

This is a three hour, open book essay exam consisting of three (3) pages. There is one fact situation with several related questions. It is recommended that you read the entire examination question and plan your answer before writing.

Good luck!

"I have neither given nor received any aid during the taking of this examination, nor have I seen anyone else doing so."

SOCIAL SECURITY NUMBER

In the early morning hours on a spring day in San Antonio in 1984, the morning silence was broken by an explosion. The explosion was caused by home-made "pipe bombs" which had been used to blow open the wall leading to a safe of a bank. The thieves quickly made off with \$10,000 in cash before police officers and private security guards arrived at the scene. While no one saw the thieves enter the bank safe, two sanitation workers who heard the blast saw two men running from the direction of the explosion with white pillow cases that appeared to be filled with something. The workers saw the men turn a corner and run out of sight behind a building. They did not follow, but instead went towards the area where they had heard the explosion.

The two sanitation workers later described for the police the men that they had seen running from the direction of the explosion. Both witnesses said that the men wore blue jeans and tennis shoes, and that they were of medium height and build. However, Alex Anderson, said that both men were black while Bobby Boswell said that one of the men was black and the other was white. Anderson said that both men wore baseball caps but Boswell stated that only the white man wore such a cap. Anderson said that he had carefully observed the two men for about a minute and that "We got a real good look at them from a distance of less than 15 yards." Boswell, on the other hand expressed doubt about his ability to identify the men in a line-up because he got only "a quick look at them while they were running." Boswell estimated that the men were at least 25 yards away when they were nearest to the witnesses.

Police officers responding to a radio dispatch concerning the explosion suggested that road-blocks set up on major roads leading out of the area where the explosion had occurred. Officers at the roadblocks stopped all cars for a brief visual inspection of the interior of the car and a driver's license check of the driver and any passengers. Officers were instructed to be alert in particular for two men travelling together who were black or one black man and one white man, wearing blue jeans, tennis shoes and baseball caps. Several cars containing occupants who fit this description were detained for several minutes and questioned and permission was sought to look in the trunk of these cars.

Officer Davis of the San Antonio Police Department was helping to execute the road block when he observed a car make a u-turn about 500 yards before the roadblock. Officer Davis decided to pursue the car as it drove off in the opposite direction. As the car turned a corner Officer Davis lost sight of it for a moment. As a result the Officer did not see a large package that was thrown out of the car. The package was seen and retrieved by a young boy who was riding his bicycle. Meanwhile, Officer Davis again caught sight of the car and decided to pull it over. Davis put on his flashing lights and the car pulled over immediately.

Davis approached the car and obtained a driver's license from both the driver and the passenger. The driver was Ernie Evers, a 35 year old white man who wore blue jeans, tennis shoes and a baseball hat. The passenger, Fred Franklin was a black man who was also attired in blue jeans and tennis shoes, but he wore no hat at the time that Officer Davis stopped the car. A computer check showed that there were no outstanding warrants against the car or either man, although the computer showed a previous arrest for arson five years before. The car was registered in the name of Edward Evers. Officer Davis learned from Ernie Evers that Edward was Ernie's brother. Edward had been out of the country for three weeks according to Ernie, and his brother had left the car with him so that he could drive around San Antonio in search of a home. Evers stated that he was looking at real estate that morning. Evers said that Franklin had informed him after consulting a map, that they were headed in the wrong direction for a house that had been advertised in the newspaper and that they had turned around for this reason. Evers gave permission to Officer Davis to open the trunk of the car. After a cursory inspection of the trunk and passenger compartment, Davis returned the driver's licenses and informed the two men that they were free to go.

As Davis returned to the squad car, a small boy on a bicycle pedalled up to him and gave him a package that the boy said had been thrown out of the window of the car that the officer had stopped. Davis quickly cut the rope that was secured around the heavy cardboard package and opened it. Two small home-made "pipe bombs" were inside.

Davis quickly sped after the car containing Evers and Franklin. The car had travelled no more than a quarter of a mile before Davis stopped it again, this time placing both men in handcuffs in his squad car. A search of the Evers' car revealed a pillowcase that had been stuffed into the glove compartment and another pillow case that had been stuffed behind the spare tire. Evers and Franklin were taken to the police station by Officer Davis, while another officer impounded the car.

When the car arrived at the police impoundment lot, it was searched again. Under the floor mat of the front seat was a handwritten list of supplies and directions for making a "pipe bomb."

Before transporting Evers and Franklin to the police station, Officer Davis personally addressed each of them, giving each a complete set of Miranda warnings. Both men stated that they wanted to talk to an attorney and Officer Davis made no further attempt to interrogate either defendant.

After arriving at the police station both men were "booked," fingerprinted and photographed. Officer Gross spoke individually to both men about five hours after their arrival at the police station. Gross again warned Evers and Franklin of their Miranda rights. Evers again stated that he wanted to talk to an attorney and Gross immediately broke off the interview. Franklin however, was silent for a minute and then blurted out:

"It was Ernie's idea, I never wanted to make bombs."

Further questioning resulted in an oral statement by Franklin implicating Evers and himself in a bank robbery scheme. Franklin stated that they had dumped the stolen money at the apartment of Harry Hope.

A squad car was immediately dispatched to Hope's apartment. Hope invited the police officer in. After Hope received Miranda warnings, he took the officers to his home safe and opened it. Hope admitted that the \$10,000 in the safe had been given to him by Evers and Franklin and that the three of them had conspired to steal the money. Police officers seized the money which was identified by serial number at trial by bank officials as money stored in the burglarized safe. Hope was offered immunity for prosecution in return for his testimony against Evers and Franklin.

On the same day that Evers and Franklin were arrested and before their initial appearance, both men were called into an office at the police station. Alex Anderson and Bobby Boswell were both in the room. Anderson immediately said:

Boswell appeared less certain. He hesitated for a moment and then said:

"I think that Bobby is right."

Following an examining trial and indictment of both Evers and Franklin, a line-up was conducted. Eight men including Evers and Franklin appeared in the line-up and then Evers and Franklin also appeared in a second line-up with four other men, none of whom had been in the first line-up. All of the men in the line-up were between 5'7" and 6' tall and all weighed between 150 and 185 pounds. Of the ten men other than Evers and Franklin who appeared in the line-ups, two were black and eight were white. Although the same attorney was appointed to represent Evers and Franklin, counsel was not informed and did not attend the line-up.

Alex Anderson and Bobby Boswell attended the line-up. Anderson identified Franklin and another black as the men that he had seen running from the scene of the explosion, but he failed to identify Evers. Boswell selected both Evers and Franklin in both line-ups stating that he was certain of his identifications.

Following arraignment and indictment, Franklin was released on bail, but Evers was unable to meet bail and was incarcerated in the Bexar County jail. An electronic eavesdropping device was placed in Evers' cell which broadcast conversations occurring in the cell to police officers.

At the joint trial of Evers and Franklin, the prosecution will attempt to introduce the following evidence:

- the pipe bomb thrown from the car retrieved by the boy on the bicycle and opened by Officer Davis
- the pillow case found in the glove compartment and the pillow case found in the trunk. The cases were identified by witnesses Boswell and Anderson as being similar to those carried by the men seen running from the explosion. Scientific testing of the cases showed that powder traces from an explosion appeared on the pillow cases.
- the handwritten list of supplies and instructions found under the floor mat of the Evers' car.
- the testimony of Officer Gross relating the oral confession of Franklin implicating himself, Ernie Evers and Harry Hope.
- the testimony of Harry Hope implicating Fred Franklin and Ernie Evers in the bank robbery. Hope was given a grant of immunity in return for his testimony.
- the \$10,000 in marked bills taken from the safe of Harry Hope.
- the testimony of Alex Anderson and Bobby Boswell concerning their identification of Evers and Anderson at the police station.
- testimony of the line-up identification of Anderson and Evers by Boswell and the identification of Franklin by Boswell.
- the identification of Franklin and Evers at their trial by both Anderson and Boswell.
- statements overheard by a police officer monitoring the broadcast of conversations of Franklin in jail.

Assume that you are the defense attorney for Ernie Evers and Fred Franklin. What arguments can be made that any of the above evidence should not be admitted at trial? What counter arguments would you anticipate from the prosecution?