

**CRIMINAL PROCEDURE FINAL EXAMINATION**

**Judge Brogan - May 6, 2005**

**Instructions: Answer question number one and five of the remaining six questions. The questions are worth thirty points each, for a total of 180 points, matching the amount of minutes of the examination. You will not receive extra credit for answering more than six questions (question one and five of the remaining six). Good luck!**

**Question 1.**

What is the "exclusionary rule"? What are the alternatives to the "exclusionary rule"? Give five examples of how the United States Supreme Court has softened or ameliorated the effect of the exclusionary rule.

**Question 2.**

Consider the following documents:

State of New York            )  
County of Westchester    )    Circuit Court of Westchester County

**Search Warrant**

On this 5th day of May, 2003, Police Officer Harvey Lance has subscribed and sworn to before me an application for search warrant and accompanying affidavit. Upon examination of the affidavit, I find that it states facts sufficient to show probable cause.

I therefore authorize a search of the home of Lester Webster, located at apartment 6 in the building at 231 Longfellow Avenue, Scarsdale, New York, and I further authorize a seizure of all electronic appliances stolen in the burglary of Joe's Appliance Store, Main Street, Scarsdale, on April 24, 2003.

Issued May 5, 2003 ss/ Judge Linda Black

State of New York            )  
County of Westchester    )    Circuit Court of Westchester County

**Application for Search Warrant and  
Affidavit in Support of Application**

Police Officer Harvey Lance now appears before the undersigned judge of the Circuit Court of Westchester County and requests the issuance of a warrant to search the home of Lester Webster, located at apartment 6 in the building at 231 Longfellow Avenue, Scarsdale, New York, and to seize the following articles and things: all items taken in the burglary of Joe's Appliance Store, Main Street, Scarsdale, on April 24, 2003, which constitute evidence of that crime.

Applicant further states that he has probable cause to believe that the above listed things to be seized are evidence of the offense of burglary and are now located upon the premises indicated above. Probable cause is based upon the following:

An informant, who has provided accurate information to me on several occasions in the past (leading to the arrest of one Raymond Rowe and one Sally Stowe) and who wishes to remain unidentified, reported to me today that on May 2, 2003, she was in the apartment of Lester Webster at the above address and observed several electronic appliances, including a color TV and video camera, and that Webster stated to her that he had taken those and other items when he broke into Joe's Appliance Store on April 24. I confirmed with the store manager that a break-in did occur that day and that several items, including a color TV and video camera, were taken.

ss/Harvey Lance

Subscribed and sworn to before me on the 5th day of May, 2003.

ss/Judge Linda Black

Does this warrant comply with the requirements of the Fourth Amendment?

Assume that the warrant in example I was issued, and the search of Lester Webster's apartment was conducted. Police seized several items, including some that were later confirmed to have been taken from Joe's Appliance Store. Would the lawfulness of the search be undercut by any of the following additional facts?

a. Subsequent to the search, Police Officer Harvey Lance was overheard telling a fellow officer in the courthouse men's room that he had concocted the entire story about an informant being in Webster's place and seeing the loot because Lance had a hunch Webster was the perpetrator, but had no hard information to go by.

b. Assume instead that Lance is overheard telling a fellow officer that there actually was an informant who provided the information about Webster set out in the affidavit, but that the informant had been inaccurate on three of six previous occasions when she had given Lance tips.

c. While the officers were searching Webster's apartment, they discovered an automatic assault weapon in his hall closet. As possession of this weapon is a crime, they seized it. The officers then found in the closet a small cigar box, which they opened to discover unlawful

hollow-nosed bullets inside. The officers seized the bullets.

d. When the officers appeared at Webster's apartment to conduct the search, they found him and three other persons inside. They frisked all four men and found an unlawful pistol on one of the visitors.

e. Assume instead that when the officers appeared to conduct the search, Webster was leaving his apartment. After identifying themselves and showing him the warrant, the officers requested that he remain. When he refused, one officer detained Webster in the hallway while the others conducted the search.

### Question 3.

John is growing marijuana plants in a backyard garden immediately adjacent to his home. The small yard is surrounded by an eight-foot-high stockade fence. A hot tub is located next to the garden. Has a "search" occurred in any of the following situations?

a. Police Officer climbs over the stockade fence into the yard, enters the garden, and observes the plants?

b. Police Officer climbs a stepladder she placed on the public sidewalk, peers over the fence, and observes the plants.

c. Police Officer obtains the consent of John's neighbor and observes the plants from the neighbor's second-story bedroom window.

d. Assume instead that John's marijuana plants are located 75 feet from his house in a wooded area of his unfenced property, surrounded by a dense circle of pine trees. Police Officers enters the property and observes the plants through the trees.

e. Assume instead that John's marijuana plants are located 75 feet from his home inside a wooden shed. Police Officer enters the property and looks into the shed through an open window, observing the plants.

f. Assume the same facts as in example 1 e, except Officer enters the shed in order to make her observations.

g. Now assume John is conducting an indoor growing operation. The marijuana plants are in his den, and the windows are covered by thick shades. Detectives park their van across the street and aim a high-tech listening device toward the house, picking up incriminating conversations John is having with customers within."''

2. Police Officer, with the permission of the landlord, entered a crawl space under Paul Parrott's first-floor apartment. The crawl space is used only when repairing pipes and wiring, but

neither the tenants nor the public has regular access to it. Officer spent two hours in the space and heard Parrott engage in what appeared to be numerous sales of narcotics. Did Officer obtain the information through a "search"?

**Question 4.**

On Tuesday at 2:30 p.m., Officer Harvey was on routine cruiser patrol in a suburban neighborhood that had been experiencing a spate of daytime burglaries. Harvey's attention was drawn to a car parked in a residential driveway. The car's trunk was open, exposing several large green plastic trash bags which appeared full and of the type reportedly used to remove the loot in the break-ins. The uniformed officer made a U-turn and pulled into the driveway behind the car. At that moment the driver had just closed the trunk and was beginning to back up, but the police car now blocked her exit. The driver got out of the car and, appearing quite upset, asked the officer to move the cruiser. The officer responded instead by asking the driver for identification, which she produced. The identification indicated an address on the other side of town. At that point the officer frisked the driver, took the keys to her car from her coat pocket, opened the trunk, and then the trash bags inside. Finding TVs, stereo components, jewelry, and cash, the officer placed the driver under arrest. It was later determined that the items had been stolen from a nearby residence. The driver-now-defendant moved to suppress the items. Were the officer's actions justified? Explain.

**Question 5.**

1. Sylvia Suspect was arrested, taken to the police station, and booked for selling narcotics. She was advised of her *Miranda* rights by Detective Oak and responded "I don't have anything to say." No questioning was attempted, and she was placed in a small holding cell. One hour later Oak approached her, read her rights again, and stated "Have you had enough time in there yet?" Suspect replied that she was "tired of rotting in this cell" and would talk. During questioning she admitted her participation in the narcotics ring. Is her statement admissible in court?

2. Assume instead that after Sylvia Suspect was advised of her *Miranda* rights by Detective Oak she responded "I won't say anything until I talk to my lawyer." No questioning was attempted, and she was placed in a holding cell. One hour later Oak approached her, read her rights again, and asked: "Are you ready to talk now?" Suspect submitted to interrogation and made an incriminating statement. Is her statement admissible in court! Would it make any difference if Suspect had sent word through her guard that she wanted to see Detective Oak?

3. Assume instead that after Sylvia Suspect was advised of her *Miranda* rights by Detective Oak, she orally agreed to waive those rights. After several minutes of interrogation, Suspect interrupted and said "When will you let me go home? I really need to talk to someone about this before I answer your questions." The detective responded "Why don't we get this over with? It'll be easier on you if you just tell me what happened out there." The detective continued

questioning and elicited an incriminating statement from Suspect a short time later. Is Suspect's statement admissible in court?

4. Lyle Loser was taken into custody on suspicion of rape and read his *Miranda* rights. At first he agreed to answer questions, but after ten minutes stated "You know, I'd better talk to my lawyer before I say anything more." As the two interrogators were gathering up their papers to leave, Officer Mutt said to Officer Jeff "Let's go see the victim. I heard she picked Loser's photo out of the array." Upon hearing this, Loser said "I've changed my mind, guys. I don't need to talk to anyone. Let me tell you what happened and let's work something out." Loser proceeded to respond to questions and confessed. Is his statement admissible at trial?

5. Steven Smith was arrested and taken to the interrogation room of the police station by two detectives. The following conversation occurred:

Q. Steve, I want to talk with you in reference to the armed robbery that took place at McDonald's restaurant on the morning of the nineteenth. Are you familiar with this?

A. Yeah. My cousin Greg was.

Q. Okay. But before I do that I must advise you of your rights. Okay? You have a right to remain silent. You do not have to talk to me unless you want to do so. Do you understand that?

A. Uh. I was told to get my lawyer. I was told you guys would railroad me.

Q. Do you understand that as I gave it to you, Steve?

A. Yeah.

Q. If you want to talk to me I must advise you that whatever you say can and will be used against you in court; Do you understand that?

A. Yeah.

Q. You have a right to consult with a lawyer and to have a lawyer present with you when you're being questioned. Do you understand that?

A. Uh, yeah. I'd like to do that.

Q. Okay. If you want a lawyer and you're unable to pay for one a lawyer will be appointed to represent you free of cost, do you understand that?

A. Okay.

Q. Do you wish to talk to me at this time without a lawyer being present?

A. Yeah, and no, uh, I don't know what's what, really.

Q. Well. You either have to talk to me this time without a lawyer being present, and if you do agree to talk with me without a lawyer being present you can stop at any time you want to.

A. All right. I'll talk to you then.

In subsequent questioning Smith admitted participation in the robbery. Can his admission be offered into evidence against him at trial?

6. Barry Bash was arrested at a train station on probable cause to believe he was a narcotics dealer and taken to an Amtrak police interrogation room, where he WM advised *of* his *Miranda* rights and agreed to submit to questioning. After a question about the identity *of* his supplier, however, Barry said he was "pleading the Fifth." At this point questioning stopped, and he was transported *by* the arresting officer to the police station. En route in the cruiser, Barry inquired as to where he was being taken. The officer described the procedure that would take place when they arrived at the police station. The officer then asked Barry, what he did for a living, and he said he was studying electronics. The officer observed that "it's a shame you got mixed up in this, because you're young and have a trade and you're going to screw up your whole life." Barry responded, "I'm just doing it to see how much money I can make." The officer then asked: "Where does a kid like you get the drugs to sell?" Barry responded, "Somewhere uptown." Can these incriminating answers be used against Barry at trial?

### Question 6.

1. Victoria was robbed *of* her wallet at gunpoint while waiting for a bus at 1:00 p.m. The robber, the only other person at the bus stop, had previously engaged Victoria in conversation lasting about ten minutes. Victoria immediately reported the robbery to the police and described the perpetrator as a slim man, about 20 years old, approximately six feet tall, wearing a long tweed coat and a woolen hat. A man of that description was observed in the vicinity shortly after her report and was taken into custody *by* the police. A search *of* the suspect turned up a wallet with Victoria's identification inside.

Victoria was brought to the police station at 3:00 p.m. and shown her wallet. She was told that it was found on the suspect, and the police asked her to observe the man in his cell. Victoria did so and immediately identified him as the robber. The suspect was the only person in the cell and the only individual the police asked Victoria to observe.

a. Is Victoria's station house identification admissible in evidence?

b. Assume instead that the suspect had been indicted and arrested pursuant to a warrant prior to Victoria's station house identification *of* him. How would this change your analysis?

2. Johnson is arrested pursuant to an indictment *for* armed robbery of Cozy's Convenience Store. The police also suspect him of an unsolved robbery of a nearby gas station.

a. If the police wish to display an array of photographs including Johnson's to customers who were at the convenience store at the time of the crime, must counsel be present?

b. If the police wish to display Johnson in a lineup to the witnesses of the gas station robbery, must counsel be present?

**Question 7.**

Arrest warrants were issued *for* Tommy Tucker and Max Malone on a charge of armed robbery of a gas station. Police, who had been unable to locate either suspect, received a call - from Malone in which he offered to turn himself in if "he could get a good deal." Detective Simpson told Malone that they would consider "giving him a break" if he could "get the goods on Tucker." Malone agreed to wear a wire and engage Tucker in a conversation concerning the gas station robbery. Simpson also directed Malone to "get Tucker talking about that First National bank heist last month, because I think he's our in an on that job, too."

Malone met Tucker the next day, wearing a recorder the police fitted him with, and turned the conversation to reminiscing about the gas station robbery. Tucker made several incriminating statements. Malone also got Tucker talking about other crimes he had been involved in, and Tucker boasted about his participation in the First National robbery.

May the prosecution use these statements against Tucker at trial on the gas station robbery? On the bank robbery? Would it make a difference if Tucker had already been indicted *for* the gas station robbery at the time the conversation with Malone occurred?

Chatty Charlie, who has been an informant on a number of occasions *for* the Drug Enforcement Administration (DEA), was sharing a cell at City Jail with Loose Lips, who was under indictment *for* first degree murder. Lips and Charlie had a conversation in which Lips shared the details of his involvement in the murder. Charlie, seeking to benefit from this information, informed his DEA contact of the conversation and offered to testify about it in court. Would this evidence be admissible against Lips?

Police proceeded to the home of Sam Sellers after his indictment for conspiracy to distribute methamphetamine came down. They told him they were there pursuant to the indictment and engaged him in conversation concerning his involvement in drug trafficking and his associates. He made several incriminating statements and was then arrested. Later at the station house police advised him of his *Miranda* rights; he signed a waiver *form* and repeated his earlier admissions. May the statements made at home and the police station be admitted against him.