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# WIDENER UNIVERSITY SCHOOL OF LAW FALL 2005 EXAMINATION CRIMINAL PROCEDURE I: INVESTIGATION, SECTION D

## PROFESSOR MOULTON

December 14, 2005

### **Instructions:**

- 1. Write your anonymous number in the space provided on the top of this page, and on the cover of each blue book you use. You must return this exam with your answer sheet and blue books.
- 2. This is a closed book exam.
- 3. You have exactly three (3) hours to complete this exam. The exam consists of three (3) parts on fourteen (14) pages, including these instructions.
- 4. Part I consists of twenty (20) questions in multiple choice format. For Part I:
- A. On the answer sheet, write your anonymous number in the place for I.D. number, starting from the left, and fully darken the circles that correspond to your number. Do not use a sticker.
  - B. In the block marked "TEST FORM," darken the circle designated "A."
- C. To be scored, your answers must be recorded on the answer sheet using side 1, numbers 1-20. Choose only circles "A" through "D."
- D. Use only a #2 pencil. Fully darken the circle for the answer you select. Do not make stray marks on the answer sheet.
- 5. Parts II and III consist of one essay question each. Write your answers for Parts II and III in one or more blue books, or use ExamSoft. Be sure to write legibly, and please try to write only on one side of each blue book page. If I can't read it, I can't give you credit for it.
- 6. Each of the three parts of the exam is worth one-third (1/3) of the total exam grade. You should structure your time accordingly, but be aware that equally weighted parts may not take the same amount of time to answer. Before beginning to write, take sufficient time to think about and organize your answers.
- 7. GOOD LUCK AND ENJOY THE BREAK!

### Part II – 60 Points

You and your boss, Notah Potted Plant, represent David Dalandry, a 55-year-old retired Philadelphia police officer who has been charged in federal court with various offenses related to the manufacture and sale of methamphetamine ("meth"). Your independent investigation, coupled with discovery provided by the prosecution, has revealed the following facts.

On August 1, 2005, DEA agents arrested Wally Witness for selling meth. Witness agreed to cooperate. He told the agents he had purchased the meth from Dalandry, that the transaction had taken place in June in Dalandry's house at 123 Apple Avenue, that Dalandry had a detached garage at that address that Witness believed contained a lab used to manufacture meth, and that Dalandry told Witness that Dalandry stored his excess meth at a storage locker on the other side of town.

On September 5, 2005, based on Witness' statements related above, and on Dalandry's two-year-old conviction for meth possession, the agents secured two search warrants. The first, for the house at 123 Apple Avenue, authorized a search for meth and for records related to its manufacture and sale. The second, for the garage at 123 Apple Avenue, authorized a search for meth and items used in its manufacture.

On September 15, 2005, the agents went to 123 Apple Avenue to execute the warrants. They went to the house first, knocked, and were greeted at the door by Dalandry. The agents handcuffed Dalandry to a chair and showed him the warrants. Agent Andrews falsely told Dalandry that another warrant would soon be executed at "your storage facility across town," and said that if Dalandry provided a key to that facility, the agents would not have to damage any doors or locks. Dalandry nodded at a key hanging on a hook by the front door, and said "take it." (Statement One.) The key was attached to a tag that said "Storage facility, 987 Zebra."

Agent Andrews then drew his gun, tapped the barrel on Dalandry's knee, and asked, "What about the garage – is there anything in there that might blow us up?" (Andrews asked this question because of his knowledge, based on training and experience, that meth labs can be explosive, flammable, and highly toxic.) Dalandry responded, "No. You'll be fine." (Statement Two.)

Twenty minutes later, as the searches were progressing, Agent Brown sat down with Dalandry, read him is *Miranda* warnings, and obtained a signed waiver. Dalandry admitted that he had set up the lab in the garage and stored methamphetamine in a storage locker at 987 Zebra Street, but insisted that all the meth was all for his personal use. (Statement Three.) In addition, Dalandry signed a form consenting to the search of the storage locker.

**Part II Continued on Next Page** 

The searches at 123 Apple uncovered the following: In the house, the agents discovered a small amount of meth on the kitchen table, and a loaded handgun hidden in a bedroom dresser drawer. In the garage, the agents found lab equipment, much of which was coated with meth residue; and, in a locked metal filing cabinet in the garage, they found ledgers detailing various drug transactions.

The agents also went to the storage locker at 987 Zebra, used the key to open the locker, and found six pounds of meth.

Prepare a memorandum to Plant that, assuming the facts set forth above, addresses the admissibility of Statements One, Two, and Three, and the physical evidence found in each of the three locations – the house at 123 Apple, the garage at 123 Apple, and the storage locker at 987 Zebra. Be sure to include all reasonable arguments for suppression that might be offered on behalf of Dalandry, all reasonable arguments in support of admissibility that might be offered by the government, and an assessment of the relative strength of those arguments. If you believe you need any additional information, state what you need to know and why it is relevant.

**End of Part II** 

**Exam Continued on Next Page** 

### Part III - 60 Points

You are a federal prosecutor in charge of the prosecution of Lewis "Scooter" Bibby and Karl Stove for possession of stolen property. Your investigation to date reveals the following:

On December 1, 2005, at about 2:15 a.m., Officer Lotsa Donuts responded to anonymous tip that drugs were being sold on the corner of Holywood and Vine, a "high crime" area in the city of Widener. As Donuts pulled up to the corner, he saw a group of five or six men standing around a trash barrel fire. When the men saw Donuts' cruiser, all but one took off running. One of those who ran tossed a bag containing a green, leafy substance into the fire. Only Bibby remained, standing with one foot perched on his Razr scooter, which was not motorized..

Donuts got out of the cruiser and approached Bibby. He asked, "Why did all your friends take off? They aren't afraid of me, are they?" Bibby smiled, turned, and headed off down the sidewalk on his scooter, proceeding at a pace slightly faster than a walk. Donuts followed at a slow jog. He said, "Hey wait, I'm talking to you." Bibby did not respond, but continued on the scooter, neither speeding up nor slowing down. Donuts followed for about a minute, finally catching up with Bibby. Donuts put his hand on Bibby's shoulder while jogging alongside and said, "Do me a favor, man. Stop for a minute, I can't keep up with you." Bibby stopped.

Donuts again asked why everybody ran. Bibby answered: "Because they had a little weed, and a couple of them might've had guns. But I had nothing to do with any of that." Donuts then pushed Bibby up against a car and frisked him, finding a jewel-encrusted gold necklace in an inner pocket of Bibby's overcoat. Donut held up the necklace and said, "This doesn't look like weed to me." Bibby then said, "I'm just holding that for my boy Stove. He got it, and lots more, from that job at the Widener Museum last month." Donuts then handcuffed Bibby and walked him and his scooter back to the cruiser. As they drove to the police station, Donuts recited the *Miranda* warnings. Bibby responded: "I got no interest in talking to you anymore, fat man."

Once at the station, Donuts turned Bibby and the investigation over to Dan Detective, who ushered Bibby into an interrogation room. Detective began the interview by asking, "You understand your rights, right?" Bibby responded, "Yeah, the fat man read them to me." Detective then conducted a thirty-minute interview, which resulted in Bibby confessing that he was helping Karl Stove to sell the jewelry stolen from Widener Museum.

As it turned out, Detective had already been investigating Stove for his involvement in the sale of stolen jewelry. Based on that investigation, and the statements obtained from Bibby, Detective obtained a warrant to search Stove's apartment. The search uncovered additional stolen jewelry, on which crime scene investigators found fingerprints of both Bibby and Stove.

**Part III Continued on Next Page** 

Prepare a memorandum for your supervisor that assesses the admissibility of the following evidence: (1) The necklace found in Bibby's coat; (2) Bibby's statement to Donuts concerning holding jewelry for Stove; (3) Bibby's confession to Dan Detective at the station; and (4) The jewelry found in Stove's apartment. With respect to Bibby's statements, consider only their admissibility against Bibby. With respect to the physical evidence, consider its admissibility against both Bibby and Stove. Be sure to include all arguments in favor of suppression likely to be advanced by Bibby and by Stove, your responses to those arguments, and the likely outcome of motions to suppress the evidence. If you believe you need any additional information, state what you need to know and why it is relevant.

**End of Part III** 

**End of Exam**