

EXAM NUMBER _____

UNIVERSITY OF LA VERNE COLLEGE OF LAW

Course Name: Criminal Procedure

Instructor's Name: Professor Goldstein and Professor Anderson

Semester/Year: Fall 2006

Date of Exam: December 13, 2006

NO OF QUESTIONS	1
NO. OF PAGES	4
LENGTH OF EXAM	2 hours

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

Be sure your exam number is entered on this sheet and all bluebooks in which you write.
Do not put your name on any materials.

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, see the proctor.

At the end of the exam, please put all materials together inside of one bluebook before you turn it in to the proctor.

SPECIAL INSTRUCTIONS: See first page of exam.

MATERIALS THAT MAY BE USED DURING THE EXAM ARE: None.

IMPORTANT:

Writers: Write on only one side of page in your bluebooks.

Typists: Show proctor you have ended exam before exiting the room; upload your exam answers within 12 hours.

FALL 2006 – CRIMINAL PROC.
FINAL EXAM – EVENING DIVISION
PROFESSOR GOLDSTEIN/ANDERSON

The following examination consists of 4 pages (exclusive of this cover sheet). This is a closed book exam. There is one question. The time allotted for the exam is two hours. Make sure each blue book contains your exam ID number. Make sure your writing is legible. Do not write on the backside of pages. Good luck.

For two weeks, ten-year old Mary S. had been attending fourth grade at a new school in a small town named Elkview. Her parents were getting a divorce. One day shortly after being released from classes, Mary remembered she had left her backpack in a classroom. Mary went to the room. The lights were off in the room. Mary could just barely see her backpack. She rushed in to grab her backpack. Just as Mary turned around to leave two people grabbed her and assaulted her. During the attack Mary tried to scream and one of the assailants told her repeatedly to, "shut up". The attack lasted less than three minutes. Mary's mom found her in the room crying.

Law enforcement was summoned. Mary gave a statement to Detective Dean about the incident. Within ten days, police investigation resulted in the arrest and formal criminal charges against two men- Defendant Smith and Defendant Harris. Defendant Harris was employed as a janitor at the same school. The citizens of this small community were outraged over the attack at their school.

On the day of their initial arraignment Defendants Smith and Harris were brought to court. They were arraigned and entered pleas of not guilty. Defendant Harris was appointed Deputy Public Defender Dan and Defendant Smith was appointed private counsel Rogers. Following the entry of pleas and appointment of counsel, the court considered the issue of bail. The local bail schedule for Elkview required that bail be set in the amount of one million dollars. Despite the fact that neither defendant had a criminal record, the Judge (who was up for re-election) stated on the record that given his concern about public outrage, he would set the bail for each defendant-over both defendant's objections-at five million dollars. The case was then set for preliminary hearing.

Following their arraignment, the two defendants were marched in custody, in jail

uniforms and in chains down a back court hallway. Mary also happened to be in the hallway waiting to testify in her parents divorce case. While in that hallway Mary saw the defendants. She told her mother that Defendant Harris was one of the men who attacked her. She did not identify Defendant Smith. The next day Mary told Detective Dean and the prosecutor about her identification in the hallway.

After the arraignment, both attorneys for Defendants Smith and Harris remained in the courtroom and did not witness the exposure of Mary to the Defendants. Deputy Public Defender Dan had been an attorney with the public defender's office for five years. This was his first child assault case. Attorney Rogers had been an attorney for twelve years and specialized in child assault cases.

Two days before the preliminary hearing, Detective Dean arranged for a live line-up to occur at the jail so that Mary could have a chance to identify Defendant Smith. On the date set for the live line-up Detective Dean left a message on Attorney Roger's voice-mail telling him about the time and place of the line-up. On the date set Detective Dean selected five similar appearing inmates to stand in a line with Defendant Smith behind two-way glass. (The inmates couldn't see out). Attorney Rogers didn't show. After waiting half and hour the line-up proceeded. The only people present were Mary, the jailers, the prosecutor, Detective Dean and Public Defender Dan, who was only present because his client in an unrelated matter was in the next line-up. Mary did not immediately make a selection. Detective Dean told Defendant Smith to yell "shut up" three times. After the line-up, Mary told Detective Dean in the presence of Deputy Public Defender Dan that Defendant Smith "maybe was the other guy".

During the preliminary hearing, Mary testified about the attack. She identified both Defendant Smith and Harris and said she was really sure. Neither defense counsel objected to

the in-court identification. On direct examination, Mary confirmed that she was familiar with Defendant Harris because of his custodial duties at the school. She did not testify on direct examination about seeing the Defendants in the hallway or the live line-up. Deputy Public Defender Dan asked no questions in cross-examination. Attorney Rogers cross-examined Mary about her in court identification of Defendant Smith. He did not ask Mary, nor did she reveal any details of the live line-up. At the conclusion of the preliminary hearing the defendants were held to answer for trial.

Prior to trial, both attorneys made written request for all relevant discovery including any and all exculpatory information. At a pre-trial hearing Defendant Smith told the court directly that he didn't like his lawyer and that he thought it would be a good idea for him to be his own lawyer in the trial. The court ignored this statement. No additional discovery was provided.

The case proceeded to trial by jury. During jury selection the prosecutor used all of her peremptory challenges against the only six Hispanic jurors. Only Attorney Rogers objected. The judge inquired as to the prosecutor's reasons. The prosecutor explained that given the fact that neither Defendant was Hispanic neither had a right to question her use of peremptory challenges. The court made no further inquiry and the Defendants lodged no additional objections on this issue.

During the trial, Mary testified consistently with her preliminary hearing testimony. She identified both defendants on direct examination and stated she was "really sure". Deputy Public Defender Dan cross-examined Mary about her prior less than certain identification of the Defendant Smith at the live line-up. This was the first time Attorney Rogers had learned that the live line-up had actually proceeded. Rogers objected to the late discovery, objected to the in court identification and requested a mistrial. His requests were denied.

The court recessed for its normal afternoon break. There was apparently one day left in the trial. After the recess, Defendant Smith stated directly to the court "I want to represent myself for the rest of the trial". The judge denied this request. The trial finished without either defendant calling any witnesses. Following argument, instruction and deliberation, both defendants' were convicted of child assault. After the verdict and sentencing, the prosecution told Attorney Rogers and Deputy Public Defender Dan about the identification that occurred in the hallway of the court following the defendant's arraignment.

Assuming a timely notice of appeal is filed for each defendant, please analyze any and all potential constitutional issues in the convictions of Harris and Smith.