

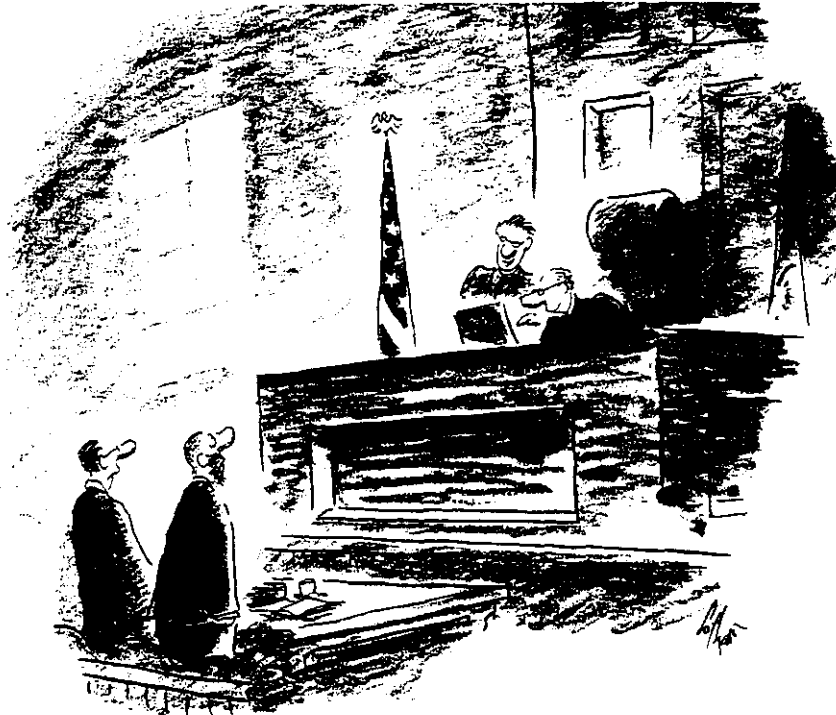
EXAM NO. _____

CRIMINAL PROCEDURE
SECTION B

Final Examination
May 1, 2003

2½ Hours
9:00 - 11:30

OPEN BOOK



“O.K., you’ve just sentenced him to twenty-five years to life—now push ‘send.’”

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)

Consider the following factual scenario:

“On May 20, 2001, a confidential informant working for the Highlands County Sheriff’s Office purchased cocaine and marijuana from Gregory Cassells at a restaurant in Avon Park, Florida. Based on this sale, the sheriff obtained a search warrant to look for drugs and paraphernalia at Cassells’ home which was only one block away from the restaurant. Ten days after the warrant was issued, at approximately 7:30 p.m., a small group of deputies went to the home to conduct surveillance and execute the warrant, if possible. Upon arrival, the deputies observed that Cassells’ car was not in the driveway and delayed execution of the warrant. Two hours later, the officers recognized Cassells as he drove into the driveway. The deputies immediately pulled into the driveway behind Cassells’ car. In addition to Cassells, there were three other occupants in the car, who were all young children.

“One of the deputies approached Cassells and informed him that they were there to execute a warrant. Another deputy took charge of the children to assure their safety during the search. As Cassells was exiting his car, he was asked if the home was occupied. Cassells stated that the house was unoccupied. The entry team then went to the front door. They knocked and announced, and waited approximately ten seconds before making a forceful entry into the home. No one was home. Thereafter, the warrant was read to Cassells, and he said: ‘Do I have to show you where my coke is?’ One of the deputies responded: ‘Whatever. It’s up to you,’ and Cassells then assisted the deputies in finding drugs and other contraband in the house.

“The young children in the car were also searched and seven baggies of marijuana were found to have been sewn into their clothing.”

Cf. State v. Cassells, 835 So. 2d 397 (Fla. Ct. App. 2003).

You now work in Avon Park, Florida, part-time as a cocktail waiter/waitress and part-time as a public defender.

(1) In your latter occupational capacity, what tenable arguments do you think Cassells has to suppress the narcotics and other contraband found in his home and on the young children and his statement to the police (“Do I have to show you where my coke is?”)? How likely are these arguments to succeed? Why?

(2) If—as a result of overindulgence at your other part-time employment—you show up for Cassells’ suppression hearing intoxicated and you forget to move to suppress the marijuana

found on the children and Cassells' statement, what chances of success will Cassells have on appeal (with a better attorney) of getting his conviction reversed because of your mistakes? Why?

II.

(60 minutes)

Wolf Blitzer ("Wolf") was driving along one day in a bright pink Humvee (which belonged to his girlfriend, Christiane Amanpour ("Christiane")), minding his own business, when he noticed in his rear-view mirror that he was being closely followed by a police cruiser (driven by Officer Larry King ("Officer Larry") who was following Wolf's car because he thought that Wolf "looked suspicious . . . like he was an Arab." Because it made him nervous to be so closely scrutinized by the police, Wolf immediately made a (lawful) left-hand turn into a McDonalds parking lot, pulled into a parking spot, and just sat there. Officer Larry turned into the lot as well and parked and watched Wolf's car. After Wolf just sat there for 10 minutes without getting out of the car, Officer Larry walked over and tapped on his car window. When Wolf rolled the window down, Officer Larry asked: "Why are you just sitting here in the parking lot?" Wolf answered: "Mexerxel zanwasse hoodiddle?" (Although Officer Larry did not know it, Wolf does not speak English. In Wolf's language—Hoogalian—what he said meant "Where is the post office?") Officer Larry responded: "What in the hell did you say? Are you making fun of me? Get out of the damned car!"

When Wolf did not get out of the car (remember, he does not speak English), Officer Larry opened the car door and pulled him out. While Officer Larry was grabbing Wolf to pull him out, he felt "lumps" in Wolf's right armpit that Officer Larry concluded must be "rocks" of crack cocaine. Officer Larry then said: "Hey, you're under arrest, buster," and he reached under Wolf's shirt and removed six tiny packages containing white powder from Wolf's right armpit. (The packages were later analyzed and found to contain only sea salt.) Officer Larry then searched the front and back seats of the Humvee and found nothing except a black leather jacket, laying on the back seat floor. In a pocket of the jacket which he unzipped, Officer Larry found a bag, which he opened and found a small box, which he opened and found a ball of tin foil, which he opened and inside found a tiny jade Buddha. Officer Larry then smashed the Buddha on the parking lot asphalt and discovered inside the broken Buddha a small amount of marijuana.

While he was searching the car, Officer Larry had also heard what sounded like scratching noises from inside the trunk. After finding the marijuana, Officer Larry asked Wolf: "Do you mind if I look in the trunk?" Wolf responded, "Oo-kay Doo-kay?," which means "What?" in Hoogalian, but which Officer Larry believed meant "OK." Officer Larry then pried open the trunk lid and found Connie Chung ("Connie") laying inside, bound and gagged. He immediately untied Connie, who said: "Thanks a lot. It was getting real stuffy back here. Wolf tied me up because I get pretty strange when I'm on 'E.'" (*Statement #1*) Officer Larry said: "E? You mean Ecstasy?" Connie answered: "Yeah, want some?" (*Statement #2*) Officer Larry answered affirmatively and Connie then handed him a bag from the trunk containing 116 Ecstasy tablets.

Officer Larry then said to Connie: "You and Ookay Dookay over there are both under arrest." Connie responded: "Oh, no! Not again! I'm going to have to pay my lawyer again? That's four arrests this Spring. Where the hell did I put his phone number?" (*Statement #3*) As Connie looked for the number, Officer Larry gave Wolf and Connie *Miranda* warnings and then asked Connie: "What were you arrested for the last three times?" Connie answered: "Sale of narcotics. At least this time you only got me for possession." (*Statement #4*) Finally fishing a phone number out of her purse, Connie then said: "Now let me call my attorney." Wolf said: "Yomama feshzatnik glazed binky" which means "I want a Krispy Kreme" in Hoogalian.

All of the foregoing events took place in Spittsburgh, Spennsylvania. Spennsylvania is one of the states in the United States. You are an Assistant District Attorney in Spittsburgh. Wolf, Christiane and Connie have all been arrested and charged with possession of narcotics (the marijuana and the Ecstasy tablets) by your office. Their defense attorney, John Burkoff (played by Freddie Prinz, Jr.), has filed a motion to suppress the marijuana, the Ecstasy, and Statements #1, #2, #3, and #4, all of which you would like to use in a trial of the three co-defendants. Discuss the likelihood of success of Burkoff's motion to suppress on behalf of the three co-defendants.

III.

(30 minutes)

"In London, police say that every worker or shopper is caught on at least 300 cameras every day." Alfred Lee, *Big Brother is Watching You*, THE STRAITS TIMES (Singapore), August 23, 2001, at 7.

"[In the United States,] the security industry estimates that more than 2 million surveillance cameras are in use across the country. In Manhattan in 1998, volunteers counted 2,400 electronic eyes in public places used to catch everything from red-light runners at traffic intersections, shoplifters outside grocery and department stores, and drug sellers loitering near lampposts." Spencer S. Hsu, *D.C. Forms Network of Surveillance*, WASHINGTON POST, February 17, 2002, at C1.

(1) When does the Fourth Amendment apply to the use by a private party or an agent of the government, acting jointly or separately, of a surveillance camera to watch your activities in a commercial building, on the street, in your car, or in your home?

(2) When does the Fourth Amendment apply to the use by a private party or an agent of the government, acting jointly or separately, of a surveillance microphone to listen to your conversations in a commercial building, on the street, in your car, or in your home?

Professor Burkoff

