

MASSACHUSETTS SCHOOL OF LAW
DISTRICT COURT CRIMINAL PRACTICE AND PROCEDURE

JUDGE AGNES
JUDGE CORNETTA

FINAL EXAMINATION

Spring, 2002

DIRECTIONS: The first question consists of ten statements which are either “true” or “false.” Accordingly, your answer should be simply “true” or “false.” No explanation is required or permitted. The remainder of the questions call for an essay-type answer. You should read each question carefully, identify the legal issues, outline your answer on a separate sheet, and then write your answer legibly. If we cannot read your handwriting, you will not receive credit for your answer.

QUESTION ONE

- (1) At a so-called “dangerousness” hearing under G.L. c. 276, § 58A, in which the prosecutor is relying on the affidavit submitted by the victim in support of a restraining order under G.L. c. 209A along with the testimony of police officers who responded to the scene of the alleged offense, the defendant has a right to call the victim of the crime as a witness. True or false?
- (2) The district court has final jurisdiction of all misdemeanors and felonies not punishable by life imprisonment. True or false?
- (3) Tape recordings of the communications between the police dispatcher and the police cruisers which were involved in the high speed pursuit which led to the defendant’s arrest for operating under the influence of alcohol are subject to a conditional privilege and are discoverable by the defendant only upon a showing of “good cause.” True or false?
- (4) When the defendant has been summonsed to appear for her arraignment on a complaint charging a misdemeanor that does not involve violence such as trespassing, the defendant has the option of entering a finding of “responsible” by mail and paying a \$100 assessment instead of appearing in person in court. True or false?
- (5) Hearsay is always admissible in a probation violation hearing under the district court rules without regard to whether it is reliable or trustworthy. True or false?
- (6) A defendant who is arrested and found to be in default for an offense that is punishable by more than 100 days in jail such as operating a motor vehicle negligently or recklessly so as to endanger the lives and safety of the public is not eligible for bail until the default is removed and the case is disposed of. True or false?

(7) When the competency of the defendant is at issue, the Commonwealth has the burden of proving that the defendant is competent by clear and convincing evidence. True or false?

(8) Upon the defendant's conviction of a crime punishable by up to 2 ½ years imprisonment in the House of Correction, with no mandatory minimum sentence required, the district court may impose a split sentence of six months to the House of Correction, 30 days to serve and the balance suspended for 3 years that will result in the defendant being on probation for 3 years after completing the 30 day sentence. True or false?

(9) A motion to revise and revoke a sentence under Rule 29 of the Rules of Criminal Procedure is a remedy that authorizes the sentencing judge to take a second look at the sentence to determine whether justice was done and, if not, to revise the sentence to that which better serves the ends of justice. True or false?

(10) When a motion for a required finding of not guilty under Mass. R. Crim. P. 25 is filed at the close of the government's case, the judge is required to deny it so long as there is credible evidence offered by the Commonwealth that meets the standard of probable cause to believe that a crime was committed and that the defendant is the party who is responsible. True or false?

QUESTION TWO

Henry Adams has hired you to represent him. Six months ago he was arrested by the Massachusetts State Police for operating under the influence of alcohol, operating after suspension of his driver's license, and operating to endanger. He was arraigned the next morning in the Andover-Essex District Court. He declined appointment of counsel and pled guilty to the above offenses. He was sentenced by the court to 18 months in the House of Correction on the operating under the influence of alcohol charge and to a from and after sentence of 2 years straight probation on the other charges. Henry's family arranged for a transcript of the hearing to be made which reads as follows:

"Judge: Good morning Mr. Adams. My name is Judge Thunder of the District Court. I understand from the clerk that you do not have an attorney, that you do not wish to be considered for appointment of an attorney and that you simply wish to plead guilty. Is that correct?"

Defendant: Yes, sir.

Judge: All right, let's proceed. Let me begin by advising you of your rights. You have a right to a trial or a jury trial and you do not have to plead guilty. If you had a trial, you may call witnesses, you have a right to remain silent and the Commonwealth has to prove that you are guilty beyond a reasonable doubt. You also have a right to have a jury trial in which people from the community will decide your guilt or innocence instead of a jury. If you're found guilty and you're not a citizen of the United States, you can be deported. Do

you have any questions so far?

Defendant: No, sir.

Judge: Tell me something about yourself.

Defendant: Sir, I am 28 years old, I've got as bad cocaine and alcohol problem and I'm afraid that if I don't get help I'm going to hurt someone or kill myself. I really want to get this over with. I don't feel too good this morning.

Judge: All right. Let me also tell you that the crimes you are charged with are punishable by imprisonment in a House of Correction. For example, if convicted of operating under the influence of alcohol, you can get 2 ½ years. Now I'm going to ask the District Attorney to read the police report. Please listen.

Defendant: Ok.

Assistant District Attorney: Reading from the report of Trooper Able, while on routine patrol last evening at 11:51 p.m. on Interstate Route 93, she observed the defendant's vehicle traveling too slow. She activated her blue lights and pulled the defendant over. She approached the driver's side and noticed that the defendant had stepped out of the vehicle. He was unsteady and had an odor of alcohol on his breath. The defendant could not do the 1 leg stand. He was arrested, taken to the barracks and booked. The car was towed. The defendant agreed to a breathalyzer test. The results of the 2 subject tests were 0.11% and 0.12%.

Judge: Mr. Adams, did you hear what the ADA had to say?

Defendant: Yes, sir.

Judge: Do you agree with those facts?

Defendant: Basically yes, sir.

Judge: Conferring with the ADA [inaudible at this point]. All right, sir. I sentence you to 18 months to the House of Correction on the operating under the influence charge and 3 years probation from and after on the other charges. Good luck. Custody, Mr. Officer."

What, if anything, will you do on Henry's behalf if you accept his case? In particular, analyze the plea hearing. Does it comply with the requirements of the law? If not, why not?

Question 3

On Friday, March 15, 2002, at 12:30 a.m., the Lawrence Police responded to a call of a home invasion at 53 Willow Street in that city. Upon arriving there, Officers Mike Foy and Sheila Cooke spoke with Amanda Blake and her twelve year old daughter Francine about the incident.

Both Amanda and Francine related that they had been asleep in their apartment on the second floor when a masked man about 5' 6" with an Hispanic accent and wearing what was described as "cat burglar clothes" burst into their apartment demanding money and drugs. Amanda sought to give him some cash from her handbag when he grabbed her purse and bolted down the stairs into the street. The man had a long buck knife and threatened both Amanda and her daughter with it. Once they were able to compose themselves, Amanda dialed 911 and the police arrived within minutes.

Both victims related to the police that they were sure the assailant was Amanda's former boyfriend Carlos Reis. The officers being familiar with Reis, immediately put out a citywide broadcast over their police radio network for the suspect.

Reis was arrested at his apartment about a quarter of a mile away from the Blake apartment within minutes by another route car that intercepted the citywide broadcast. Police knocked on the door and when Carlos came to the door, they immediately pushed him aside, handcuffed him and searched his one room apartment. In his apartment they found fifty five bags of cocaine, a digital scale, packaging and cutting supplies, two cell phones, a beeper and \$3,750.00 in U.S. currency.

Carlos was arrested and the evidence was seized, marked and put in property envelopes for return to the police station's property locker.

Carlos was held over the weekend at the Lawrence Police lockup and appeared in court Monday morning, March 18, 2002 for arraignment.

At his arraignment, Carlos was appointed an attorney. A bail hearing was held and bail was set by the judge at \$75,000.00 cash, \$750,000.00 surety. A motion was filed at that time seeking funds for an investigator. The judge set the matter down for hearing on the pre trial date of April 29, 2002 and instructed defense counsel to supply the District Attorney with a copy of the motion, so that the Commonwealth would be ready to argue the motion on the next in court date.

Please identify each issue presented in this fact pattern and advise whether the actions taken conform with applicable law and in any particular instance, if not why not? Also, what if any remedy (ies) might Carlos have in seeking relief here ?

Question 4

Gail Wilson is a frequent patron of the Dew Drop Inn located in Andover, Massachusetts. It is a local bar where people often come to socialize, play darts and sometimes, meaningful relationships have their beginnings there. It is a *nice* local establishment.

On Saturday night, April 6, 2002, Gail was at the bar with her friend Jane. At about 11:45 p.m., it was clear that Jane had consumed too much liquor and was becoming quite loud and abusive.

Ted Rollins was at the bar that night playing darts with his significant other, Andy. The two men are openly gay and have frequented the bar for about a year. Both are employed in responsible jobs and they live in Andover. They are generally well liked by the patrons and staff at the bar.

As the night wore on and Ted was bringing drinks from the bar to the dart shooting line, Jane became increasingly loud and vulgar, making lewd remarks about Ted and Andy.

At some point, the bartender, Lou Atwater had enough. He told Jane to either pipe down or she would have to leave. At this, Jane became enraged and reached over the bar to grab and hit Lou. In self defense, Lou pushed her away and in so doing struck Gail who fell to the floor. A bottle on the bar thereupon rolled off the bar and struck Gail on the head, injuring her.

The police were called and an ambulance arrived. Gail was treated at the scene for her injuries but refused to go to the hospital. Gail and Jane were driven home by another patron and the bar was closed for the night. The police refused to press any charges, indicating that Lou acted in self defense and that it was a civil matter.

On Monday, still upset, Gail and Jane made out an application for process at the Clerk's Office of the Lawrence District Court seeking to charge Lou with assault and battery by means of a dangerous weapon, to wit a beer bottle, assault and threats. A hearing was held by an assistant Clerk Magistrate on April 17th and Lou appeared with a lawyer and one of the police officers who responded on the night in question. Each side told their story and after considering the matter, the clerk declined to issue criminal process.

Gail and Jane were furious over the matter and immediately went to the District Attorney's office in the court house demanding that Lou be charged and arrested. The assistant on duty listened to both women, reviewed a police report of the incident and interviewed the police officer who appeared at the clerk's hearing. After doing so, the district attorney also refused to act in the matter.

Gail and Jane then wrote a letter to the First Justice of the Lawrence District Court. In their letter they accused the assistant clerk and assistant district attorney with misconduct for failure to act and they have demanded that the First Justice order the clerk magistrate's office to issue criminal charges against Lou. They also demanded that the District Attorney's Office to be ordered by the judge to prosecute the case and citing the fact that assault and battery by means of a dangerous

weapon is a felony, they want the judge to order the District Attorney to present the case to the grand jury for indictment. They have concluded their letter to the judge by telling her that if she does not act in this matter immediately, they intend to go to the news media with their complaints.

What should the judge do in this case ??

Isn't there any forum where Gail and Jane now have a right to be heard after what has happened ??

Can't a court order be issued so that this case can be ordered to be prosecuted by the police and the district attorney ??

Are there particular issues involving the parties here that need to be discussed ??

What about the public's safety and the rights of Gail and Jane ... is there no justice ???

Please advise !!