

The following is a three hour open book examination consisting of 4 pages. Please check to see that you have all of the pages of the exam. There are 5 questions: one forty-point question, two twenty-point questions and two ten-point questions. You should consider the point values in apportioning your time. You need not cite case names but you may use such names as a shorthand, if you explain the legal principle that the case stands for at some point during the exam. Please turn in your blue-book(s) when time is called unless you have finished earlier. You may keep the examination questions. If you would like to receive notification of your grade prior to the official University grade report for all courses, leave a self-addressed stamped post card with your exam. Good luck.

QUESTION ONE
(10 Points)

Immediately after Dickens received a \$250 fine for driving while intoxicated, he and a court officer assigned to accompany him went to the court cashier's office. When Dickens opened his wallet, the officer noted that the wallet contained three separate "packets" of currency. Dickens selected \$250 in bills and gave them to the cashier, who placed them under a counterfeit currency detector light. The cashier gave him back four of the bills and said, "Now give me real money." Dickens went back into his wallet and produced another \$80. He said nothing during the entire transaction. The cashier, apparently satisfied with the second group of bills, gave the defendant a receipt.

After learning from the cashier her belief that the first bills had been counterfeit, the officer asked Dickens to accompany him to his office, where Dickens without objection turned over his wallet on request. Five hundred dollars (\$500) in counterfeit bills were found within. Dickens was charged with possession of counterfeit currency. At the trial the prosecution introduced the counterfeit bills as evidence and called as witnesses the court officer and the cashier, who testified to the events described above. Dickens did not testify. In final argument over objection by defense counsel, the government was permitted to argue that the defendant's failure to say anything when confronted with the cashier's statement, "Now give me some real money," was circumstantial evidence that he knowingly possessed the bills. Defendant was convicted.

On appeal, Dickens argues that his privilege against self-incrimination was violated.

Is the defendant's claim on appeal correct? Explain.

QUESTION TWO
(20 Points)

William Watts was shot and killed in a bar apparently after an argument over a card game. The police arrived and were told by witnesses that Delbert Duncan had done the shooting. The shooting occurred at about midnight and an arrest order for Duncan was broadcast about 12:30 a.m. At about 2:00 a.m. about six blocks from the bar, Officer Johnson saw Duncan staggering down the street. He recognized him, pulled his patrol car alongside him and told him to get in the car; that they were going to the police station. Duncan said, "Hey boy, I didn't do nothing and I don't have to talk to you and I'm not going to." Duncan was intoxicated. He got into the car and Johnson drove him to the station. At the station Duncan was taken into the interrogation room and, for the first time, given his Miranda warnings. When asked if he understood his rights, Duncan said, "Hey boy, I didn't do nothing and I don't have to talk to you and I'm not going to talk to you. Maybe I should get me and lawyer and he won't talk to you either." The officers said, "All right," and they took Duncan from the interrogation room to a waiting room where he sat by himself. At about 2:45 a.m., the Police Chief, having been informed of the shooting, arrived at the station. The officers told the Chief what Duncan had said to them and Chief went to where Duncan was

sitting and said, "Hello, Duncan, I understand you won't talk to my officers. You got any objections to talking to me?" and Duncan replied, "No, Chief, you've always been straight with me, not like those turkeys."

The Chief and Duncan then went into the Chief's office where, according to the Chief, he gave Duncan some coffee and a cigarette and the two of them began talking about various things, including how Duncan's family was faring, but nothing was said about the shooting. About 15 minutes later the Chief said, "You know what happened tonight is pretty serious?" and Duncan said, "Yes." The Chief then said, "Now listen to me," and was about to give the Miranda warning when Duncan said, "I'd like to talk about it." The Chief then said, "You want to make a statement?" and Duncan said, "Yes." The Chief and Duncan then left the office and went to the interrogation room where two officers were sitting. The Chief said, "Duncan's ready to make a statement," and then left the room. The officers read Duncan the Miranda warnings and he signed a "waiver card." Duncan then made a statement in which he admitted shooting Watts.

Assume that you are an Assistant District Attorney. Prepare a memorandum for the D.A. discussing potential defense arguments concerning a motion to suppress the statement made by Duncan and possible arguments for the state.

QUESTION THREE
(10 Points)

Bruce Darn wishes to appeal his conviction for tattooing a minor without the parents' consent, a misdemeanor punishable by a term of imprisonment not exceeding one year, a fine not exceeding \$1,000, or both. Although Darn is an indigent, his request for appointed counsel at the trial was denied, and he was convicted and sentenced to pay a \$100 fine. Must the court appoint an attorney to represent Darn on appeal? Will Darn prevail on the merits of his claim that his right to counsel was denied at the trial? Explain.

QUESTION FOUR
(20 Points)

Defendant is charged with murder, armed robbery, and aggravated sexual assault.

Two men, both wearing face masks, robbed and sexually assaulted two women, one of whom died from her injuries. While the surviving victim was giving up her jewelry, she looked closely at the hands of one of the men because "he put his hand in front of my face." Some minutes later, his hands were at her eye level as she was forced to her knees to perform a sex act. After the incident, which lasted about 15 minutes, she specifically described her attacker's hands to the police, including color and skin tone.

Over a month after the incident, she viewed a lineup consisting of six men, each of whom wore towels to simulate the masks worn by the attackers. Defendant stood in the third position, and his attorney was present. Although she was unable to make an identification, the witness asked to have a close look at the hands of four, five, and six. All of the participants were told to step forward and present their hands to the witness. However, she was unable to see any better, since the tinted glass through which she viewed the lineup distorted certain features of color and small details.

The next day another, "hands only" lineup was held at which defendant's attorney was also present. Instead of the tinted, one-way glass partition between the witness and those in the lineup, a blanket was hung so as to prevent viewing anything but six pairs of hands thrust through jail bars. Each pair of hands was tagged with a number; defendant was forced by the police, over the objection of his attorney, to stand in the number five position. Defendant was the only person to stand in both lineups. At the second lineup the witness identified defendant's hands as "at least very similar to the hands" she had seen on the day of the crime.

The State also plans to introduce an in-court identification by the witness. Assume that the defense will move to suppress any testimony concerning the pretrial identification as well as the witnesses' in-court identification of defendant. As the trial judge, would you grant the defense motions? Explain.

QUESTION FIVE
(40 Points)

"They're growing pot on the old Brady farm and selling it." Click. The police department had received three identical anonymous calls stating the same cryptic message. Officer Bobby Boyd decided that it was time to investigate. He knew the Brady farm well. It had been purchased at an estate auction six months ago by a mysterious man who had never been seen in the small town of Dusty, Texas, which was only three miles from the Brady ranch.

Officer Boyd obtained the name of the new owner, Fred Farmer, from the deed which was on file in the town hall. Boyd could find no record of any prior criminal record for Farmer, but he was suspicious of Farmer's reclusive ways. Farmer had built a high fence around the entire farm and had posted numerous no trespassing signs. The driveway next to the house on the property was blocked by a locked gate.

Officer Boyd decided to set up surveillance. After obtaining permission from the owner of the neighboring farm, Brady watched the actions on the Brady ranch for a full day with the aid of high-powered binoculars. Brady was unable to observe any signs of illegal activity, but he noted that a greenhouse had been constructed and he observed a grey Chevette automobile enter and leave the premises several times during the day. Boyd was unable to see into the new greenhouse, but he noticed that the structure had a small opening near the roof. By climbing a tree and with the aid of a high-powered camera lens, Boyd was able to focus on the plants inside the greenhouse. Boyd felt that leaves of the plants had the distinctive shape of the leaves of marijuana plants.

Boyd went to the Brady farm. Ignoring an opening in the gate that led to the front door of the home on the farm, Boyd scaled the fence and walked behind the house to a garage with a garden shed attached to it. Walking through the open garage, Boyd pushed open a door leading to the garden shed. Inside, he saw Fred Farmer standing in front of a table with a large quantity of a substance that looked and smelled like marijuana. (Later, testing confirmed that the substance was marijuana.)

Boyd told Farmer that he was under arrest and placed him in handcuffs.

"What kind of operation are you running here?" Boyd asked. Fred admitted that he raised marijuana and sold it. Fred also stated that he had just sold cocaine to a tall man, wearing a leather jacket that had just drove off in a grey Chevette. Farmer identified this person as someone named Sam who had put the cocaine in a brown suitcase. At no time did Boyd give Miranda warnings to Fred Farmer. Officer Boyd requested assistance over the police radio and then pulled up some marijuana plants that were growing in a cultivated area near the greenhouse.

Officer Charles Champs heard the dispatch concerning the grey Chevette. About a mile from the Brady farm, on the only road leading away from the farm, Champs saw a grey Chevette and pulled the car over. There were three occupants in the car. The driver, a tall man who wore a leather jacket stated that his name was Sam Shepard. A search of the passenger compartment did not reveal the brown suitcase or any other evidence, but when the trunk was opened after Officer Champs took the key from the ignition, a brown suitcase was discovered and opened. A large quantity of cocaine was in the suitcase. Sam Shepard was then searched, but nothing was found on his person, but a search of the two passengers, Marilyn Maples and Warren Wild, produced a small bag of cocaine from each.

Page Four

All three occupants of the car were arrested and the car was impounded. A later inventory search of the car produced no evidence.

Fred Farmer was already at the police station. Officer Boyd took him to an interrogation room and gave Farmer Miranda warnings. Farmer repeated his earlier admissions concerning marijuana and cocaine dealing with "Sam." His statement was recorded, and later reduced to a written confession which Farmer signed.

Sam Shepard and Fred Farmer, and one of the passengers in the grey Chevette, Marilyn Maples were later placed together in a holding room at the jail. Maples had made an agreement with the prosecution to wear a microphone and broadcast her conversation with the two men in return for a promise of non-prosecution.

Sam Shepard and Fred Farmer made incriminating statements in the presence of Maples which were overheard by Officer Boyd. Two weeks later, following indictments which were brought against Fred Farmer, Sam Shepard, Marilyn Maples and Warren Wild, Maples again participated in a conversation with Farmer and Sam which was electronically transmitted to the eavesdropping Boyd. Following this conversation during which Sam and Fred made incriminating statements, the prosecutor sought and obtained a dismissal of the indictment against Marilyn Maples.

What arguments could be made by you as counsel for Fred Farmer, Sam, and Warren Wild, that the following evidence should be suppressed:

- marijuana found in the shed which was attached to the garage on the farm.
- testimony of Officer Boyd relating the statements made by Fred Farmer at the time of his arrest.
- Cocaine found in the brown suitcase obtained from the trunk of the grey Chevette.
- Cocaine found on the person of Warren Wild.
- Fred Farmer's written confession.
- Testimony of Officer Boyd concerning statements made by Fred Farmer and Sam in the presence of the electronically wired Marilyn Maples, before and after the indictment.
- marijuana plants from the field near the garage.

Anticipate the likely arguments by the state urging the admissibility of the evidence. Explain your answers.

THE END