

EXAM NO. _____

CRIMINAL PROCEDURE
Section A, B1 (A-K), B2

Final Examination
May 2, 2006

3 Hours
9:00-12:00

THIS EXAMINATION MUST BE RETURNED WITH YOUR BLUEBOOKS

CLOSED BOOK



"I'm encouraging him to stay in school and go into white-collar crime."

Instructions

There are two parts to this examination: Part I (multiple-choice questions), which must be answered on a scantron sheet; and Part II (one issue-spotting question), which must be answered in a blue book. Each of these two parts is worth 50% of the final grade on this exam.

In the issue-spotting question in Part II, please discuss all of the issues reasonably raised in that question even though your resolution of a prior issue may technically have made decision of 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 you need them. Specific citations to cases are welcome, but not as a substitute for analysis, i.e. do not use case citations instead of stating clearly the relevant point of law.

Part I

Select the letter of the answer that is the “best answer” for each of these questions, e.g. if answers (a) and (b) are both true and answer (c) is not true, then the “best answer” is neither (a) nor (b), but another letter stating that both (a) and (b) are true and that (c) is not true.

Note: There is ONE – and only ONE – “best answer” to each of these questions.

1. If reasonable suspicion exists to stop a person, the stopping police officer:

- (a) may lawfully decide not to stop that person.
- (b) may stop that person and search his or her person for crack cocaine.
- (c) will be making a constitutional stop under the Fourth Amendment even if the officer’s primary motivation is racist.
- (d) none of the above.
- (e) (a) and (c) above but not (b).

2. An affidavit supporting a search warrant:

- (a) may be challenged “on its face.”
- (b) may not be challenged by “going behind it.”
- (c) may be challenged by hitting it with a very large stick and yelling: “Booga Booga.”
- (d) none of the above.
- (e) (a) and (b) but not (c).

3. A defendant in a state criminal trial:

- (a) always has the right to trial by jury.
- (b) if tried by a jury, always has the constitutional right to be tried by twelve jurors.
- (c) if tried by a jury, always has the constitutional right to a unanimous jury verdict.
- (d) all of the above.
- (e) none of the above.

4. A consent search is *not* constitutional if:

- (a) the consent was obtained without informing the person whose consent is sought of his or her right not to consent.
- (b) the person whose consent is sought consents to the search, but also asks to talk to an attorney.
- (c) the person whose consent is sought does not give that consent voluntarily.
- (d) all occupants of the premises to be searched are not physically present at the time of the search.
- (e) the person whose consent is sought has diarrhea.

5. A Bill of Rights provision is applicable to state law enforcement authorities when:

- (a) a court finds that a fundamental right of the accused has been violated.
- (b) a court finds that the right involved was a fundamental part of dual sovereignty at the time the Bill of Rights was added to the Constitution.
- (c) the Supreme Court has selectively incorporated the right through the Fourteenth Amendment.
- (d) all of the above.
- (e) none of the above.

6. A criminal defendant's statements are admissible at trial when they were made during custodial interrogation by the police after the defendant received *Miranda* warnings where:

- (a) the defendant voluntarily waived her right to counsel and her right to silence.
- (b) the defendant voluntarily waived her right to counsel and her right to silence but had made the same statements previously while being interrogated in custody without having received her *Miranda* warnings.
- (c) the defendant voluntarily waived her right to counsel and her right to silence but asked to speak to a priest before talking and a priest was not obtained for her.
- (d) all of the above.
- (e) (a) and (b) above but not (c).

7. An indigent defendant has the right:

- (a) to have filing fees he or she cannot afford be paid for him.
- (b) not to be imprisoned for non-payment of a fine that he or she cannot afford to pay.
- (c) to appointed counsel on a discretionary appeal as long as it is the first direct appeal after the defendant's conviction.
- (d) all of the above.
- (e) (a) and (b) but not (c) above.

8. Automatic standing to raise the issue of a Fourth Amendment violation in a federal criminal prosecution:

- (a) is available whenever the accused is charged with a possessory offense.
- (b) is available whenever the accused was "legitimately on the premises" of a residence searched by the police.
- (c) is available whenever the accused is determined to have been the "target" of a police investigation.
- (d) none of the above.
- (e) (a) and (b) but not (c) above.

9. A defendant who pleads guilty prior to trial:

- (a) has a right to counsel at the guilty plea hearing.
- (b) cannot take a direct appeal to an appellate court.
- (c) has no right to represent himself or herself pro se.
- (d) all of the above.
- (e) (a) and (b) but not (c) above.

10. A police officer may *not* question a person:

- (a) who has been stopped while walking along minding his own business.
- (b) who has been stopped while driving his car by a police officer who saw him make an illegal left-hand turn.
- (c) who has been seized but who is not in custody.
- (d) if the answers to the questions being posed might tend to incriminate the person being questioned.
- (e) none of the above.

11. In executing a search warrant, the executing officers:

- (a) may always search anywhere in the search premises that the items specified in the warrant may be present.
- (b) may always seize paperwork that identifies the owner of the search premises.
- (c) may never look for evidence in places that the search premises occupants intend to remain private.
- (d) (a) and (b) above but not (c).
- (e) none of the above.

12. Physical evidence that has been seized unconstitutionally by the police:

- (a) may be admitted in the prosecution's case-in-chief if the trial judge determines that police officers would not be "incrementally deterred" by its admission.
- (b) may be admitted at trial to impeach the defendant's credibility if the defendant testifies to something that the physical evidence contradicts.
- (c) may be transmuted from straw into gold.
- (d) none of the above.
- (e) (a) and (b) but not (c) above.

13. The Supreme Court has ruled that an accused is “indigent” for purposes of the appointment of counsel when:

- (a) he or she has a gross annual income of less than \$6,000 a year.
- (b) he or she cannot retain an attorney without having to sell a residence or a vehicle needed for work.
- (c) he or she is “financially unable to obtain counsel.”
- (d) all of the above.
- (e) none of the above.

14. The good-faith exception to the exclusionary rule does *not* apply in federal cases:

- (a) when a reasonably-trained law enforcement officer would have known that the search was unconstitutional despite the issuing magistrate’s authorization.
- (b) when a law enforcement officer is acting in objectively reasonable reliance on an unconstitutional statute.
- (c) when a law enforcement officer makes an arrest based on an police record indicating erroneously the existence of an outstanding arrest warrant.
- (d) all of the above.
- (e) (a) and (b) but not (c) above.

15. People in the United States have a “reasonable expectation of privacy” for Fourth Amendment purposes:

- (a) in their physical location.
- (b) in the heat that they or their possessions give off inside their homes.
- (c) in what can be seen through their windows with high-powered binoculars.
- (d) in their psycho-sexual auras.
- (e) in their scents.

16. An anticipatory search warrant:

- (a) is unconstitutional.
- (b) is unconstitutional if the triggering event specified in the affidavit does not occur.
- (c) need not be based upon a triggering event.
- (d) (b) and (c) above but not (a).
- (e) none of the above.

17. A Bill of Rights provision is applicable to federal law enforcement authorities only when:

- (a) a court finds that a fundamental right of the accused has been violated.
- (b) a court finds that the right involved was a fundamental part of the Anglo-American tradition.
- (c) the Supreme Court has selectively incorporated the right through the Fourteenth Amendment.
- (d) all of the above.
- (e) none of the above.

18. A police officer may lawfully search an entire apartment where:

- (a) the only one of three occupants who is present gives her voluntary consent to the search and the other two occupants are in jail.
- (b) a person who the officer believes (reasonably but mistakenly) is the only one of three occupants who is present gives her voluntary consent to the search.
- (c) the search is pursuant to a lawful search warrant.
- (d) all of the above.
- (e) (b) and (c) but not (a) above.

19. When executing a search warrant, the executing officers:

- (a) may search anyone who is on the search premises.
- (b) may detain anyone who is on the search premises.
- (c) may use reasonable force, including handcuffing, on anyone on the search premises if they reasonably fear the risk of violence.
- (d) all of the above.
- (e) (b) and (c) above but not (a).

20. Evidence sought to be suppressed by an accused is *not* “fruits of the poisonous tree” when:

- (a) it is testimonial not physical evidence.
- (b) but for the government’s unconstitutional activity, the evidence would never have been discovered.
- (c) the government discovered it by use of an independent source.
- (d) all of the above.
- (e) (b) and (c) but not (a) above.

21. This Criminal Procedure course:

- (a) was absolutely terrific, in no small part because of the professor’s brilliance and *savoir faire*.
- (b) was taught at 9:00 a.m. on Tuesdays, Wednesdays and Thursdays.
- (c) was taught on the planet Earth.
- (d) all of the above.
- (e) (a) and (b) above but not (c).

22. A criminal defendant has standing to raise the issue of a Fourth Amendment violation:

- (a) if a law enforcement officer has listened to his or her telephone conversation.
- (b) if a law enforcement office has obtained information to be used against that defendant in a criminal proceeding from the defendant's alleged co-conspirator.
- (c) if the defendant was the target of a law enforcement "sting operation."
- (d) none of the above.
- (e) (b) and (c) but not (a) above.

23. An indigent defendant is entitled to the appointment of counsel when:

- (a) he or she faces potential punishment of more than 6 months incarceration.
- (b) he or she receives a sentence of at least one day in jail.
- (c) he or she receives a suspended sentence.
- (d) all of the above.
- (e) (b) and (c) but not (a) above.

24. Stand-by counsel:

- (a) is an attorney appointed to represent a pro se defendant only if the defendant decides not to continue representing himself or herself.
- (b) must be appointed when a defendant seeks to represent himself or herself pro se in a federal but not a state prosecution.
- (c) can be deemed to have acted ineffectively if he or she does not participate in the criminal proceedings.
- (d) all of the above.
- (e) (a) and (c) but not (b) above.

25. People in the United States do *not* have a “reasonable expectation of privacy” for Fourth Amendment purposes:

- (a) in “open fields” that are not part of the “curtilage” of their homes.
- (b) in the “curtilage” around their homes.
- (c) in their tire tread patterns.
- (d) in the contents of the letters that they mail.
- (e) (a) and (c) but not (b) or (d).

26. A defendant in a federal criminal trial:

- (a) always has the right to trial by jury.
- (b) if tried by a jury, always has the constitutional right to be tried by twelve jurors.
- (c) if tried by a jury, always has the constitutional right to a unanimous jury verdict.
- (d) all of the above.
- (e) none of the above.

27. A criminal defendant does *not* have standing to raise the issue of a Fourth Amendment violation:

- (a) if the defendant is only a passenger in an automobile stopped by the police.
- (b) if the defendant is only a social guest in someone else’s apartment searched by the police.
- (c) if the defendant is an overnight guest in an apartment searched by the police.
- (d) none of the above.
- (e) (b) and (c) but not (a) above.

28. A law enforcement officer making an arrest:

- (a) never needs to obtain an arrest warrant if the arrest is based on criminal activity the officer has observed.
- (b) may enter the arrestee's home to make the arrest even if the officer does not possess an arrest or search warrant and no exception to the warrant requirement exists.
- (c) may enter a third person's home (not the arrestee's home) to make the arrest if the officer possesses an arrest warrant for the person to be arrested.
- (d) all of the above.
- (e) (a) and (b) above but not (c).

29. A police officer may enter a person's home without a warrant and without that person's permission where:

- (a) the officer is entering in order to arrest an occupant who has committed a felony.
- (b) the officer reasonably believes that someone has been severely injured inside the home.
- (c) the officer reasonably believes that a terrorist is inside with a biological weapon.
- (d) the officer would like to watch the most recent episode of the *Sopranos* on a wide-screen TV and there is a 42" Sony Trinitron set inside the home.
- (e) (b) and (c) above but not (a) or (d).

30. Police may search the trunk of a car for evidence of crime:

- (a) when they have arrested an occupant of the car.
- (b) when they have arrested a recent occupant of the car.
- (c) when they have probable cause to believe that evidence of crime is in the trunk.
- (d) when they are searching for evidence of crime while doing an inventory search at a police impound lot.
- (e) all of the above.

31. Criminal defense counsel representing a defendant that counsel knows to be guilty must:

- (a) represent that defendant as if he or she was not guilty if that is what the client wants.
- (b) enter a plea of Not Guilty if that is what the client wants.
- (c) introduce perjured testimony if that is what the client wants.
- (d) none of the above.
- (e) (a) and (b) but not (c) above.

32. The federal exclusionary rule does not apply:

- (a) to private searches.
- (b) in federal habeas corpus proceedings if the defendant had a full and fair opportunity to raise his or her Fourth Amendment issues in the state courts.
- (c) to civil deportation proceedings.
- (d) all of the above.
- (e) (a) and (c) but not (b) above.

33. Probable cause to search a house exists where:

- (a) there is a fair probability that a known drug dealer resides in the house.
- (b) there is a fair probability that Martha Stewart has called her stockbroker from that house and might presently be inside preparing Frittata with Sausage and Pecorino without using fresh watercress leaves as is called for in her published recipe.
- (c) there is a fair probability that evidence of crime is presently inside the house.
- (d) none of the above.
- (e) (a) and (c) but not (b).

34. A search warrant:

- (a) containing a typographical error in the address of search premises is always defective as a violation of the particularity clause.
- (b) seeking to search for evidence that has not yet arrived at the search premises is always defective as a violation of the particularity clause.
- (c) based upon probable-cause information that is many years old is always defective.
- (d) none of the above.
- (e) (a) and (b) above but not (c).

35. The “plain smell” doctrine:

- (a) provides that a police officer may have probable cause to search a place if the officer smells the odor of burning marijuana coming from there.
- (b) provides that marijuana found during the course of a lawful search may be seized.
- (c) provides that an officer who stops someone based on reasonable suspicion that criminal activity may be afoot may have a dog or a small human sniff that person’s clothes.
- (d) none of the above.
- (e) (a) and (b) above but not (c).

36. An arrested suspect may be interrogated at the station house by the police:

- (a) if he has been *Mirandized* and has waived his right to silence.
- (b) if he has been *Mirandized* and has waived his right to silence, but has asserted his right to counsel and counsel is not present.
- (c) if he has been *Mirandized* and has asserted his right to silence, but a significant amount of time has passed and he has been re-*Mirandized* before being interrogated.
- (d) all of the above.
- (e) (a) and (c) but not (b).

37. The words "Criminal Procedure":

- (a) contain, in total, seventeen letters.
- (b) are "erudecorP lanimirC" when read backwards, if one had any antecedent justification to read them backwards.
- (c) rhyme with the words "Griminal Groceedyer" but not with the words "Triple Yoi."
- (d) all of the above.
- (e) none of the above.

38. If police have probable cause to believe that a package contains marijuana:

- (a) they may seize and search the package without a warrant wherever it is located.
- (b) they may seize and search the package without a warrant if it is located in the trunk of a car.
- (c) they may seize and search the package without a warrant if it is located in the passenger compartment of a car.
- (d) all of the above.
- (e) (b) and (c) above but not (a).

39. A criminal defense attorney who falls asleep for no more than a few minutes during his or her client's preliminary hearing proceedings:

- (a) is an example of automatic extrinsic ineffectiveness.
- (b) cannot be found to have acted ineffectively in the absence of proof of actual ineffectiveness that prejudiced his or her client.
- (c) can be waked up, hit with a stick and then immediately disbarred.
- (d) all of the above.
- (e) none of the above.

40. The exclusionary rule:

- (a) is inapplicable where a defendant is seeking to suppress evidence seized from his person pursuant to a *Terry* stop undertaken without reasonable suspicion by a stopping officer who was acting in good faith.
- (b) is inapplicable where the defendant seeking to suppress seized evidence has previously been successful in a § 1983 or *Bivens* civil action against the police officers in question.
- (c) is available where police officers search a home pursuant to a search warrant that is supported by probable cause to look for narcotics, but child pornography rather than narcotics are found in plain view.
- (d) (a) and (b) but not (c) above.
- (e) none of the above.

41. The inevitable discovery doctrine:

- (a) applies when the government presents evidence establishing beyond a reasonable doubt that law enforcement officers would have found the evidence sought to be admitted independently of their unconstitutional conduct.
- (b) is an exception to the normal application of the exclusionary rule.
- (c) does not apply where the law enforcement officers' unconstitutional activity was the "but for" cause of the discovery of the evidence sought to be admitted against the accused.
- (d) all of the above.
- (e) (a) and (b) but not (c) above.

42. A criminal defendant's statements are *inadmissible* at trial to impeach his testimony if and when he testifies in his own behalf if:

- (a) the statements were obtained without the defendant having received *Miranda* warnings.
- (b) the statements were obtained as a result of police coercion.
- (c) the statements were obtained after the defendant received *Miranda* warnings and asked to speak to an attorney, but no attorney was present when he made the statements.
- (d) all of the above.
- (e) (a) and (c) above but not (b).

43. After a person has been arrested, law enforcement authorities:

- (a) may take the arrestee into custody even if the crime which is the subject of the arrest is punishable only by a fine, not incarceration.
- (b) may strip search the arrestee.
- (c) may search the arrestee's purse and/or briefcase if the arrestee was carrying it when he or she was arrested.
- (d) all of the above.
- (e) (a) and (c) above but not (b).

44. In executing a search warrant, the executing officers:

- (a) must always "knock and announce" before entering.
- (b) may always enter forcibly if there is no response to a "knock and announce" within 15 to 20 seconds.
- (c) may not enter search premises if no one is home.
- (d) need not "knock and announce" if they possess reasonable suspicion that evidence is being destroyed inside the search premises.
- (e) (b) and (d) above but not (a) and (c).

45. A criminal defense attorney who concedes at trial that his client is guilty:
- (a) is an example of automatic extrinsic ineffectiveness.
 - (b) cannot be found to have acted ineffectively in the absence of proof of actual ineffectiveness that prejudiced his or her client.
 - (c) cannot be found to have acted effectively if his only rationale for making that concession was to have a better chance of avoiding the death penalty at a capital sentencing hearing.
 - (d) all of the above.
 - (e) (b) and (c) but not (a) above.
46. The federal exclusionary rule does not apply:
- (a) to forfeiture proceedings.
 - (b) to grand jury proceedings.
 - (c) to violations of the law rather than violations of the Constitution.
 - (d) all of the above.
 - (e) (b) and (c) but not (a) above.
47. A police officer searching an area lawfully:
- (a) may seize any evidence the officer comes across inadvertently if it is immediately apparent that the evidence has a nexus with criminal activity.
 - (b) may seize any evidence the officer comes across if it is immediately apparent that the evidence has a nexus with criminal activity, whether or not its discovery was inadvertent.
 - (c) may break open locked containers if those containers might reasonably contain items specified in a search warrant which was the authority for the search.
 - (d) all of the above.
 - (e) (a) and (c) but not (b) above.

48. An issuing magistrate's decision to issue a search warrant can be overturned by an appellate court:

- (a) if the appellate court concludes that probable cause was established by a totality of the circumstances.
- (b) if the appellate court concludes that a substantial basis did not exist for the issuing magistrate's decision to issue the warrant.
- (c) if the appellate court concludes that the issuing magistrate acted in good faith.
- (d) all of the above.
- (e) (a) and (c) above but not (b).

49. A thermal-imaging device used to look for heat patterns and heat sources in a person's home:

- (a) cannot be used by federal law enforcement agents.
- (b) cannot be used by state law enforcement agents.
- (c) can be used by federal or state law enforcement agents acting with probable cause and a warrant.
- (d) can be used by federal or state law enforcement agents acting without probable cause but with the existence of some exception to the "warrant requirement."
- (e) (c) and (d) but not (a) or (b).

50. An affidavit supporting a search warrant:

- (a) cannot establish probable cause if it is not attached to the warrant itself.
- (b) cannot establish probable cause if it contains material misstatements.
- (c) may establish probable cause even if it is not attached to the warrant and contains material misstatements.
- (d) (a) and (b) above but not (c).
- (e) (a) and (c) above but not (b).

Part II

Consider the following scenario:

“In late October of 2002, Marcel Tate and Shantell Smith purchased several guns. Some time after the purchase of the guns, Tate and Smith placed the guns in a vehicle that they then drove to the Dollar Inn, located at 6231 West Washington Street in Indianapolis, Indiana.

“On the evening of October 31, 2002, Marion County Deputy Sheriff John Howard, along with two additional officers, conducted a walk-through of the Dollar Inn where Tate and Smith were renting a room. This particular motel was targeted for periodic walk-through inspections by the Marion County Sheriff’s Department because of its reputation as a site of previous and ongoing criminal activity, primarily prostitution and drug sales. During their tour of the premises, Deputy Howard detected an odor of marijuana coming from the rear portion of the motel. Deputy Howard identified Room 140, rented to Smith and Tate, as the likely source of the scent by tentatively matching the odor to emissions from various rooms’ outdoor air conditioning vents.

“Deputy Howard then proceeded to knock on the door of Room 140, which was answered by Tate’s girlfriend, Nakisha Marfia. Although disputed by Marfia’s testimony at a pre-trial suppression hearing, Deputy Howard testified at trial that he asked Marfia for permission to enter the room and speak with her, and that she agreed. Marfia testified that Deputy Howard told her that he had a search warrant and that is why she let him in.

“Once inside the doorway of the motel room, Deputy Howard observed Tate sitting on the bed closest to the door, and a handgun sitting on a vanity toward the back of the room. Soon thereafter, Smith exited the bathroom, putting him in close proximity to the handgun on the vanity. The officers immediately lunged to confiscate the handgun and to restrain the room’s occupants, identified as Smith, Tate, Marfia, and Latoya Russell, who was found in the bathroom.

“After the room was secured, Deputy Howard observed other contraband, including a shotgun behind the room’s front door, a black powder gun near the television, a cross bow and arrow in an unlocked but closed suitcase, and some pellet guns adapted to shoot live ammunition covered by clothing between the television and vanity. In addition, by looking in the bathroom, Deputy Howard testified that he could see a small amount of marijuana on the back of the toilet. Deputy Howard then requested that Smith, the occupant under whose name the room was

registered, sign a form consenting to an official search of the room. Smith complied, saying, 'Look, we got nothing to hide. That little bit of dope. Man, that's all we got.' An additional small amount of marijuana was found in a subsequent search of Tate's toiletry kit.

"Furthermore, after all four were transported to the station house, a strip search of Russell turned up a quantity of cocaine hidden in her underwear."

Cf. Tate v. State, 835 N.E.2d 899 (Ind. Ct. App. 2005).

You moved to Indianapolis after law school graduation in order to be closer to the Indianapolis Motor Speedway, a significant part of the NASCAR circuit. You are now representing Tate, Smith, Marfia, and Russell, all four of whom have been charged with narcotics and weapons offenses.

(a) Discuss the chances of *each* of these defendants successfully suppressing all of the marijuana, the cocaine and all of the weapons (handgun, shotgun, black powder gun, adapted pellet guns, and crossbow) against him or her at trial?

(b) Discuss the chances of suppressing Smith's statement ("little bit of dope") against all four defendants.

(c) If you fail to file a suppression motion on behalf of each of these four defendants, discuss the chances that their subsequent convictions might be overturned on appeal as a result of your ineffective assistance of counsel.



"Wow—the house I was using as a hideout has tripled in value since I was arrested."