

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 887
SUBJECT _____
CLASS Criminal Procedure
SECTION _____
INSTRUCTOR Goldstein
DATE 5/7/06

MAY 7

11" x 8.5" 8 LEAVES 16 PAGES

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1)

Whether the tip received from the confidential informant was enough for PC?

The fourth amend prohibits the warrantless search and seizure of persons, their property and effects w/o probable cause. In order for a warrant to be obtained, there must be probable cause, (PC), and that is an officer's reasonable objective standard used by an officer in believing that the suspect has committed a crime (for arrest Warrants) and/or a particular item/instrumentality of a crime is to be found at a given location (for search warrants). In order to show such PC exists to obtain a warrant, the courts today use the Gates' "totality of circumstances" test, which is a test that has incorporated the old rule of Aguilar-Spinelli into itself. Under this test the court looks into all factors, some of the most important ones being the reliability/veracity of the informant, his/her basis of knowledge, corroborating information, whether officer observed any info on his own, officer's expertise and experience in the field, and if under considering all the given factors, the court then decides as to existence of PC and issues a warrant.

Here the informant was confidential/anonymous, but he had been reliable in the past, although the facts don't mention anything about how he came about knowing what he knew; there is also no mention of the officers having had observed anything on their own, no mention of corroborating evidence either. But we are told that Jones is a 10 year veteran who had some minimal if not more training in regards to manufacturing methamphetamine. Given the facts here, it does not seem like that Jones had enough

PC to get a Warrant (W), for arrest or for a search. An anonymous tip, even from a reliable informant with no other corroboration etc., is unlikely to convince a magistrate to allow one's constitutional rights to be free from unreasonable searches and seizures under the 4th amend to be violated. So there was no PC for a W.

Whether Jones violated Betty's 4th amend rights by entering her front yard?

One has the outmost protection of the 4th amend for their home. However we must look at the facts to see if that protection is extended here to the front yard, etc. The home is considered one's residence, any building attached to it such as a garage, or even buildings not attached to it but where one does intimate activities, such as a shed, also the 4th protects the curtilage of your home. It can be argued that the officers were in the curtilage of Betty's home, the curtilage being the immediate area surrounding the residence, one has a reasonable expectation of privacy there. The test for reasonable privacy is a two part test (Katz), where the court asks whether the person here had a reasonable expectation of privacy in the area searched and whether such expectation is considered to be reasonable by society. Betty's lawyer can argue that she had such an expectation of privacy and they shouldn't have entered w/o a warrant. However the state can rebut by saying that although it was the curtilage of her home her expectation of privacy is much lower than what it is inside her home. This was the front of her door, the officers entered through an open gate (door was not locked), so this pretty much means that any member of the public had access to it, and Betty's argument that she

had a high expectation of privacy there wont hold. Jones didnt violate her 4th amend right by entering the front unlocked gate and walking towards the door of her residence. NO warrants were needed so far.

Whether Jones violated Betty's 4th amend right by looking into her trash can?

The court has held in the past that one does not have a right to privacy in their trash can, simply because its open to the public, meaning any member of the public can have access to it (homeless people, kids, animals) and therefore no expectation of privacy. However there is an exception though where the trash can is not on public road or if within the curtilage of the home where no one from the outside has access to it. Meaning that even if it was within the backyard, but someone can very easily still access it then still there would be no search under the 4th amend, however if it was somewhere within the curtilage of the home where no one would really have access to it w/o some sort of huge intrusion into Betty's privacy, then it would be considered a search and a warrant is required. Here Betty can argue that the three foot chain link fence is evidence of her trying to keep out the public from her property, as well as the fact that the trash can was covered should be more evidence that she intended to keep whatever is in it to herself and away from the eyes of the public. She can then argue that what the officer did in looking into the trash can constituted a search under 4th amend and he couldnt do it w/o a search warrant which he did not have.

In rebuttal the state can argue that although the trash can was in the curtilage of her home and covered it was still very easily accessible because anyone could very easily

walk in just the same way Jones did and look into it. The front gate was open and it was followed by a path to the front door meaning this was the main entry to the residence, and anyone trying to get to the door, would have to walk through the front gate, and on their way to the front door see and have the opportunity to examine the trash can.

Of course if the court finds that she had no expectation of privacy in the trash can on her property, then the evidence, the towels with the red stains found in them are admissible in trial against her. However if the court finds that what Jones did was a violation of 4th amendment rights, then the towels would be excluded via the Exclusionary Rule which states that any evidence obtained via a violation of the 4th amendment is excluded from the case in chief of the prosecutor against defendant, (although it can still be used to impeach defendant, but not his witnesses). (Ohio v. Mapp)

Only those with standing can assert 4th amendment violation of their rights under the exclusionary rule. (Rakas).

Was Betty in custody while being interrogated by Jones at her front door?

One is considered to be in custody if a reasonable person in their place under the circumstances would not believe they were free to leave, or believe that their freedom of movement has been substantially interfered with. (Mendenhall test). One is in Custodial Interrogation where one is in custody (reasonably believes to be in custody) and the officer has initiated questions either expressly or in anyway equivalent to it which is likely to induce the suspect to make self incriminating statements (Nix v.

Officers are allowed to do a brief pat-down when they have a reasonable suspicion that the suspect at hand is armed and maybe dangerous. No PC required for such pat down, and its very much limited to the outer clothing of the suspect, no further manipulation of any objects felt is allowed. Under Terry officer can pull out any objects he by simple patting down of the outer clothing believes to be a weapon or if he comes across an abject he belives to be contraband, he can also pull that out under the Plain Touch doctrine (Dickerson). The state will argue that officer was justified in doing the pat down, due to Jones having a reasonable individualized suspicion that she was armed because he saw her reach into her rear waist band in a suspicious manner thinking she was hiding some sort of a weapon. The defense however will argue that he had no reason to believe she was armed, they had come to her home, she was alone at the front door, their were not only one but four officers (jones and 3 more) at the scene. Also the denfese could argue that simply seeing or allegedly seeing her touch her wrist band in a suspicious manner doesnt equal to reasonable suspicion to do a Terry, because very unlikely that she could have any type of weapon hidden under her wrist band with which she could harm/threaten four armed officers!

The court more than likely will find the Terry a violation of the 4th.

Jones upon conductin the Terry came upon finding the credit card. Although pulling it out, etc is allowed under the plain touch doctrine, since it was a fruit/product of the illegally conducted Terry to begin with its out under the exclusionary rule and may not be used against Betty at court for being in possession of a stolen credit card.

Whether Jones needed an arrest warrant to arrest Betty?

The police can not enter one's home w/o a search warrant or an arrest warrant unless in a very few circumstances (ex. exigent circumstances). This was the rule court adopted in Payton v. Ny, saying pretty much that a warrant is required if one is to be arrested in their home. The police needs at least an arrest warrant to arrest you in your home, search warrant is not needed to arrest you in your own home, (although needed if you were being arrested at a home of a 3rd party). An arrest warrant is not needed even if the police is arresting the suspect at home when there are exigent circumstances (ex. hot pursuit) or consent by the suspect. Also an arrest warrant is not needed when one is being arrested within the curtilage of their home or at their door. One can be arrested in public without a warrant if there is PC that he/she has committed a crime. Here the officers wouldnt need an arrest warrant to arrest here where they did since she wasn't in her home at time of arrest. Defense can argue that she was asked to come out of the home and did so under the impression that there would be a mere questioning by the officers. So although they didn't need an arrest warrant to arrest her outside of her home they still needed PC to do so and based on the discussion before, they did not have PC (Gates discussion above, it didnt pass the Gates totality of circumstances test). So the arrest too was illegal and in violation of the 4th amend. The state can also try and argue that no warrant was needed to arrest Betty because of exigent circumstances--under this doctrine the police can arrest one even at their home w/o a warrant if their are exigent circumstances (such as hot pursuit, imminent destruction of evidence, or like safety issues). The facts indicate that the process of manufacturing methamphetamine was very dangerous and prone to trigger explosions, and so perhaps the state can argue under this stating there was a public safety as well as officer safety at issue here which excuses the fact that they didn't get a warrant.

Unsure of whether such argument would hold however since the arresting of Betty didn't really do anything about the 'exigency of the circumstances', nothing was done at the time she was arrested to prevent possible explosion. (unless the state argues that if she were allowed to go back in the home and not be arrested, she could've caused an explosion by continuing to make methamphetamine!).

Whether it was constitutional for officer to freeze the residence until a warrant can be obtained for its search?

Yes, officers are allowed to freeze the residence or any other area where they have PC to find evidence/instrumentalities of a crime for a reasonable period of time until a warrant can be obtained. This is to preserve the evidence and the intrusion is outweighed by its overall benefit to society and public safety.

Whether the search warrant written on the scene was valid?

For a search warrant to be valid, it must have PC, be signed by a neutral magistrate, it must contain an affidavit by the officer, and must very specifically state the persons/areas/things to be searched in the most descriptive and detailed way possible to the officers. Here Betty's best way to attack the Warrant is to argue that there was no PC for it. The officers obtained the information they obtained illegally, and so the info gathered for the PC was a product of 4th amend violation and therefore is out. Officers aren't allowed to go about conducting in illegal behavior, gathering incriminating info about one and then based on that info get a warrant to search the house of

suspect. Here there was no PC to search the house or arrest Betty to begin with as discussed above, so whatever other info was found on the premises was also obtained illegally. However the state can rebut this argument perhaps by arguing the plain view doctrine. Under the plain odor/smell doctrine officer can seize or get PC to arrest/seize evidence/persons whom in plain view are either committing a crime or are evidence of one. For the doctrine to apply the officer first of all has to be in a place where he has the right to be (here Jones was, he had the right to be at the front door of her house, this was no violation of any right, or law), officer must have a legal vantage point, pretty much meaning that he could smell (hear/view for plain view or plain hearing) without doing anything illegal, and that the smell was apparant, meaning he didnt have to do anything other than ordinary (which is simply breathing and smelling) to smell it. Officer was familiar with the smell of such drugs and acids due to his experience and knew what they were. No search warrants are needed to seize objects under the plain view/smell doctrines, only PC.

Defense will argue that even though in plain smell of the officers, had it not been for the illegal detaining/seizing of Betty they would not have obtained the other information (the smell) and so they are a fruit of the poisonous tree under the exclusionary rule which states that any incriminating evidence derived from illegal conduct by police under the 4th is out. The state however can rebut this by saying even if that is true, the officer would've been able to obtain a warrant at a later time for the search of the house due to him smelling the drugs, which would hten corroborate the informant's tip, resulting in PC to get a warrant for the search, which would then fall under the Independent source doctrine which is an exception to the Fruit of the poisonous tree/exclusionary rule. This doctrine states that evidence that although

originally found by illegal means, if later re-discovered by legal means/independent source would be admissible. If the court accepts this argument then the warrant to search the house would stand and any evidence found in it would be admissible.

The state can also argue under another exception to the 4th amend Exclusionary rule, which is the good faith exception. Under the good faith exception if under the given circumstances if the officers in good faith reasonably relied on the warrant executed by the magistrate and didnt lie in the affidavit as to the information, and then executed the warrant which was then found to be invalid (as here lets say the judge finds that the W is invalid per the argument above), the evidence would still be admitted. (Leon). So in another words if the officers reasonably and in good faith relied on the reliability/validity of the warrnant in executing it, then the evidence obtained at Betty's home would still be admissible. So even though earlier stated that the evidence would be out since the PC for it was lacking, it is possible that the court might let it in anyway afterall under this exception to the rule.

Whether Betty's waiver of Miranda rights was voluntary?

The facts state that Betty waived her rights voluntarily, knowingly and intelligently. For one to waive these rights one must know so in an affirmative way leaving no ambiguity behind for the officer, no exress/written waiver is required so long as the behavior/conduct of the suspect suggest to a reasonable person that he/she has waived her/his Miranda rights.

Whether Betty's confession after having been read Miranda is admissible against

her?

For a confession to be admissible against the party confessing, it had to have been made voluntarily, knowingly and intelligently without any undue influence, and duress. Being in custody all by itself is inherently coercive and Betty can argue duress. The burden of proof is on her to prove it, and more than likely she won't be able to show it based on the facts given. She stated she wanted a lawyer after having made some incriminating statements. At this point having invoked her right to counsel under Miranda, Jones was required to stop all questioning and get her a lawyer. He was not to question her about anything else till her lawyer was present (Miranda right to counsel is not offense specific, he was not allowed to discuss any other crime with her at this point on). Instead of terminating all questioning, he continued to make statements. Betty was under custodial interrogation here at the police station, custodial interrogation is when the police expressly or in any other way equivalent to it questions the suspect or creates a setting where the suspect is reasonably expected to make incriminating statements against him/herself. One has the right to be not compelled to incriminate himself under the 5th amend. Here after Betty stated she wanted a lawyer, (she did so very clearly leaving no ambiguity-- which is what is required of a suspect to do, if police unclear of whether you're invoking your right to counsel, then they are to assume you haven't invoked it--must specifically say you want a lawyer) Jones made statements about her going to a jail cell to sleep with her gang friends after having been told by Betty that she was fearful of them. This was in a sense coercive conduct compelling Betty to make self incriminating statements against herself after she had already invoked her right to counsel under Miranda. It was an indirect threat of fear by Jones knowing

she feared the gang members and she was forced to make statements against her interest/incriminating herself in order to help herself not have to go in the jail cell with the gang members. She did not voluntarily then make the following statements.

It's important to also note the fact that Jones even promised her leniency if she were to talk, and defense can argue that the tactics used here by Jones were unethical and deceptive, and coercive compelling Betty to make self-incriminating statements, and since they were made in violation of Betty's 5th amendment as well as Miranda rights and should be excluded.

She was then mirandized and then confessed to the whole thing. Voluntary statements that are miranda-defective or in violation of 5th amendment even if excluded by the court can still be used to impeach defendant at trial, however involuntary ones are inadmissible for all purposes. Defense can argue that the statements made after the 2nd Miranda were all involuntary because due to unconstitutional tactics by Jones in overcoming Betty's will and not scrupulously honoring Betty's right to counsel after having invoked it.

Here Betty was first mirandized, then she made some incriminating statements, then she invoked the right to counsel under Miranda and then instead of it being scrupulously honored she can argue to have been coerced/compelled to making incriminating statements against herself in violation of the 5th. Therefore her lawyer can motion to have the statements made after her second Miranda excluded. They can argue a violation of her 5th amendment right which prohibits one from being compelled to be a witness against one's self by making testimonial incriminating statements against him/herself.

Taking it even back one more step, Betty was illegally arrested and then taken to the police station (in custody), mirandized and then made self incriminating statemtns, then invoked the right to counsel (Miranda) and then was coereced into making more incriminating statements. She can argue that her initial statements made after the first time she was Mirandized were inadmissible against her in the case in chief of the prosecutor because although voluntary at the time they were a result of an earlier 4th violation of the police. The state will argue that even if the alleged argument is true, the intervening facts and time cleanse the confession/statements, specially the fact that she was read her Miranda rights, and made the incriminating statements afterwards. The court has found in the past that a statement made later after having been Mirandized although a fruit/prdocut of an earlier 4th amend violation can still be admitted (Elstad).

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END OF EXAM

