

EXAM NUMBER _____

UNIVERSITY OF LA VERNE COLLEGE OF LAW

Course Name: Criminal Procedure
Instructor's Name: Professors Goldstein and Anderson
Semester/Year: Fall 2007
Date of Exam: December 6, 2007

NO OF QUESTIONS	One Question – two parts
NO. OF PAGES	3
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: None

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.

On August 2, 2006 Mr. T was found shot dead in the family home he shared with his wife Mrs. T and their two small children in Omaha, Nebraska. When police arrived at the scene of the shooting Mrs. T told them that her husband had been abusing her and the children for years. She told the police that she finally snapped. Mrs. T was charged with murder pursuant to a Nebraska statute which allowed for conviction based upon a showing of an unlawful killing of a human being with malice aforethought in the absence of substantial peril to the Defendant. Prior to trial and after the preliminary hearing, Mrs. T was offered a plea to a reduced charge and two years in prison. The prosecutor informed Mrs. T through her attorney that if she didn't accept the disposition the Prosecutor intended to join a second case to the murder information alleging multiple counts of welfare fraud against Mrs. T. The welfare fraud allegations had previously had a preliminary hearing and prior to his death charged Mr. T as well. Defense counsel advised Mrs. T that her maximum exposure was life in prison. Mrs. T rejected the disposition.

The prosecutor then filed an amended information alleging the murder of Mr. T as count one, count two and three were the welfare fraud allegations. Prior to trial defense counsel brought a pre-trial motion for severance of the murder allegations from the welfare fraud allegations. In denying the motion the trial court noted that judicial efficiency favored consolidation.

The matter proceeded to jury selection. The voir dire process was completed after both sides waived challenges for cause. The prosecution used his first four peremptory challenges against women and his next two against Hispanic males. Mrs. T (who is Asian American) through her counsel objected and asked that the jury be struck. The trial judge found a prima facie showing and asked the prosecutor to state his reasons for the record. The

prosecutor responded that the first female juror excused had young children and he feared she would identify with the defendant. The second female juror had a voice tone that disturbed the prosecutor and the third and fourth had been previous domestic violence victims. In explaining his peremptory challenges against the two Hispanic jurors the prosecutor expressed concern that perhaps domestic violence had touched their lives. The trial judge denied the motion to strike the panel.

The Defense theory was that the killing occurred during a domestic assault and thus provided a defense to the charge of murder. A Nebraska statute provided for such a defense when the Defendant could show by a preponderance of the evidence that she entertained a reasonable apprehension that she would sustain great bodily injury or death to herself or her minor children.

During the trial and against his client's wishes defense counsel failed to call a witness who had observed prior acts of domestic violence by the deceased against Mrs. T. Defense counsel felt the testimony would more likely establish mutual combat between the two. Prior to the lunch recess Defense counsel was cross-examining the investigating Detective. The judge was annoyed it was taking so long. The court announced that Defense counsel would have twenty more minutes to complete cross examination of this witness. After twenty minutes, and in the middle of a question, the Court ended the cross examination.

During a heated exchange about the cross examination of another witness the prosecutor referred to Mrs. T as a "bitch" in front of the jury. Without any objection by any party the trial judge dismissed count three of the information as a sanction for the prosecutor's outburst. Following three days of trial and four days of deliberations the jury returned guilty verdicts as to the murder allegation and the remaining welfare fraud allegation.

One week after the verdict Defense counsel was advised by the prosecutor that he had failed to provide a prior incident report and photographs that were taken of Mrs. T in 2000 when the police had been called to the home upon complaint that Mr. T "face punched" Mrs. T.

Defense counsel made a motion for a new trial. In denying the motion the trial judge noted that the late discovered evidence probably wouldn't have made a difference. The judge did dismiss the remaining welfare fraud allegation noting that it was way to weak for his court room and probably shouldn't have been joined.

At sentencing the judge found that the killing was particularly callous thus triggering a Nebraska statute which allowed the trial court to elevate stated prison sentence from life with parole to life without the possibility of parole. Your firm has been retained to analyze the potential appellate issues.

#1 Please analyze the potential United States Constitutional Violations that may have occurred in convicting Mrs. T and any potential prosecutorial responses to these violation.

#2 Could the prosecutor appeal/retry Mrs. T. for either of the welfare fraud allegations?