

EXAM NUMBER _____

UNIVERSITY OF LA VERNE COLLEGE OF LAW

Course Name: **Criminal Procedure Investigation**
Instructor's Name: **Professor Goldstein/Anderson**

Semester/Year **Spring 2006**
Date of Exam **May 7, 2006**

No. of Questions **1 essay and 7 multiple choice.**
No. of pages **11 pages**
Length of Exam **3 hours**

DO NOT TURN BEYOND THIS COVER UNTIL INSTRUCTED TO DO SO BY THE PROCTOR.

BE SURE YOUR EXAM NUMBER IS ENTERED ON THIS SHEET AND ALL OF YOUR BLUEBOOKS.

NO WRITING OR TYPING WILL BE PERMITTED AFTER TIME IS CALLED.

REMINDER: DO NOT TAKE ANY EXAMINATION QUESTIONS, ANSWERS OR MATERIALS OUT OF THIS ROOM UNLESS INSTRUCTED TO DO SO. IF YOU HAVE QUESTIONS CONCERNING A POSSIBLE ERROR IN THE EXAM, GO TO THE PROCTOR. IF YOU NEED TO GO TO THE REGISTRAR'S OFFICE, LEAVE YOUR EXAM PAPERS COVERED ON YOUR DESK.

SPECIAL INSTRUCTIONS: Part one: Write answers in the blue books provided.
Part two: Write answers on the separate answer sheet.

Outside materials that may be used during the exam are: **None**

Do not discuss legal doctrines not covered in class nor within the material assigned during the semester.

***** Good Luck *****

QUESTION #1

Outland Police Officer Jones a 10 year veteran of the department, received a confidential tip from an informant that the resident of 100 Jersey Street was manufacturing methamphetamine. On one prior occasion this same informant had provided reliable information regarding the sales of methamphetamine. Within a few days of receiving this "tip" Officer Jones and three other officers went to 100 Jersey Street. The residence at this location was a single story home surrounded by a three foot chain link fence. The Officers opened the unlocked front gate and followed a path to the front door. At the front door they noted a covered trash can. When Jones removed the lid he saw dozens of paper towels with red staining. Jones had been taught that this red staining on the towels was an indication of the manufacturing process of methamphetamine.

Jones knocked on the door and Betty Smith answered the door. Upon request by Jones, Betty identified herself as a resident of 100 Jersey Street. Officer Jones told her that he was investigating narcotics activity. He told Betty to step outside and speak with him and the other officers. Betty complied and left the front door open. As Betty approached Jones noted that Betty reached into her rear waist band in a suspicious manner. While speaking with Betty, Jones and the other officers noticed a strong chemical odor coming from the interior of the house. Jones yelled at Betty about the odor and told her he knew she was making drugs inside. She denied this and explained that the odor was from acid she was using to clean an antique. Jones had learned that some types of acid are used in the manufacturing process for methamphetamine.

Jones had also been taught that the process of manufacturing methamphetamine was very dangerous and prone to trigger explosions.

Jones decided to conduct a brief pat-down of Betty's outer clothing. During the pat-down Jones felt an object that he believed was an identification card or credit card in Betty's front pocket. Jones had been taught that drug users will use a plastic credit card to "cut" drugs for use. Jones reached in and removed a credit card in the name of Vick Brown from Betty's pocket.

Jones then told Betty that she was under arrest for the manufacture of methamphetamine. He further advised her that the residence was being frozen and that no one would be allowed to enter or exit until a search warrant was obtained.

Jones wrote a search warrant on scene containing all the information mentioned above. He took the completed warrant to a neutral and detached magistrate who signed the search warrant. On this same date a search pursuant to the search warrant was conducted at the residence. Inside the residence Officer Jones found the manufacture of methamphetamine occurring.

Prior to removing Betty from the area of 100 Jersey Street, Jones was informed that there was a legally valid arrest warrant for petty theft for Betty Smith. Betty was taken to the Outland Police Station. She was properly read her Miranda rights by Officer Jones. She knowingly, intelligently and voluntarily waived her rights. She told Jones that she was addicted to drugs and had been in counseling for depression. She told Jones she wasn't guilty. She said she had been set up by local gang members that she feared and hated. When she was asked to elaborate she said she wanted a lawyer. Jones escorted her to a holding cell and said "Well here you go. Now you can sleep with your gang member friends." Betty shrieked "why am I being put with gang

members." Jones told her to tell the truth and he would help her. She was then re-mirandized and confessed to the manufacture of methamphetamine.

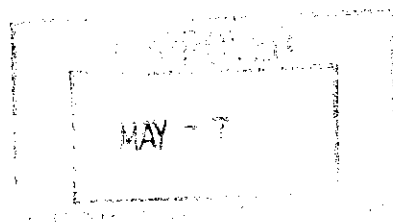
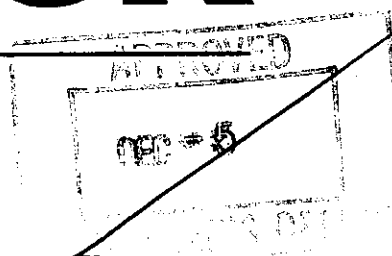
The next day Officer Jones received a call from Vick Brown. He told Officer Jones that Betty had stolen his credit card. Betty was charged with manufacturing methamphetamine and possession of the stolen credit card.

Please analyze any potential United States Constitutional challenges to any of the evidence or statements contained above.

USE YOUR IMAGINATION

Blue Book

EXAMINATION BOOK



Box No. _____

NAME 910
SUBJECT Crim. Pro.
CLASS _____
SECTION Evening
INSTRUCTOR Goldstein
DATE May 7, 2006

11" x 8.5"

8 LEAVES 16 PAGES

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ID: 910

SP06-Criminal Procedure (Goldste. Professor Goldst...

ID: 910 (Exam Number)
Exam Name: SP06-Criminal Procedure (Goldstein)
Instructor: Professor Goldstein
Exam Date: May 7, 2006
File Name: 910-SP06-CriminalProcedure(Goldstein)-060507.xmd

Grade: _____

1)

I. Informant Information:

Was officer Jones justified in his reliance on the informant?

Reliance on an informant, for purposes of probable cause to effectuate a search, requires a totality of the circumstances. Some circumstances to look at are the previous reliability of the informant, corroborating evidence, statement against the suspect's interests, etc.

Officer Jones went to an informant who, albeit only once, had previously provided good information. Further, the suspect stated that the resident of the suspected house was manufacturing methamphetamine. While there is no information that may show that the informant had an ulterior motive for providing the information, there is no information showing that the informant was not a stand up citizen.

Further, based on the information given, it is quite possible that Officer Jones could have sought and received a search warrant at this phase of the investigation, since Officer Jones knew what he was looking for, knew where it would be located, and had the informant's statements. All that would be required is that Officer Jones created an affidavit, which is devoid of lies and misstatements, and submit it to a neutral and detached magistrate. Unfortunately, Officer Jones opted to continue with the investigation without securing a search warrant at this point.

Officer Jones was justified in his reliance upon the informant, for purposes of establishing probable cause.

II. Entrance to the Yard at the Suspected Residence:

Were Officer Jones and his compatriots legally justified to enter the front yard of the residence, without a valid search warrant?

Generally, state actors can enter a property, so long as it does not impede on the resident's expectation of privacy within the curtilage of their home.

Here, there was a fence erected around the outside of the front yard, however, it was only three feet tall. A resident can hardly expect to have a right to privacy of their front yard with only a three foot tall fence. Couple this with the fact that the gate to the front yard was left open (not locked), shows that there was no expectation of privacy in the front yard.

As such, the police officers were legally justified in entering the front yard of the residence.

III. Opening the Trash Can in the Front Yard:

Was Officer Jones act of looking in the trash can a valid search?

Generally, looking through discarded waste is not considered a search, since the person discarding that waste has no expectation of privacy in articles that have been discarded.

Here, there are two factors that tend to establish that there was an expectation of privacy in the trash. First, there was a lid on the trash can, which officer Jones personally removed. The lid would take the trash out of the realm of plain view. Second, the trash can was not on the street waiting for the trash truck; it was within the fenced off front yard of the residence, near the front door. Given the placement of the trash can, Officer Jones would have no clue as to what it contained, were it not for his

looking inside of the trash. The placement of the trash can could be for any number of storage purposes beyond a mere trash receptacle.

Overwood

Further, aside from the informant tip, there is nothing conspicuous about this residence such that Officer Jones could establish probable cause for the search of the trash can.

As such, the search of the closed garbage can placed at the front door was likely a search that ran afoul of the Fourth Amendment. Officer Jones should have obtained a search warrant or consent from the owner, before searching the trash can.

IV. Encounter with Betty at the Front Door of the Residence:

Did Officer Jones' instruction to Betty, for her to step outside the interior of the residence, amount to a detention and interrogation?

A detention and interrogation, for Fifth Amendment purposes is an inherently coercive atmosphere. As such, Miranda Safeguards were put in place to inform the person being interrogated of their rights. These Miranda safeguards need not be recited to the suspect until the suspect is placed in a situation where the reasonable person would not feel free to leave. Any statements derived from situations where Miranda safeguards have not been issued may not be used in trial (though they can be used for impeachment and at non-trial hearings).

Officer Jones, accompanied by three other officers, approached Betty's front door. Officer Jones "told Betty to step outside and speak with him and the other officers." When Betty received the order to step outside, she complied with the order, but did not offer to step outside. This initial fact seems to show a lack of voluntariness (i.e. a lack of consent) on Betty's part, since she was obeying an order issued by a

police officer. Under this situation, where four police officers are barking orders at a person, it would be hard to believe that a reasonable person would feel free to leave and/or discontinue the questioning, even though they were right on their doorstep. The orders being issued seem to be a convenient way of intimidating someone into helping the police sidestep Fourth Amendment search and/or arrest warrant requirements.

As a result, any statements by Betty, at this point, would be inadmissible at trial, for purposes of direct testimony.



V. Odor Emanating from Betty's Residence:

Would testimony about the odor, emanating from the front door, be admissible at trial against Betty?

Betty left her front door open when she was ordered out of the house. Providing that Betty was actually being detained and interrogated, the odor emanating from the house could be "fruits of the poisonous tree." However, there would be an argument that the police officers would have "inevitably discovered" the odor (and obviously the methamphetamine operation along with it).

Further, and probably more convincing, is that the evidence derived from the odor could be admissible under extenuating circumstances. Officer Jones smelled the acid emanating from the residence, and, due to his training, remembered that the chemicals used to make Methamphetamine were highly explosive. As such, any yelling and questioning, which would otherwise be Miranda defective, could be justified as trying to avert imminent harm to the surrounding community. Though, given that Officer Jones did nothing about the chemicals and took the time to "Pat Down" Betty, lead me to believe that Officer Jones assessed the situation and found that there was no

imminent threat to the community.

VI. Officer Jones' Pat Down of Betty

Was the Pat Down valid under Terry v. Ohio?

Terry v. Ohio provides that an officer may validly stop a person upon reasonable suspicion that a crime has been committed, and may "pat down" the person if there is reason to believe that the person may be armed.

Here, if the detention of Betty was found to be a Terry Stop, the Pat down would likely be found valid. Since officer Jones had the informant tip that the resident was manufacturing Methamphetamine, and Betty identified herself as the resident, officer Jones would likely be able to formulate reasonable suspicion for the stop. When Betty exited the front door of her residence, she "reached into her waistband in a suspicious manner." As such, Officer Jones could reasonably believe that Betty was concealing a weapon. Because of this, Officer Jones would be legally justified, under Terry v. Ohio to "pat down" Betty.

However, as was described previously, I believe that the officers should have obtained a warrant previously. This would have given them the ability to search Betty's Grab Area.

Providing that this was a Terry Stop, and the stop had not yet exceeded the scope of Terry v. Ohio, then the Pat Down was valid and legally justified because of the reasonable suspicion that Betty may have a concealed weapon.

VII. Officer Jones' Confiscation of the Credit Card, Found During the "Pat Down":

Was Officer Jones Legally Justified in removing the card from Betty's clothing?

During a Terry Stop, officers may pat down the individual if there is a reasonable belief that the person may be armed. The scope of the "Pat Down" is to search for weapons, but if the officer can deduce that there is hidden contraband on the individual's person, the officer can remove the contraband. The officer is not allowed to manipulate the suspected contraband in any way beyond patting it.

Here, Officer Jones "Patted Down" Betty and removed a card from her person, which Officer Jones believed to be an ID Card or Credit Card. Officer Jones knows that these type cards can be used to "cut" drugs for use. Even if these cards can be used to help process the drugs, they are hardly contraband, and so Officer Jones would not be justified in removing the card from Betty's person. Further, Officer Jones would find it difficult to articulate how he would have mistaken the card for a weapon or contraband.

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Also, If officer Jones wanted to effectuate a search of Betty's Person, he would not be justified, at this point, to search her, since he did not believe that she was under arrest at that point. As such, it would not be a search incident to arrest nor would there likely be any other valid exception to the necessity for a search warrant. Note that there is a high expectation of privacy regarding searches of the Person.

As such, the card would not be admitted into evidence, since it is the result of an invalid "Pat Down", which rose to the level of a search. Any evidence derived from this would be inadmissible. So the name on the card, which indicates that the card has been stolen, would not be admissible, since it is "Fruit of the Poisonous Tree."

VIII. Officer Jones' Arrest of Betty:

Officer Jones informed Betty that she was under arrest. He informed her that her residence was being frozen and that no one was allowed to enter or leave the

residence from this point on. This affirmatively ends all arguments that Betty would be free to leave, from this point onward, since Officer Jones stated that no one would be allowed to leave and that Betty was actually under arrest.

IX. Officer Jones' Search Warrant:

Is the search warrant, which Officer Jones drafted on the premises, a valid search warrant for the residence?

A search warrant, in order to be valid, must be devoid of any misstatements or lies, be based on the affidavit submitted by the officer based on an assertion of Probable Cause, the search warrant must be certain to its terms, and it must be submitted to a neutral and detached magistrate. Probable cause is based on a totality of the circumstances, where the officer must show that the area is a high crime area, the suspect's conduct is odd, there are admissions by the suspect, the suspect has a record, and/or there is other corroborating physical evidence.

Here, there are no facts that indicate that Officer Jones made any lies or misstatements in the warrant. The warrant was drafted by the officer and it spelled out what was being sought and where. It was submitted to a neutral and detached magistrate. The establishment of Probable Cause, to search the residence, would be based on the area being a high crime area, which is evidenced by the gang activity mentioned in the facts. Further, there was the odd behavior of Betty acting like she was hiding something on her person. There is the odor emanating from the house, which is supporting physical evidence. There is the informant's tip and there is the admission that Betty was using acid (even though she did not admit that it was being used for manufacture of methamphetamine.

Yes, the warrant is valid for the aforementioned reasons.

X. Betty's Admission, that She is Addicted to Drugs:

Is Betty's admission, that she is a drug addict, valid under the Fifth Amendment?

For the admission to be valid, when the suspect is in custody, there must be a valid Miranda warning and a valid waiver of the rights enunciated in the Miranda warning.

Here, Betty was properly Mirandized. "She knowingly, intelligently, and voluntarily waived her rights." As such, everything that was said or admitted, from the point of the commencement of interrogation at the station, up to the point that she asserted her right to counsel, is proper and valid.

XI. Statements that Betty Made After Her Assertion of the Right to Counsel:

Are statements made, by Betty, after her assertion to the right to have counsel present, allowed, even though Betty did not have counsel present?

Once an assertion to the right of counsel has been made, under Miranda v. Arizona, all questioning must cease, and no more questioning can take place without counsel being present.

Here, Betty asserted her right to counsel after her admission that she was set up by a local gang. Betty actually asserted when she was asked to elaborate on her "set up" comment. At this point, all police questioning should have ceased. Instead, police used coercive tactics to elicit a confession from Betty. The police used her comment, that she was afraid of gangs, against Betty, by putting her in a cell with those gang members, and only allowed her to leave the cell when she agreed to confess. The

police must "Scrupulously Honor" Betty's assertion of the right to counsel, which they did not do.

As such, everything that was said by Betty, after her assertion of the right to counsel is invalid and is inadmissible at trial.

XII. Betty's question as to why she is being placed in a cell with a gang:

Is Betty's statement "why am I being put with gang members?" enough that Betty reinitiated the police interrogation?

A simple question, such as "What is going to happen now", is enough to reinitiate police interrogations. Re initiation must only be some affirmative act, done by the suspect, to reinitiate the interrogation.

Here, Betty did ask a question, but the only reason was that Officer Jones was using coercive tactics to overcome Betty's free will, in order to elicit a confession. In light of the egregious behavior of Officer Jones, in not "scrupulously honoring" Betty's assertion of the right to counsel, coupled with the type of force used on Betty, the confession would not be valid.

XIII. Betty's confession, after being Mirandized a second time:

Is the confession, which Betty signed after being re-mirandized, a valid confession?

The confession must be made "Knowingly, intelligently, and Voluntarily" for it to be admissible, where Miranda Rights were read.

Here, given the circumstances, the confession made after being Re-Mirandized can hardly be considered voluntary, since the police used tactics that could cause Betty

harm. Further, Betty had already asserted her right to counsel, and that assertion was not "scrupulously honored."

As such, the confession is invalid.

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END OF EXAM