

**CRIMINAL PROCEDURE
PROFESSORS COYNE AND PULLER
SPRING 2008 FINAL EXAM**

*In the long run, people hit only what they aim at. Therefore,
you had better aim at something high.*

Thoreau

Use your social security number on the blue book and this examination. Write your answers to Question 2 in the spaces provided.

Your knowledge of the law, and ability to analyze the issues should be clear from the manner you express those thoughts on this test. Please express your thoughts completely and clearly.

Write no more than six (6) handwritten pages using only one side of each paper or four (4) typed, double-spaced pages. We will not read anything that exceeds the page limitation.

Question One

On February 20, 2008, two city police officers, Melinda Dixon and Chauncey Berg, stopped a car driven by David Lee Moore. They had heard over the police radio that a person known as "Chubs" was driving with a suspended license, and Dixon knew Moore by that nickname. The officers determined that Moore's license was in fact previously revoked, and arrested him for the misdemeanor of driving without a license, which is punishable by up to a year in jail and a \$2,500 fine. The officers subsequently searched Moore and found that he was carrying 16 grams of crack cocaine and \$516 in cash. A search of the trunk of the car revealed even more cocaine.

The arresting officers did not perform a search incident to arrest immediately upon taking Moore into custody, because each of them mistakenly believed that the other had done so. They realized their mistake after arriving with Moore at Moore's hotel room, which they stopped at on the way to the police station, so he could try to locate his license. They searched his person there and discovered a large

quantity of the drug Ecstasy. They then searched the room he was in and discovered bloody knives and duct tape.

Under state law, the officers should have issued Moore a summons instead of arresting him. Driving on a suspended license, like some other misdemeanors, is not an arrestable offense except as to those who “fail or refuse to discontinue” the violation, and those whom the officer reasonably believes to be likely to disregard a summons, or likely to harm themselves or others.

Moore was also charged with possessing cocaine and Ecstasy with the intent to distribute.

Forensic DNA testing of the duct tape and knives revealed that they were used in the abduction and murder 5 years ago of 6 year old Billy Budd from the neighboring town of Orlando. No other physical evidence or witnesses were ever discovered concerning this highly publicized crime.

While in jail awaiting his arraignment, Moore confided to his cellmate, Joe Addictus, a long-term paid police informant, that he not only killed little Billy Budd but also told him precisely where the body could be located. Addictus told Dixon and Berg the information. They immediately went to that location. Way in the backyard surrounding Moore’s mother’s house they climbed over the fence and discovered the remains of Billy Budd buried near Moore’s mother’s Pit Bulls’ cage.

Question 1. David Lee Moore claims that he cannot afford a lawyer and asks the court to appoint one. How should the court rule?

Question 1b. You are the attorney for David Lee Moore. How would you proceed and why?

Question 1c. Later, throughout the course of your representation, Moore, who has a 4th grade education, begins to fight with you frequently and informs the judge on the day of trial that he demands to represent himself. How should the court rule?

Question Two.

In May and June of 2007, Sullivan worked for Arizona Chemical Company, which manufactures weapons grade chemicals at their secure facility in the valley. He was working there when he is alleged to have committed the crimes described below.

Vicki Blanar went to the police and told them that on May 4, 2007, Sullivan was standing near the pool in the apartment complex where Sullivan lived when Vicki Blanar approached her friend's apartment. Her friend was not home. As she walked away from the apartment, Sullivan came up behind her, put a knife to her throat, and forced her into the complex laundry room under threat of death. He ordered her to have intercourse with him. The police brought Blanar to the emergency room but the tests were inconclusive for rape. Blanar reviewed numerous photo lineups and eventually she said she thought Sullivan looked like her attacker.

Over the course of the next few weeks, the police watched Sullivan but did not see anything unusual. While walking past Sullivan's apartment, officer Candace Perry noticed that the door to the apartment was wide open. Not knowing if something was wrong or not she went inside, called out Sullivan's name and looked around. Inside Sullivan's refrigerator Perry found what appeared to be 16 frozen human fingers. Definitive testing is pending.

Perry used the above information to obtain a warrant from a judge to place a recording device on Sullivan's telephones and to use trained cadaver dogs at the Arizona Chemicals complex. The recording device showed that Sullivan frequently made phone-sex calls but little else.

After being arrested for driving to endanger on the evening of June 13th, Sullivan's car was towed and he was brought to the station for questioning. During police questioning, Sullivan's lawyer told him to trust that the truth would set him free. He confesses to murder, rape, dismemberment of a body and various driving offenses. He also discloses that there are two more dead bodies in the trunk of his car. The police charge him with numerous offenses. At arraignment the judge accepts his plea of guilty after asking him if he desires to plead guilty to the charges.

Please fully define each of the following terms and then explain how, if at all, it applies to the fact pattern described in Question Two.

Peremptory Challenge _____

Probable Cause _____

Brady Materials _____

Exceptions to the warrant requirement for a lawful search

Alford Plea

Curtilage

Totality of Circumstances _____

Custodial Interrogation _____

Inevitable Discovery Doctrine

Ineffective Assistance of Counsel