens upon a philosophically liberal cop.

Professor Burkoff