

MONTEREY COLLEGE OF LAW -HYBRID

FINAL EXAMINATION

SPRING 2023

CRIMINAL PROCEDURE -SECTION 1

Professors C. Knight & N. Knight

Instructions

1. This examination consists of three (3) essays of equal value.
2. Make sure that you read each essay question carefully before answering. Attempt to organize your answer before you start writing. The essay questions test your ability to apply the law to the facts. After stating the issue, provide a succinct statement of the relevant legal principles, followed by a detailed analysis of how these legal principles apply to the facts, and a conclusion. There are multiple issues to address in the essay questions. Some issues may be fairly straightforward and do not require detailed analysis. Other issues may be more complicated; those issues merit more extended discussion.
3. There is a three (3) hour time limit to complete the exam.

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Exam Question 1

Officer Hart received a tip from an untested confidential informant that a notorious street gang was illegally selling heroin from a house located at 111 Elm Street in a neighborhood known for drug dealing.

Officer Hart surveilled the house on 3 occasions and observed numerous short visits to the house, most by young men wearing identifiable gang paraphernalia associated with the street gang.

During a fourth surveillance, Officer Hart observed a young man leaving the house he had seen on one prior occasion. Seeking to confirm his suspicion of heroin sales, Officer Hart contacted the man on the sidewalk near the house. Hart identified himself as a police officer, showed his badge, and asked the young man for his identification. The young man kept walking, saying he knew his rights. Officer Hart grabbed the man by his arm and demanded that he stop. The man, Bobby Jones, broke away and ran a short distance, throwing a small packet into the bushes as he ran. Officer Hart drew his firearm and ordered Bobby Jones to stop. Jones complied and Officer Hart handcuffed him. Hart located the packet which contained a white powdery substance, cash, and a gang “kite” [letter with instructions from gang leader] which directed the killing of a rival gang member. Hart asked Jones if the packet was his. Jones admitted the packet was his. Hart arrested Jones. The packet was tested at a lab and turned out to be heroin.

The prosecutor charged Jones with conspiracy to murder. Jones’s lawyer filed a motion to suppress the arrest saying it was without a warrant. The lawyer filed a motion to suppress the kite and the heroin. The prosecutor responded that all of the evidence was admissible and the arrest was legal. For the kite and the heroin, what are the pertinent arguments on each side and how should the court rule? For the arrest, what are the pertinent arguments on each side and how should the court rule?

Question 2

Law enforcement in the county was placed on “Full Alert;” a child had been abducted.

At 10:00 a.m., foster parents reported to police that a six-year-old child suddenly went missing minutes before from their home. Police spoke to a neighbor of the foster parents who knew the biological parents of the six-year-old. The neighbor reported to police that shortly before 10:00 a.m., she saw the biological parents, John and Sue, parked near the foster home in a dark blue Honda Civic with a license plate number she provided to police. John and Sue both had prior contacts with law enforcement, and police considered them unstable and an immediate risk to their child. A police check of DMV records revealed that the blue Honda Civic was registered to John.

At 11:00 a.m., Officers Brown and Reyes observed the blue Honda driving in the general vicinity and made a felony car stop; John was the only occupant of the car. The officers ordered John out of the car and arrested him. Officer Reyes searched John and located what felt like a cellphone in John’s shirt pocket. Officer Reyes seized the phone and handed it to Officer Brown. Officer Brown opened the phone and was able to see texts to and from Sue which disclosed a conspiracy to abduct the child and made clear Sue currently had the child in her custody at an unknown location. The texts were made that morning ending just before John’s arrest.

While Officer Brown informed police dispatch of these facts, Officer Reyes approached John who was handcuffed and seated in the caged rear of the patrol car. Officer Reyes asked John to tell him where the missing child was located. John responded by spitting at the officer. Officer Reyes then responded, “What do you think are your chances of ever seeing your child again if you don’t cooperate?” After John failed to respond, Officer Reyes repeated the question several times. John finally disclosed the location of the child who was with Sue and the police recovered the child from Sue.

The prosecutor charged John with felony child abduction. Although John’s defense attorney correctly conceded that probable cause supported John’s arrest, he filed a motion to suppress the following evidence: (1) The information law enforcement obtained from the cell phone; and (2) John’s statements to Officer Reyes. What are the pertinent arguments the defense and prosecution should make and how should the court rule?

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Final Exam Question 3

On the night of March 1, Amy drove after having too much to drink. On a rural road, she struck a bicyclist and kept going.

Amy was about 20 minutes from home at the time of the collision but just before she reached her home, a CHP officer observed Amy weaving, pulled Amy over and after investigating, lawfully arrested Amy for driving under the influence. Amy was taken to jail, booked, and made bail. The next day she hired an attorney to represent her in the DUI case.

Two days later the cyclist died at a trauma center. Sheriff's Deputy Sue, assigned to investigate the vehicular homicide, decided to research all of the traffic stops in the county on the night of March 1st and discovered Amy's DUI report. Sue drove to Amy's address listed in the report and discovered Amy's car parked in the front driveway of the house between the street and Amy's garage. The car was parked in front of the attached garage which was situated to the immediate left of the house's front door. Sue walked a few feet up the driveway and inspected the right front of the car and discovered what appeared to be paint transfers from the bicycle. Using a knife, she scraped some of the transfers off the car, placed them in an envelope, and departed. Subsequently the sheriff's lab confirmed the paint transfers were from the decedent's bicycle.

Two weeks later Amy appeared with counsel in court and was arraigned on her DUI. After the arraignment was concluded, Amy's counsel departed. Deputy Sue, who in full uniform watched the proceedings, then approached Amy and told Amy that she would like to talk to her. During the conversation, Amy admitted seeing the bicyclist. When Sue asked if Amy struck the bicyclist, Amy told her she was done answering questions. Deputy Sue then arrested Amy for vehicular manslaughter.

In Amy's vehicular manslaughter case, what arguments should the defense and prosecution make concerning the admissibility of 1) the paint transfers and expert testimony they were from decedent's bicycle; and 2) Amy's admission to Deputy Sue. How should the court rule on the defense and prosecution arguments?
