

Froelich
Criminal Procedure
Fall 1995

GENERAL INSTRUCTIONS:

All of the questions are generally of equal weight; there is probably not enough time to answer every question as completely as you would like, however, everyone will be in the same position and the final grades will be curved.

I. The Defendant, John Doe, is charged in Federal Court with armed bank robbery of a federally insured institution an offense which carries a sentence of up to 10 years. He is also charged for the same robbery in State court with armed robbery, which likewise carries a penalty of up to 10 years. Based on a conference between the Defendant's attorney (the same attorney represents him in both State and Federal), and the prosecutor for the federal government and the prosecutor for the State charge, the Defendant's attorney tells the Defendant that both prosecutors will recommend concurrent sentences.

The Defendant does not want to take the chance of a twenty year sentence and, therefore, pleads guilty in both State and Federal Court. As promised, the State and Federal prosecutors recommend concurrent sentences. However, at sentencing two weeks later, the Federal Judge imposes a ten-year sentence consecutive with the State sentence. The Defendant complains in court that the prosecutors recommended concurrent sentences and the Judge informs him that the Court does not have such discretion, but is required by Federal law to impose its sentence consecutively with any State sentence.

The Defendant, therefore, has been sentenced to twenty years and he is not a happy camper. Please do not discuss the logistics of how the Defendant would raise his complaints (i.e., an appeal, motions, habeas corpus, etc.), but rather discuss the substance of the complaints he could make and how the prosecution could respond.

II. The Defendant, John Smith, is prosecuted for a robbery (taking property by force) that occurred at approximately 2:00 o'clock p.m. The prosecutor received information and a written statement from Wanda Witness stating that she was with the Defendant at 3:00 p.m. immediately after the robbery, and he said nothing about the crime.

During the course of trial preparation, the Defendant's attorney makes a routine discovery request which includes a request for the names of all witnesses and any statements made by the Defendant. The prosecution does not supply the name of Wanda Witness since (1) the prosecution does not intend to call her since it has several eye-witnesses to the crime and (2) the Defendant did not admit or deny committing the offense to her and (3) Wanda has supplied information on other criminals to the police

before and they do not want to disclose her identity and risk losing a confidential informant,

Pursuant to local rules and statutes, the Defendant provides reciprocal discovery and also give notice of an intent to rely upon an alibi, but provides no further details of the alibi.

At the jury trial, the Defendant takes the stand and testifies he was out of the country touring Moscow at the time the crime took place. In the rebuttal part of its case, the prosecution calls Wanda Witness and she testifies she was with the Defendant in town at 3:00 o'clock p.m. so he could not have been in Moscow. The Defendant is convicted by the jury and sentenced by the Judge to 10 years in prison.

A. What arguments can be made for and against a reversal of the conviction?

B. If the conviction were reversed, can the Defendant be prosecuted (a) for the same robbery? (b) for armed robbery (based on the fact that a weapon was found at the scene after the first trial)?

C. If reversed and if reprosecuted and if convicted at a jury trial, can the Defendant be sentenced to 15 years?

III. Two brothers (Mr. Inside and Mr. Outside) are charged with an armed robbery that occurred at a fast food restaurant; both of the people who committed the robbery wore ski masks and cannot be identified except by height and weight. At the robbery, one of the perpetrators was inside and one was outside, The police happened on the scene and viewing the activity, immediately turned on their lights and pulled their guns, The outside defendant yelled towards the inside defendant, "Hey, Bro, run, they got me!" The inside defendant then ran out the back door and was not captured

The outside defendant who is captured states that he and his brother were driving in his car and his brother asked him to stop at the fast food restaurant. He said he knew his brother always carried a gun, but did not know he was going inside the restaurant to rob it.

Both defendants are charged with armed robbery and the inside defendant is also charged with carrying a concealed weapon. They both retain the same attorney. Both defendants and all charges are tried together. At the trial (at which neither defendant testified), the statement of Mr. Outside is introduced. The jury returns a verdict convicting Mr. Inside of armed robbery and carrying a concealed weapon. Mr. Outside is found not guilty. Mr. Inside is sentenced to 10 years in prison. The State then files a forfeiture action against Mr. Outside seeking to forfeit his car for its use in the armed robbery.

A. What arguments can Mr. Inside make on appeal and how will these arguments be

countered by the State?

B. What are the arguments for and against allowing the State to appeal the acquittal of Mr. Outside?

C. What are the arguments for and against allowing the forfeiture of Mr. Outside's car?

IV. The Defendant, Jane Doe, is the terror of a local neighborhood. She is always high on drugs or alcohol, takes lunch money from small children, plays her stereo at an unbearable volume, is suspected in numerous burglaries, vandalizes any vehicles parked on the street, etc....

On the complaint of several local citizens, she is arrested and charged with sleeping in the public park, a local ordinance that carries a penalty of up to thirty days in jail and a fine of \$250.00. She is taken to the jail, booked, and then appears before a judge. The Judge appoints an attorney who will be able to see her the next day and sets the trial in 45 days. The entire community is present and supports the police request for a one million dollar bond.

The Defendant says, 'I didn't do nothing and I'll show you all that at trial -- if it gets that far and you have any witnesses that show up -- and, anyway I don't have no money for any bail.'

A. What are the arguments that should be made by both sides concerning pre-trial release and why?

B. What are the procedures at this appearance to set the conditions of pre-trial release?