

## CRIMINAL PROCEDURE EXAMINATION

Judge Brogan – May 6, 2004

Instructions: Answer all six questions. They are equally weighted at 20 points each for a total of 120 points. Good Luck!

### Question 1: (30 minutes)

The respondent, Daniel Murphy, was convicted by a jury in an Oregon court of the second-degree murder of his wife. The victim died by strangulation in her home in the city of Portland, and abrasions and lacerations were found on her throat. There was no sign of a break-in or robbery. Word of the murder was sent to the respondent who was not then living with his wife. Upon receiving the message, Murphy promptly telephoned the Portland police and voluntarily came into Portland for questioning. Shortly after the respondent's arrival at the station house, where he was met by retained counsel, the police noticed a dark spot on the respondent's finger. Suspecting that the spot might be dried blood and knowing that evidence of strangulation is often found under the assailant's fingernails, the police asked Murphy if they could take a sample of scrapings from his fingernails. He refused. Under protest and without a warrant, the police proceeded to take the samples, which turned out to contain traces of skin and blood cells, and fabric from the victim's nightgown. This incriminating evidence was admitted at the trial.

The respondent appealed his conviction, claiming that the fingernail scrapings were the product of an unconstitutional search under the Fourth and Fourteenth Amendments. You are an appellate judge, how would you rule and why?

### Question 2: (30 minutes)

Nathan Ramirez and Jonathan Grimshaw were both found guilty, after separate trials, of the first degree murder of Mildred Boroski. Grimshaw was sentenced to life in prison, and Ramirez, age seventeen, was sentenced to death.

Both prior to and during trial, Ramirez moved to suppress his confession. The trial court denied both motions and the confession was introduced as substantive evidence against him. The pertinent facts surrounding the confession follow.

The victim's body was found in an open field not far from her home. Her death was caused by two gunshot wounds to the head. The subsequent investigation revealed that someone had broken into her home and stolen some items of jewelry, her gun, and about \$35. There was evidence that the victim had been raped before her death.

Grimshaw, who was the victim's neighbor, soon became a suspect. After several

interviews and a final interrogation lasting several hours, Grimshaw confessed his involvement in the crime. Although Grimshaw gave several inconsistent versions of events, he eventually admitted his involvement in the crime, but pointed to Ramirez as the ringleader.

In order to convince the police of the truthfulness of his statements regarding Ramirez's involvement, Grimshaw phoned Ramirez from the station while the sheriff's detectives listened in and recorded the call. During the call, Ramirez and Grimshaw discussed the items of physical evidence related to the crime that were in Ramirez's possession and made plans to destroy the victim's automobile to eliminate evidence of the crime.

Ramirez was at home around three o'clock that afternoon when, shortly after the phone call, a sheriff's deputy arrived wearing a badge and carrying a firearm. The deputy asked Ramirez to produce the physical evidence in his possession linked to the murder, including the suspected murder weapon and some of the victim's jewelry. According to the deputy, Ramirez was a "little hesitant at first, [and] denied having the articles." After the deputy informed Ramirez that he knew about the phone conversation with Grimshaw, Ramirez turned over the items that were in the house and accompanied the deputy to retrieve other items. The deputy then asked Ramirez if he would be "willing to come with [him] to the sheriff's office" to speak with a detective. Once transported to the station, Ramirez was placed in a small room and questioned by two other detectives.

The entire interrogation at the station was videotaped and is part of the record on appeal. The videotape reveals that the lead detective began the interrogation by questioning Ramirez about how the items came into his possession. When Ramirez initially claimed that Grimshaw gave him the items, one of the detectives informed Ramirez that:

[R]esources indicated that you may have some involvement in the case. . . . What I want you to do is I want you to be honest with me. *The indication we have is that both you and John [Grimshaw] are involved. I want you to tell me what happened that night. I know you were there. I wouldn't be here if I didn't know that. You know what I'm saying?*

After these statements by the detective, Ramirez admitted breaking into the victim's house the night of murder.

It was only *after* this admission that the second detective suggested that Ramirez be informed of his *Miranda* rights. The detective said:

Why don't you let Nate [Ramirez] know about his rights. I mean, he's already told us about going in the house and whatever. I don't think that's going to change Nate's desire to cooperate with us.

Ramirez then asked if he was "Like being placed under arrest?" to which the other detective responded, "No, no, I'm just reading your rights at this time." After the *Miranda* rights were

administered, Ramirez acknowledged what the detective had read by nodding and stating, "I guess that is what I'm here for."

Ramirez eventually admitted his involvement not only in the burglary, but also in the murder. He stated that he was the one who shot the victim, denied any involvement in the rape, and claimed that he was acting at Grimshaw's direction. Only after Ramirez fully confessed to the murder did the detectives belatedly obtain a written waiver of his *Miranda* rights. When Ramirez was asked to sign the waiver of rights form after he had fully confessed, the lead detective asked him to acknowledge that he had not been promised anything or been threatened before giving his statement. Ramirez's response was that the detective had only promised to be his friend.

You are the trial judge, would you suppress Ramirez's confession? Explain your reasoning.

### Question 3: (30 minutes)

Loretta A. Ramos pled no contest to aggravated possession of drugs after the Cook County Court of Common Pleas overruled her motion to suppress. The court found her guilty and sentenced her to six years of imprisonment. On appeal, Ramos asserts one assignment of error:

At approximately 5:45 a.m. on November 19, 2001, Ohio State Trooper Sgt. Joe Luebers stopped a white sport utility vehicle ("SUV") driven by Ramos for a marked lanes violation. The trooper had previously been alerted by an anonymous call that a vehicle matching Ramos' SUV was weaving within its lane. Ramos informed Sgt. Luebers that she had swerved, because an ash had gotten in her eye. Ramos was traveling with two passengers: a woman in the front passenger seat and a man lying in the back seat. Ramos explained that she had driven to New York to pick up her sister-in-law, Maria C. Soto (the front seat passenger), who was at a battered women's shelter, and that she was taking her back to Dayton. Ramos later identified the male passenger, Ryan Johnson, as her son-in-law, whom she explained had driven with her for protection. Sgt. Luebers ran a check on Ramos' and Soto's identifications. According to the videotape of the traffic stop, at 5:53 a.m., the trooper learned that Ramos' driver's license had expired. Ramos later indicated that neither Soto nor Johnson had valid driver's licenses either. At 5:58 a.m., the dispatcher informed Sgt.

Luebers that Ramos had had a drug trafficking charge in September 2001.

At approximately 5:57 a.m., Sgt. Luebers requested a canine unit. At the hearing on Ramos' motion to suppress, Sgt. Luebers testified that he summoned the K9 unit, because "[t]here was something. that was not right about that stop." He indicated that Ramos' explanation of her trip to New York made him suspicious. He noted that

there was no luggage in the car and that the front seat passenger was very nervous. Sg1. Luebers testified that he also considered the back seat passenger's behavior to be another indicator of criminal activity. Specifically, he pointed to Johnson's being curled up in a fetal position and his lack of movement during the traffic stop. The trooper further testified that there was an "immense odor of air fresheners." According to the videotape of the stop, at 6:31 a.m., Sg1. Luebers commented that there was cinnamon scented "air freshener galore."

At approximately, 6:00 a.m., State Trooper Meyers arrived. Sg1. Luebers asked Ramos to return to his vehicle with him while the two passengers remained in the SUV. Sg1. Luebers testified that he began to write the citation for Ramos at 6:06 a.m. He indicated that the ticket, which would address the marked lanes violation, the expired license and a seatbelt violation, would typically take him twenty-five to thirty minutes to write. For approximately the next seventeen minutes, Sg1. Luebers questioned Ramos about the nature of her trip, the passengers, and her personal history. At 6:38 a.m., State Trooper Darren Fussner arrived with the drug-sniffing dog. After the passengers were removed from the vehicle, Trooper Fussner walked the dog around the SUV. At 6:42 a.m., the dog alerted near the right rear tire of the vehicle. After the alert, the troopers began to search the interior of the vehicle. Johnson admitted to having a small amount of marijuana, which he gave to the trooper. At approximately 6:58 a.m., Sg1. Luebers discovered Ecstasy pills inside the pocket of a pair of sweat pants that were hanging in the back of the vehicle. Ramos was arrested and taken to the police station, where she was questioned further. Ramos ultimately was charged with aggravated possession of drugs.

Ramos filed a motion to suppress with the trial court, seeking to exclude the drugs and her statements to the state troopers.

You are the trial judge, how would you rule and why?

#### **QUESTION 4: (30 minutes)**

Mabel McCown, a police officer, received a tip that a college student is selling drugs. The tip is not sufficient to provide cause to search the student's house for drugs, but she decides to go and look at the house, to see if she can find more evidence on which to base a warrant. She finds the house in an ordinary city neighborhood of single-family dwellings, and she walks down a short path in the front yard, and climbs the steps to the front porch. She walks up on the porch and rings the door bell, but no one answers. Then she notices that the side yard is littered with obstructions. No defined pathway leads into the side yard from the porch. Stacked wood, a broken-down truck, a wheelbarrow, and garden tools almost entirely obstruct

access into the side yard. Large weeds also grow in the yard, and thick foliage obstructs any view into the back yard. Mabel scrambles over all the obstructions, and walks through the side yard into the back yard. She looks up at a window, and sees some plants inside near the window. So she walks right up to the window, and looks at them closely. One plant appears to be a marijuana plant. Mabel then returns to the police station and obtains a search warrant based on what she has seen; she properly executes the warrant and seizes the plant as evidence. When the student is charged with possession of drugs, he argues that Mabel violated his reasonable expectation of privacy before she obtained the warrant, and therefore that the evidence should be suppressed. You are the prosecutor. What arguments will you make to defend Mabel's actions? What counter-arguments do you expect defense counsel to make?

### **Question 5: (30 minutes)**

Appellant Jerry Lynn Young was convicted on December 19, 1980, of the armed robbery of the Bank of Mississippi in Tupelo, Mississippi. On March 17, 1980, a man wearing some sort of mask and carrying a sawed-off shotgun robbed the bank. At the time of the robbery, three tellers were present at the scene of the crime. The crime lasted approximately one and one-half to two minutes. The robber forced the tellers to lie face-down on the floor. A Tupelo police officer saw the robber leave the bank and get into his car.

At trial, in anticipation of leniency, Young's alleged accomplices testified that he robbed the bank. Although two of the bank tellers and the police officer gave descriptions of the robber, they could not identify Young as the bank robber. Only the third teller, Barbara Hoard, identified Young in court as the robber. Appellant seeks to challenge the constitutionality of this identification.

According to the record, immediately after the robbery, Hoard described the robber as a white man in his mid-twenties to early thirties, 5'5" to 5'7" tall, 150-60 lbs., with light brown hair and gold-rimmed glasses. She testified that she could describe him because, although she was scared to death, she had raised her head and looked up at the robber while she was lying on the floor. She stated that she could see his glasses, eyes, mouth, the side of his face and his hair through the holes in the stocking he wore over his head. The other tellers and the policeman all testified to the contrary that the robber wore not a stocking but a mask. Despite her detailed description, at that time Hoard could not identify or recognize the robber as either a bank customer or as Young, although she testified she knew Young by sight as a bank customer. It was not until four or five weeks later that Hoard first identified appellant at a pre-trial photographic identification procedure"

At the time of the photo array procedure, Hoard knew that a "Jerry Lynn Young" was a suspect in the crime. Hoard was shown six photographs. One was a picture of Jerry Young with his name printed on it. He was thirty-seven, gray-haired, clean shaven and wore glasses. No evidence suggests that he looked any different at the time of the crime. Four of the other five photos were of men in their early twenties; the fifth man also was not close to Jerry Young's age. Only one of the other five men wore glasses, and he had a beard.

At trial, during the prosecution's case-in-chief, Young's counsel moved to strike Hoard's testimony, and moved for a mis-trial, "on the grounds that Mrs. Hoard made an alleged identification of the defendant from the photograph before she came into Court and made an in-court identification."

You are the trial judge. Should you strike Hoard's in-court identification of Young and why?

### **Question 6:**

State Police Officer Misener conducted a consensual search of defendant's rented vehicle at a roadblock set up by state police to check driver's licenses and compliance with New Mexico motor vehicle laws. Although defendant produced a valid driver's license and a rental agreement for the car bearing his signature and correct information, Misener requested the search on the basis of his "hunch" that the odor of a deodorizing agent emanating from the car might indicate the presence of narcotics.

When defendant opened a garment bag in the trunk of the vehicle, Misener and a fellow officer, Brittain, saw part of a "heavily taped" cardboard box. Brittain reached into the trunk and "pressed" the box. At this point, defendant zipped the garment bag, put a briefcase that he had also opened for Misener on top of the bag, closed the trunk, and stated that he wanted the search to stop. Both officers believed that the consensual search had terminated and that they required probable cause to continue their investigation. However, based upon the odor of deodorizer and the partially revealed box, both of which they believed indicated the presence of narcotics, the officers determined that they had probable cause to seize defendant and the vehicle. The officers also based their probable cause determination on defendant's withdrawal of consent. Defendant was escorted to the police station, where he was formally arrested. Misener swore out an affidavit to the above-related information and obtained a warrant to search the vehicle and its contents, specifically the box in defendant's garment bag.

The search of the box revealed the presence of cocaine. The defendant argues the cocaine should be suppressed as the product of an unreasonable search. You are the trial judge, how do you rule and why?

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