

**CRIMINAL PROCEDURE
PROFESSOR COPPOLA
SPRING 2007**

FINAL EXAMINATION

This is a three hour, closed book final examination. The first question is worth 40 points. It asks four (4) questions at the end of the fact pattern, A through D. Answer each, using one (1) page each, one-side of the page only.

The second question is worth 30 points. It asks three (3) questions at the end of the fact pattern, E through G. Use three (3) pages, one-side only.

You are limited to one (1) blue book.

Good luck and have a nice summer!

QUESTION ONE

(40 points. Use 1 page for each sub-question, using one side of the page only. Explain answers fully.)

In the early morning hours of November 12th, Officers Dee and Lannon saw Eddie driving erratically. They pulled him over and asked for his driver's license. Eddie gave officer Dee a piece of paper on which was written a false name and other information. Dee asked Eddie if he had been drinking or using drugs. Eddie denied he had been drinking, but did not reply to the question about drugs. Dee asked Eddie to exit the car and walk to the rear. Eddie complied but seemed a bit unsteady on his feet.

Officer Lola then arrived at the scene to administer sobriety tests to Eddie. Based on the tests, Lola believe Eddie was impaired by a substance other than alcohol. Lola arrested Eddie, advised him of his Miranda rights, and placed him in a patrol car. Meanwhile, a fourth officer on the scene, Officer Grew, searched the car for weapons and saw an unfastened canvas bag on the floor of the passenger side. Inside the bag, Grew found an unloaded semi-automatic weapon, a loaded clip for the weapon, and a container of crack cocaine. As Lola was pulling away with Eddie in the back, Eddie stated: "All right, I'll tell you my real name" and gave Lola his real name, date of birth, social security number, and other personal information. When Eddie arrived at the jail, another officer conducted a urine

drug test which showed that Eddie had consumed phencyclidine (PCP). During the testing, Eddie was cooperative and answered questions appropriately.

After the testing, Detective Harvey interviewed Eddie. Harvey again advised Eddie of his Miranda rights. Eddie signed a waiver form, initialing each admonition. Eddie then admitted that he had stolen the crack cocaine and the gun in Kansas City and was going to sell them in order to get money to buy Christmas presents for his daughter. During the interview, Eddie was cooperative.

Following the interview, while in jail, Eddie exhibited “bizarre” behavior. About one week later, on November 20th, Dr. Remi, a psychiatrist, examined Eddie and diagnosed a psychotic disorder and substance abuse. Several months later, in March, and again in July, another psychiatrist examined Eddie and diagnosed a PCP-induced psychotic disorder. In August, pursuant to a court-ordered sanity and competency evaluation, a forensic psychologist examined Eddie. The doctor reported to the court that Eddie’s I.Q. was in the low-average to borderline range, his “verbal comprehension was stronger than his verbal expressive abilities,” and his profile was consistent with that of a malingerer. The doctor testified that, at the time of his arrest, Eddie’s functioning was affected by the influence of PCP, but he noted that Eddie was able to follow directions, respond appropriately to questions, and was “goal-oriented” in that he stated his intention to sell the gun and the cocaine for money. The doctor opined that, at the time of his arrest, Eddie “had the ability to appreciate the nature of his actions” and was competent to stand trial.

Before trial, Eddie moved to suppress the gun and the cocaine as invalid under the Fourth Amendment. He also claimed that use of his admission of his name and related information would violate Miranda, and that his confession had to be excluded because he did not have the mental capacity to voluntarily and knowingly waive his rights. At a suppression hearing, Eddie presented several witnesses including a psychiatrist who testified that, because of a low I.Q. and PCP use, Eddie “was incapable of forming an intelligent and knowing waiver of his Miranda rights.” Although the doctor diagnosed Eddie as suffering from a PCP-induced psychosis, the doctor admitted that, at the time of Eddie’s arrest, he might have only been intoxicated by PCP might understand verbal and written communication.

Sub-Questions

- A. Assume the District Court rejected Eddie’s claim that he lacked the mental capacity to waive his Miranda rights and refused to suppress his confession. How should an Appeals’ Court rule on this finding? Use applicable Federal law.

- B. Assume that the District Court has yet to decide the issue of whether Eddie validly waived his Miranda rights. How should it rule? Use applicable Federal law.
- C. Assume the District Court is asked to decide whether Eddie's statements of his name, age, social security number and other personal information are admissible and assume that the information is somehow incriminating. How should it rule? Use applicable Federal law.
- D. Assume the District Court is asked to decide whether the weapon, ammunition, and cocaine found in the car are admissible. How should it rule? Use applicable Federal law.

QUESTION TWO

(30 points. Use 1 page for each sub-question, using one side of the page only. Explain answers fully.)

Because of several anonymous calls to police headquarters, the police suspected that Jimmy, 21 years old and living at home with his parents, was responsible for the murder of a thirteen year old boy named Eddie. Two officers went to Jimmy's house and, being admitted by Jimmy's father, told the father that they came to talk to Jimmy about the murder of Eddie. They falsely told the father that they had conclusive evidence, including fingerprints, that linked Jimmy to the crime. The father then hollered to his son to come down from his room. No sooner had Jimmy entered the living room than his father began beating him. As the police looked on, the father punched and slapped him saying, "You Killer! You no good s.o.b.!" The son then screamed. "No, no no! Dad, wait, it was an accident. I can explain." At that point, the officers pulled Jimmy away from his father and placed him under arrest.

At the police station, the officers read Jimmy his Miranda rights. He responded: "Well, ok, I guess I'm in trouble. I just hope my Dad gets me a good lawyer." The officers waited a few minutes and then told Jimmy, falsely, that they had his fingerprints on the murder weapon and an eyewitness who would identify him as the killer. They said that his own admissions to his father at the house actually "put the final nail in his coffin" as far as establishing his guilt. They told Jimmy that his only hope of leniency, if any, was to make a full confession then and there. They also said that they could not make any promises of leniency because "that was up to the courts." Jimmy sat silently for about fifteen minutes. The officers then went over their "evidence" again. Another fifteen minutes passed in silence. This sequence was repeated three more times until Jimmy asked for a pen and paper

and began scribbling a full confession.

Sub-Questions

- E. Assume Jimmy's lawyers file a motion to exclude Jimmy's statements at home. How should the Court rule? Use applicable Federal law.
- F. With respect to Jimmy's arrest at home, how should the Court rule on its validity?
- G. With respect to Jimmy's confession at the police station, how should the Court rule on its admissibility?

Myfiles/CrimProcedure/CrimProFinal.Sp2006.Phil

**CRIMINAL PROCEDURE SPRING 2002
PROFESSORS COPPOLA AND BACCARI**

**ESSAY
(35 POINTS)**

USE FEDERAL LAW

LIMIT YOUR ANSWER TO EIGHT (8) BLUE BOOK PAGES, ONE (1) SIDE EACH IN BLUE BOOK 1.

Albert decided to take his new girlfriend Barbara on a weekend vacation in the Berkshires. They took off in his red Camaro at about 2:00 p.m. on Friday afternoon to beat the weekend traffic. Elizabeth, Albert's ex-girlfriend was still angry and upset about their recent breakup. When she learned that Albert was going away with his bimbo blond girlfriend, she decided to seek revenge. That Friday, she made an anonymous phone call to the police. She told the police that Albert was dealing drugs to children in the local area and that he kept a large stash of cocaine at his house, located at 66 Crack Lane in Lawrence and that he was leaving on Friday for the Berkshires to make a big sale. She suggested that the police "check it out."

Elizabeth had never returned Albert's house key to him. After she hung up the phone, she grabbed the key and charged over to Crack Lane. When the police arrived at Albert's front door, Elizabeth was there to greet them with a mop in her hand and an apron around her waist. They asked if they could speak to Albert and she informed them that he was away for the weekend. When they asked if they could search the house, she replied, "Of course! Alby has nothing to hide. I'm sure he wouldn't mind."

The police searched the house from top to bottom. When they got to the attic, they found several bags of powder stashed in a suitcase in the corner. They seized the powder, which

subsequently tested positive for cocaine. Elizabeth feigned her surprise and then told the police that Albert was headed for the Berkshires with his girlfriend in the red Camaro.

The Lawrence police immediately radioed the state police with a description of Albert and Barbara. Moments after hearing the radioed description, State Trooper Diana saw two people in a red Camaro matching the radio description drive by. She put on the blue lights and pulled the vehicle to the side of the road. She could see from her vehicle that the passenger had long blond hair, but when she got to the driver's side, it was apparent that they were both males. She asked the driver for his license and registration. When he rolled down the window, a waft of smoke hit her in the face and she noticed a joint in the ashtray. She had both men step out of the car at which point she handcuffed them, placed them in the cruiser and searched the entire car. Underneath the spare tire in the trunk, she found a rifle. Both men, Charlie and Dan, were taken to the station and booked for possession of drugs and possession of illegal firearms.

Meanwhile, Trooper Ferguson was relaxing in front of Dunkin Donuts when he saw a red Camaro, which met the description given over the radio; pull in to the No-Tell Motel next door. A man and a woman matching the description given got out of the car and went into the motel. Ferguson finished his last munchkin, went in to the motel office and asked the desk clerk to let him into the room where the couple was staying.

Without knocking, Ferguson and the clerk entered the room. Ferguson, with his gun drawn, ordered Albert and Barbara to get up against the wall. He handcuffed each of them and took them down to the station. At the police station, Albert was given his Miranda warning. He told the police that he was not going to say anything without his lawyer. The police refrained from asking any questions and left Albert in the interrogation room handcuffed. After two hours, the officers came back into the room and showed Albert a film of his Elizabeth making a

statement about his involvement in the drug trade. Officer Ferguson then took a bag of cocaine, which he found in the Camaro after it had been towed to the police station, and placed it on the table in front of Albert. At that point, Albert made a complete confession.

DISCUSS THE SUPPRESSION ISSUES FOR EACH DEFENDANT: ALBERT, BARBARA, CHARLIE AND DAN (in that order).

CRIMINAL PROCEDURE-PROF. COPPOLA

12. Officer Doright, of the Amherst Police, was called to the Emerson dorm at U Mass one night to quell a disturbance between two volatile roommates. While passing through the corridor of the 3rd floor to get to the scene of the disturbance, he detected, through a slightly ajar door, the odor of marijuana. Although this was not the room of the combatants, the officer observed through the opening Colleen calmly smoking a "cogie" (marijuana cigarette) while preparing for her calculus exam. Colleen was arrested and charged with possession of a Class D substance. Her attorney brings a pre-trial motion to suppress the search. His motion will most likely be:

- A. Granted - As this was a violation of her reasonable expectation of privacy.
- B. Denied - As this search was incident to a lawful arrest.
- C. Granted - As the officer did not have probable cause to search.
- D. Denied - As the officer conducted a reasonable plain view search.

13. The police suspected Sleeze of pulling a burglary in the neighborhood. The day after the heist, three police officers waited outside his house and waited for him to come out. As he was leaving for work, the police arrested him without a warrant. He was taken to the police station and kept in a cell for four hours prior to being given his Miranda rights. He then agreed to answer questions. A short time later, he confessed to the crime. His attorney made a pre-trial motion to suppress the confession. The court will:

- A. Deny the motion because he waived his rights, knowingly, intelligently, and voluntarily.
- B. Deny the motion because the confession was not coerced.
- C. Allow the motion because the confession was the fruit of an unlawful arrest.
- D. Allow the motion because Miranda warnings were not given in a timely manner.

17. Jimmy was caught during the commission of a felony by Officer Doright. He was lawfully arrested and taken to the police station for booking. During the booking procedure, he was given his Miranda warnings and asked for a lawyer. The next morning, while having breakfast, Officer Callahan questioned Jimmy about an unrelated crime. Jimmy had previously been told he could call his lawyer, but he declined. Jimmy made incriminating statements to Callahan. If Jimmy's lawyer objects to the admissibility of these statements at trial, they should be:

- A. Admissible because Jimmy had subsequently waived his right to a lawyer.
- B. Inadmissible because the statements had been made in violation of the Massiah doctrine.
- C. Admissible because the statement was not coerced.
- D. Inadmissible because the police did not give the required second set of warnings.

18. Sam was arrested on suspicion of several larcenies from persons at ATM machines. After his arraignment, but before trial, the police showed a photo array of ten individuals, including Sam, to the victims. Sam's picture was the only one that portrayed a black and silver beard, as was described previously by the victims. Naturally, all of the victims chose Sam's picture. Sam's counsel was not present during the photo presentation. At trial, Sam's counsel seeks to prohibit admission of the identifications. The court should:

- A. Allow the evidence because the photo array did not violate Sam's 6th Amendment right to counsel.
- B. Allow the evidence because of the inherent reliability of the identification.
- C. Disallow the evidence because the photo array was made after criminal proceedings had commenced.
- D. Disallow the evidence because the photo array was highly suggestive.

16. The Associate Dean of MSL heard a rumor that several students had obtained copies of the Criminal Procedure final exam. Acting on a hunch, he examined the lockers of several students and found the exams along with several grams of cocaine. The cocaine was turned over to the police and charges of possession was brought. Students possessing lockers had all signed a form allowing the administration the right to open lockers when reasonably necessary.

At a pre-trial hearing, the defense seeks to suppress the search of the lockers. The Court will:

- A. Allow the motion to suppress because the students have a reasonable expectation of privacy in their lockers.
- B. Allow the motion because the Associate Dean did not have reasonable suspicion that contraband was in the lockers.
- C. Deny the motion because the students had given prior consent to the search.
- D. Deny the motion because the 4th Amendment does not apply.

17. Charlie was called to the police station to answer some questions as part of a general investigation into the murder of victim. He was not given Miranda warnings. As a result of the questioning, and other evidence, Charlie was charged with the murder. At trial, the defense seeks to prevent the introduction of the statements made to Charlie. The Court should rule the statements

- A. Inadmissible because the interview was a violation of Charlie's Miranda rights.
- B. Inadmissible because the coercive atmosphere prevented a voluntary waiver of Miranda.
- C. Admissible because the statements were not the result of custodial interrogation.
- D. Admissible because Charlie voluntarily came to the station.

18 Sam asked Al to keep a quantity of cocaine in Al's apartment while Sam went out of town for a few days. Sam didn't want to keep it in his apartment because he was afraid his girlfriend Liz, who was heavily hooked, would get into his stash. Liz, really bummed out at not being able to find the coke, figured out what happened, and made an anonymous phone call to the Feds, tipping them off that Al had Sam's drugs in his apartment. Acting on this tip the police, without a warrant, broke into Al's place, found the drugs and arrested Al and also Sam on his return from the trip.

At Sam's pre-trial in Federal Court motion to suppress the evidence, his motion will most likely be:

- A. Denied because the seizure was incident to a valid custodial arrest.
- B. Denied because Sam lacked standing to object to admission of the evidence.
- C. Allowed because the police lacked probable cause to make the arrest or seizure.
- D. Allowed because Sam had "automatic standing" to object to a possessory crime.

19 Police suspected that drugs were being sold from a house in Norm's neighborhood. In an effort to catch the culprit, they enlisted the services of Thor, the wonder dog, a trained dog sniffer. Thor was escorted through the backyards of the houses and onto several porches, including Norm's. When Thor reached Norm's porch, he reacted in a manner suggesting the presence of marijuana. The police knocked on the door. Norm answered and allowed the police in. On a dining room table the police saw a plastic bag with vegetable matter which through their knowledge and experience, they observed to be marijuana. Norm was arrested. At his pre-trial motion to suppress the drugs, the Court will:

- A. Allow the motion because Norm's reasonable right to privacy had been violated.
- B. Deny the motion because the reaction of the dog involved only the use of an allowable enhancement to the sense of smell and thereby gave the police articulable suspicion to make a threshold inquiry.

(Continued)

- C. Deny the motion because Norm had consented to the entry which resulted in a plain view seizure.
- D. Allow the motion because drug sniffing dogs are only allowed to search in public places.

20. Snoop was working on a telephone pole installing cablevision in the neighborhood when, from his vantage point 30 feet above the ground, he spotted a greenhouse on the other side of a fence at Norm's house. The greenhouse was a 20' x 10' structure attached to the home. Inside the greenhouse, Snoop spotted what he believed to be marijuana plants growing. Snoop got down from the pole and stopped a passing patrol car occupied by Officer Doright. Upon hearing Snoop's story, Doright climbed the pole and made the same observation. Doright got down from the pole and went to the front door and was admitted by Sally, the live-in maid. Doright asked Sally if he could look into the greenhouse and she consented. Doright seized several plants and charges were brought against Norm. Prior to trial Norm's lawyer brings a motion to suppress. The judge should:

- A. Grant the motion because Doright violated Norm's reasonable expectation of privacy when he climbed the pole
- B. Grant the motion because Doright failed to procure a search warrant.
- C. Deny the motion because Sally had apparent authority to give consent.
- D. Deny the motion because the marijuana was in an area which did not create a reasonable expectation of privacy.

21. John, recently home from college, went with his father to the post office to mail a package. Due to a recent series of postal employee slayings, the postal authorities set up a metal detector at the door, with a large notice to all that it was a violation of Federal law to carry

(Continued)

firearms into the building. John's father passed through without mishap but when John passed through, the alarm went off. The guard searched John and found a metal vial containing a small quantity of cocaine. His attorney moves to have the evidence suppressed. The prosecution's best argument is that:

- A. The search did not constitute police action.
- B. The search was a reasonable one.
- C. The search was incident to a lawful Terry stop.
- D. Patrons have no expectation of privacy in a government installation.

ESSAY
(20 points)

A Fictional Epilogue to the O.J. Case

It had been months since O.J. was acquitted for the murders of Ron and Nicole. Needless to say, Ron's father, Mr. Goldman was beside himself. He firmly believed that O.J. was responsible for the death of his son. His anger turned to rage. He decided that he would have to take matters into his own hands. He decided that O.J. would pay.

Goldman was not a fool, however. He knew that the police and the media would finger him as the prime suspect. He decided to get someone to do the "dirty deed" for him. Goldman called Al and Bob and met with them in a local bar. Goldman told them that he would pay them \$500,000 if they would kill O.J. Al immediately said yes and Bob nodded his head. Goldman took out a floor plan of O.J.'s house and Al and Goldman discussed all of the plans. Goldman instructed them to go to O.J.'s house the next night and stab him while he was sleeping in his bedroom. They were to leave a bag of cocaine in the house to make it look drug related. Bob just sat back and listened. He really did not want to get involved in this plan, but he did not say anything.

Al and Bob went to O.J.'s house the next night as instructed. Al told Bob to wait outside and act as a "look out." The French doors on the back terrace were closed but unlocked. Bob turned the handle and went inside. Having committed the floor plan to memory, he proceeded upstairs to what he thought was O.J.'s bedroom.

Meanwhile, Bob stood outside and was getting very nervous. The thought of ever going back to prison made him sick to his stomach. And then-- Bob saw the police cruiser coming slowly down the street toward O.J.'s house. That was all he could take. Bob ran home and never looked back.

Meanwhile, Al entered what he thought was O.J.'s bedroom. In the shadow, he could see the shape of a body under the covers. "Wow!" he thought to himself, "The

"Juice looks a lot smaller in person!" According to the original plan, Al was supposed to stab O.J. Al, however, decided earlier that day that stabbing was too messy. Unbeknownst to Goldman and Bob, he decided to shoot O.J. instead. Al took out his Glock and fired at the sleeping body. He pulled back the covers to view his handy work, and to his surprise, the person in the bed was Kato.

Al ran from the bedroom and down the front stairs. Right next to the front door, Al spotted a shiny new set of golf clubs. He grabbed the clubs and took off in his car. As he was speeding down the street, Al struck a pedestrian walking his dog. The pedestrian survived, but the dog died. The pedestrian pulled out a gun and shot Al in the shoulder. The wound was not life threatening.

Kato died that evening in the hospital. An autopsy showed that Kato had large doses of sleeping pills in his system. An empty bottle and a suicide note were found beside his bed. Apparently he had been distraught over his acting career (or lack thereof).

Meanwhile, Faye needed some good juicy material for the book she was working on about O.J. She planned to break into O.J.'s house and do a little snooping. Coincidentally, she showed up just after Al left. The front door was wide open and Faye walked into the house. To her delight, Faye found the bag of cocaine that Al dropped on the stairs when he was making his quick exit. Faye took the cocaine and left the premises.

DISCUSS ALL CRIMES AND DEFENSES.

HAPPY HOLIDAYS!!

CRIMINAL PROCEDURE
FINAL EXAM/SPRING SEMESTER
PROFESSOR COPPOLA

INSTRUCTIONS: MATCH THE APPROPRIATE NUMBER FOR EACH PARAGRAPH
OF DICTUM CITED TO THE APPROPRIATE CASE.

<u>CASE</u>	<u>ANSWER</u>
Moran v. Burbine	()
Berkemer v. McCarty	()
Comm. v. Lyons	()
U.S. v. Kahn	()
U.S. v. Robinson	()
Weeks v. United States	()
Franks v. Delaware	()
Colorado v. Connelly	()
South Dakota v. Opperman	()
Illinois v. Rodriguez	()
Schneckloth v. Bustamonte	()
Ybarra v. Illinois	()
U.S. v. Martinez-Fuerte	()
Roviaro v. United States	()
Winston v. Lee	()

CRIMINAL PROCEDURE
FINAL EXAM/SPRING SEMESTER
PROFESSOR COPPOLA

1. Evidence seized during an unlawful search could not constitute proof against the victim of the search.
2. Suppression therefore remains an appropriate remedy if the magistrate or judge in issuing a warrant was misled by information in an affidavit.
3. We have held that a valid waiver does not require that an individual be informed of all information "useful" in making his decision.
4. Whether the roadside questioning of a motorist detained pursuant to a routine traffic stop should be considered "custodial interrogation".
5. AGUILLAR-SPINELLI remains the standard for determining probable cause based on an anonymous tip to "stop".
6. This court ruling refused to "expand our previous line of voluntariness" cases to decide a defendant's motivation for speaking.
7. "others yet unknown"
8. A crucial factor in analyzing the magnitude of the intrusion is the extent to which the procedure may threaten the safety of the individual.
9. A requirement that "stops" on major routes inland, always be based on "reasonable suspicion" would be impractical.
10. The Supreme Court had held that the Fourth Amendment permits some inventory inspections of seized automobiles.
11. Respondent asserts that permitting a reasonable belief of common authority to validate an entry would cause a defendant's 4th amendment rights to be "vicariously waived".

12. Whether in a particular case an "apparent consent" was in fact voluntary ... is a question of fact to be determined in light of all the circumstances.
13. The justification ... for authority to search incident to a lawful arrest, rests quite as much on the need to disarm ... as it does on the need to preserve evidence.
14. It follows that a warrant to search a place cannot normally be construed to authorize a search of each individual in that place.
15. Fundamental ... fairness requires disclosure when informant's identity ... is helpful or relevant to the defense of the accused.

CRIMINAL PROCEDURE FINAL EXAM
SPRING, 1992
PROFESSOR COPPOLA

True or False

Please mark T or F

1. The prosecution can remove the taint of evidence by an intervening act or free will of the defendant. X (F)
2. Good faith reliance on a statute will not be a basis for exclusion of evidence. (F)
3. A police officer cannot rely on a defective search warrant in good faith if the warrant is defective on its face. ()
4. A truly involuntary confession may still be used for impeachment purposes. ()
5. The government bears the burden of showing beyond a preponderance of the evidence that the admission of evidence was harmless error. ()
6. If the defendant testifies at a suppression hearing, his testimony may be admitted against him at trial only on the issue of guilt. ()
7. A police officer may arrest in a misdemeanor only if committed in his presence. ()
8. Police pursuit alone does not give rise to a stop. ()
9. Prisoners have no reasonable expectation of privacy in their cells. ()
10. Defendants have a reasonable expectation in the "sound of their voice". ()
11. A "sniff-test" by a trained narcotics detection dog constitutes a search but not a seizure. ()
12. The Fourth Amendment protects the seizure, but not the search of garbage bags left out for collection. ()
13. A magistrate must take into account sufficient underlying circumstance contained in an affidavit as well as the officers conclusion to determine probable cause. ()

14. The police may not make a protective sweep beyond the defendants "wingspan". ()
15. A search incident to an arrest must be contemporaneous in time and place with the arrest. ()
16. The police must have probable cause to believe that the vehicle contains evidence of a crime for the "automobile" exception to apply. ()
17. A defendant must be made aware of his right to withhold consent for the consent to be valid. ()
18. If consent is given and then revoked, the search must cease. ()
19. Under some circumstances, a policeman may reach into an article of clothing being worn by the defendant, during a "pat and frisk". ()
20. Once a vehicle has been properly stopped for a traffic violation, a police officer may order the driver out of the automobile even without a suspicion of criminal activity. ()
21. When police have probable cause, and attempt to make a warrantless arrest in a public place, they may pursue the suspect into private dwellings. ()
22. A warrant or probable cause is required for searches conducted by public school officials. ()
23. Neither citizens nor non-citizens have any fourth amendment rights at the border or its functional equivalent. ()
24. One requirement for a wire tap is a showing of probable cause that any crime is being committed. ()
25. A finding of voluntariness by the trial court does not preclude the defendant from introducing evidence to the jury of the circumstances of the confession in order to cast doubt on its credibility. ()

CPFES92.PC

CRIMINAL PROCEDURE
FINAL EXAM ESSAY SECTION
PROFESSOR COPPOLA

EACH ANSWER LIMITED TO TWO SIDES OF ONE BLUEBOOK PAGE FOR
ESSAY QUESTIONS 1-4. PLEASE RESOLVE ALL ISSUES USING THE U.S.
SUPREME COURT GUIDELINES.

QUESTION 1 (20 min.) - 10 Pts.

Debbie, age eighteen, is a student at Central High, a public high school in the state of Central. One evening a water pipe leak causes water to seep into a row of student lockers. The school principal arrives the next morning before classes, notices the leak, and immediately opens all lockers in the row with a master key to determine what damage has been done. While looking through Debbie's locker, he picks up a water-soaked bag which falls apart, disclosing, among other items, three marijuana cigarettes.

Upon her arrival at school, Debbie is called into the principal's office, told of the discovery, and immediately expelled from school.

The principal also notifies the local State Police, which institutes proceedings in District Court for violation of a State Penal Code provision making a possession of marijuana a crime.

At a hearing in District Court, Debbie is represented by counsel of her own choosing. The only evidence presented by the State is testimony of the principal concerning his search, the three cigarettes (which were conceded to be marijuana), and a written form previously signed by Debbie, which authorized "any member of the faculty or staff of the school I am attending to inspect my locker at any time." A rule adopted by the local school board requires each student renting a locker to sign such an authorization at the beginning of the school year.

Debbie's attorney has asserted that the marijuana cigarettes were obtained by unreasonable search and seizure, and therefore should have been excluded in the District Court proceedings.

In resolving this claim, the Appellate Court will resolve what issues? Discuss and explain.

QUESTION 2 (20 min.) - 10 Pts.

Paul Jones coveted the stereo system belonging to Hazel Ventura. Therefore, Jones went to Sam Smith, who Jones knew was highly gullible, and told Smith, "Ventura borrowed my stereo, and it is time for her to give it back. She told me to pick it up anytime. Would you go to her house this afternoon and get it?" Believing Jones, Smith agreed. However, Smith did not have time to go until that night, at which time Smith entered the unlocked door of Ventura and carried the stereo system to Jones's house.

When Ventura learned what happened to her stereo, she called the police, who validly arrested Jones. Jones was not informed of his rights to remain silent. In the police car, as the officers drove Jones to the police station, one officer said to Jones, "That sure was a dumb thing to do." Jones replied, "Yes, it sure was. I should not have stolen the stereo."

Later Smith was also arrested.

The government intends to introduce against Jones the statement Jones made in the police vehicle. Was the statement constitutionally obtained? Discuss fully.

QUESTION 3 (20 min.) - 10 Pts.

Bob asked Albert to kill Bob's archenemy, Victor. Bob promised to provide the needed weapon. Albert agreed to the plan. Unknown to Bob, Albert was an undercover police officer who had agreed to the bombing solely in order to obtain evidence against Bob. Albert conducted a number of conversations with Bob about the crime. At the time of the conversations, Albert had a secret tape recorder strapped to his body. All of the conversations were taped. Bob was arrested shortly thereafter, before he did anything in furtherance of the plan. Bob was charged with conspiracy to murder.

On the day of the arrest, in Bob's jail cell, a police officer informed Bob of his constitutional rights, and then requested the opportunity to question Bob. Bob refused, stating, "I want to see my lawyer first." The officer said, "Are you sure you want to see him? It will be better for you if you talk." Bob then changed his mind and agreed to talk. As a result of the interrogation, the police received more incriminating evidence against Bob.

The government intends to introduce into evidence at trial: (1) the incriminating statements made by Bob to Albert prior to arrest; and (2) the post-arrest statements made to the police officer in the jail. Discuss the constitutional issues raised by using these statements.

QUESTION 4 (20 min.) - 10 Pts.

One night while on patrol north of Bob's bar, Officer Jones heard a police dispatch to the effect that an anonymous call had just been received saying that a man who had been drinking heavily for two hours just left Bob's heading north in a blue sedan with license number XYZ-123. Having just seen that car go by, Jones caught up with it and followed it for two blocks, watching it go very slowly and cautiously. Jones pulled the car over and asked the driver for his license. Although the driver did not look particularly intoxicated, Officer Jones deliberately lied and told him that the bartender at Bob's would swear that he had ten shots and beers. Incensed, the driver responded, "That's a dirty lie. I only had six," and was immediately arrested.

Discuss the driver's constitutional rights with regard to use of his statement in a prosecution for driving under the influence of alcohol.

QUESTION 5 (50 min.) - 20 Pts.

Art, an undercover police agent posing as a hoodlum, is asked by Bob to assist him in murdering Carl. When Art pretends to agree, Bob shows Art a bomb he is making to attach to the starter of Carl's car. At Bob's request, Art helps complete the bomb but secretly rigs it not to explode. Bob then takes the bomb to Carl's house alone and attaches it to Carl's automobile. The police, having been tipped off by Art, arrive just as Bob finishes. They immediately arrest Bob, remove the bomb, and take Bob to the nearest police station. The police then return to Carl's house where they conduct a thorough search of both Carl's automobile and Bob's car (parked across the street). In Bob's automobile they find a sales receipt for the same kind and amount of explosive used for the bomb in Carl's auto.

Bob is charged with attempted murder. At trial, the prosecution introduces the bomb and the sales receipt into evidence. Art testifies to Bob's original request that Art help him murder Carl. Art also testifies to a conversation he had with Bob when he visited Bob in jail after his indictment. In the latter conversation, Bob made damaging admissions. At no time did Art advise Bob that he was an undercover police agent. Art testifies that he secretly recorded both conversations on a miniature tape recorder; and the recordings are introduced to corroborate his testimony. The jury finds Bob guilty.

Assuming that all Bob's rights are properly preserved, what legal problems are presented on appeal to the highest court of the state? Discuss. Omit any discussion of the substantive charge of attempted murder.