

CRIMINAL PROCEDURE
SECTION B

Final Examination
April 30, 2009

3 Hours
1:00-4:00

OPEN BOOK



Instructions

The three problems are of equal weight. They will be graded equally. 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 scenario:

“A patrol officer stopped Larry Matthews for driving 48 miles per hour on a street with a posted speed limit of 25 miles per hour at 3:32 in the morning. The officer approached Matthews’s car and obtained his driver’s license and insurance card. While doing so, he noticed a young female in the front passenger seat ‘bouncing . . . uncontrollably’ with bloodshot eyes, ‘a sunk-in face,’ and ‘very rough skin.’ Based on her appearance and behavior, the officer asked her for identification. She replied that she did not have any, but provided the officer with a name and date of birth that would have made her 19 years old.

“The officer returned to his patrol car to conduct a standard check for outstanding warrants on both Matthews and his passenger. While he was waiting for the information to return, the officer wrote a speeding ticket for Matthews.

“When the passenger’s information ‘did not return,’ the officer became concerned. In his experience, ‘nine times out of ten’ the information does not return ‘because they have a warrant or they’re suspended or they’re on probation or parole. Something’s going on.’ His concern was amplified by her strange behavior and appearance, and the fact that ‘[s]he looked younger than the age she gave me.’

“The officer returned to Matthews at the driver’s window to ‘to make sure [he] didn’t make a mistake with her name and her date of birth’ and to give Matthews a ticket. The passenger told him that she possessed a driver’s license and identification card and gave the officer a different name with the same date of birth. The officer returned to his patrol car again to confirm the new information, which also did not return on file. Convinced that the passenger was lying to him, the officer approached the passenger side of Matthews’s car to talk with her. She appeared ‘highly intoxicated’ to the officer, and he smelled alcohol on her breath. He administered an alco-sensor test of her breath, which was positive for alcohol. The officer concluded that it was unlawful for her to consume alcohol based upon the date of birth she had provided. When confronted by the officer, she admitted that she was highly intoxicated and claimed that Matthews was her uncle who was giving her a ride home. She also provided a different date of birth that made her 17 years old.

“At this point the officer tried to confirm whether Matthews was her uncle. He returned to Matthews’s side of the car, and Matthews denied that he was her uncle. While talking with Matthews, the officer noticed a cigarette box in Matthews’s crotch area that was also underneath his right leg. It looked odd to the officer because a plastic bag was sticking out of the corner. The officer asked

Matthews what was inside the box and Matthews replied that he did not know because ‘the girl just gave it to him to hide.’ The officer grabbed and then looked inside the box, and discovered crystal methamphetamine. The officer then searched Matthews’s car and found a pipe with residue in a ‘side cupholder pocket’ of the center console and a small additional amount of methamphetamine inside a crumpled envelope in the trunk.

“When the officer showed Matthews the methamphetamine in the envelopes, he asked him: ‘Is this yours?’ Matthews admitted that it was.”

Cf. Matthews v. State, 670 S.E.2d 520 (Ga. Ct. App. 2008).

All of the foregoing took place in rural Cherokee County, Georgia. After graduating from Pitt Law School, you accepted a position as an Assistant Public Defender in Cherokee County to get away from big cities and all of the drug use there. Larry Matthews, your client, has been charged with: possession of methamphetamine; possession of narcotics paraphernalia (the pipe); and contributing to the delinquency of a minor.

(a) What tenable arguments can you make to exclude admission into evidence of all of the methamphetamine, the pipe, and the statements made both by Matthews and the young female (who turned out to be Angel P.) who was riding in Matthews’s car? How will the prosecution respond to these arguments? What are your chances of success? Discuss.

(b) If you decide not to make a suppression motion on Matthews’ behalf because you are convinced he will lose that motion, and if Matthew is subsequently convicted on all counts, can appellate counsel obtain a new trial for him based upon your failure to bring the motion? Discuss.

II. (60 minutes)

The Spittsburgh, Spennsylvania Police Department received an unsigned, hand-written letter in the mail which read in its entirety as follows:

I ain’t snitching on nobody or nothin, but my muther tol me that her friend said that Troyetta Pollalalulu is selling meth up at her house over on Marlburrow Stret. The one with the blue shudders. She gets the stuff from up at Butler from some guy named Big Fred, or somethin like that.

Officer Caserina Hampton in the Narcotics Division of the Spittsburgh Police Department had previously received information that someone living in Butler, using the nickname “Big Red” was making and distributing methamphetamine in the Spittsburgh area, so he decided to check into this tip. He discovered that a woman named Troyetta Polamalu lived at 5117 Marlborough Street in Spittsburgh. That residence had blue shutters on the windows. Hampton

arranged to have that residence surveilled surreptitiously. In the course of 24 hours of surveillance, police officers observed 37 separate individuals making brief visits to the residence, usually lasting no more than five or ten minutes.

Based upon all of this information, Hampton sought and obtained a search warrant to search 5117 Marlborough Street for methamphetamine. Executing officers arrived with the warrant at 10:00 at night, knocked on the door, and yelled "Police. Open up!" When no one answered the door within ten seconds, the officers broke it down, entered, and searched the residence from top to bottom. No one was home. Although they did not find any methamphetamine, they did find some letters sitting out in the open on a desk. They seized these letters and took them back to the station house. The letters were from someone named Willetta Parker who indicated in them that she lived in the house on Marlborough Street, and that Troyetta sold her the home two weeks before. Willetta also wrote in one of the letters that she had moved to 453 Beeler Street in Spittsburgh. The letters also implied that Willetta and Troyetta were engaged in a conspiracy to manufacture and sell (on a web site called ShtubShlub.com) fake tickets to Spittsburgh Speelers professional football games. Knowingly making, possessing and/or selling fake tickets to professional athletics events is a felony in Spennsylvania.

Officer Hampton immediately obtained a warrant for 453 Beeler Street to search for evidence relating to fake athletics event tickets. Officers arrived at the residence at 6:00 a.m. the next morning, knocked on the door, and yelled "Police. Open up!" The door was immediately opened by Hinetta Ward, who was dressed only in a skimpy nightgown. Some of the officers rushed right by her to search the residence, while one of them, Jamesetta Harrison, accompanied Hinetta to her bedroom so that she could get dressed. When Hinetta opened a dresser drawer and reached in to take out underwear to put on, Jamesetta pushed the underwear aside and, reaching underneath it, retrieved two small packets. One packet contained methamphetamine. The other contained brownies. "Aha," said Jamesetta, "you do meth, don't you?" Hinetta responded: "Look, it's just a little meth, honey. Don't get so damned worked up."

Meanwhile, the officers searching the rest of the house found three shoeboxes full of fake Speelers tickets, which they seized. And when they searched the back bedroom, they found Benetta Roethlisberger fast asleep on a futon. Benetta shrieked when she saw the police, who pulled her out of bed, cuffed her, and told her that she was under arrest. They then asked her whether she wanted to get dressed before going to the station house. Benetta said: "So you found the tickets, huh?" Officer Hampton said "yes," and immediately gave Benetta *Miranda* warnings. At this point, Benetta whispered, "you know, if you would just forget about this, you could have season Speelers tickets for life." Hampton got very defensive and did not respond. After Benetta got dressed, a subsequent strip search of her person turned up two small packets, one of which contained methamphetamine, and the other of which contained a tiny, heart-shaped key.

Hinetta and Benetta were both taken back to the station house. They each demanded to see a lawyer. But the officers there neither obtained a lawyer for either of them nor took either of

them before a magistrate. While they were in jail, Benetta yelled through her cell door: “What does a criminal have to do around here to get some damned attention?” And Hinetta yelled through her (adjoining) cell door: “Anyone here have some meth they can loan me? I’ll replace it with some of my own after I get out of this place. And you can have some good Speelers tickets, too.”

You are an Assistant District Attorney in Spittsburgh. The District Attorney, John Burkoff (played by Ray Lewis) has charged Hinetta and Benetta with the crimes of possession of fake professional athletics event tickets and possession of methamphetamine. Their defense counsel, Santonietta Holmes, has moved to suppress the letters taken from the Marlborough residence, and the tickets, the methamphetamine, and each and every one of the statements that Hinetta and Benetta made within the hearing of the police officers at the Beeler Street residence and while they were in jail. What tenable arguments can Santonietta make to support her suppression motion? You have been assigned by Burkoff to tackle a response to this motion. What arguments can you make in response? Who will win this suppression motion? Why?

III. (60 minutes)

Professor Melton Hazmat-Asquando of Johns Hopkins University School of Law has recently made the following comments:

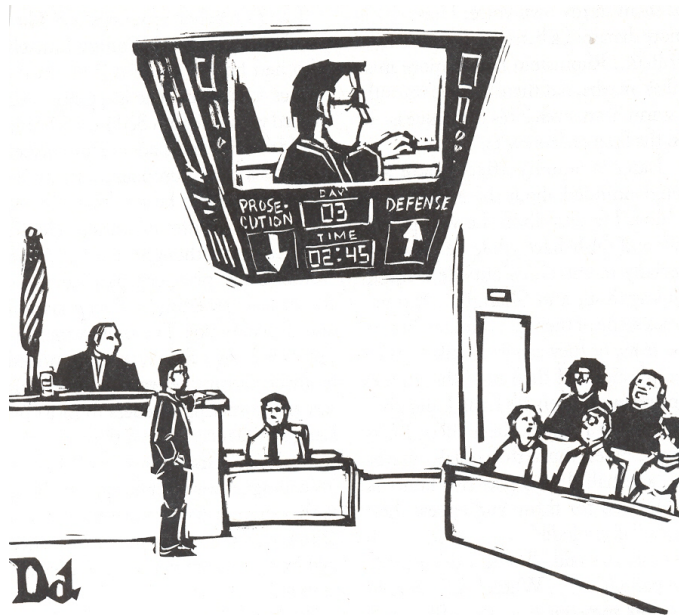
In criminal procedure cases handed down during the past few Terms of the Supreme Court, two of the justices, Chief Justice Roberts and Justice Kennedy, have played particularly critical and dispositive roles in determining which way the Court decides some of the most significant and controversial cases. * * *

For his part, Chief Justice Roberts has proven himself to be essentially neutral on criminal procedure issues. By that, I mean that more often than not, he acts – as part of his perceived function as Chief Justice, perhaps – as a consensus builder. He simply joins the majority bloc in its opinion, whether or not that majority is ruling in favor of the prosecution’s position or in favor of upholding the criminal defendant’s vision of the proper scope of his or her individual rights.

In contrast to the Chief Justice’s role, Justice Kennedy, particularly since Justice O’Connor’s retirement from the Bench in early 2006, has proven to be a reliable fifth – and sometimes, a sixth – vote for the more conservative bloc on the Court in criminal procedure cases. He has regularly and consistently sided with this group in their Fourth, Fifth, and Sixth Amendment decisions, all of which tend to favor the prosecution’s position.

Melton Hazmat-Asquando, *Modern Fourth Amendment Epistemology: Reflections on Justice, Justices, Photo Realism, and the Pasa Double*, 81 BRANDEIS LAW REV. 1181, 1193 (2008).

Do you agree or disagree with Professor Hazmat-Asquando's conclusions? Citing and discussing specific criminal procedure decisions that you have read and/or that we have discussed this semester, explain why or why not.



"It's clear from the replay that it was a leading question."

Professor Burkoff