Professor Schmolesky                                        Final Exam

St. Mary's University School of Law

Instructions

1. This examination consists of three (3) questions and five (5) pages, including this page as the first (and including a 1-page appendix of relevant statutes and guidelines).

2. You will have two (2) hours in which to complete the examination.

3. St. Mary's Law School prohibits the disclosure of information that might aid a professor in identifying the author of an examination. Any attempt by a student to identify himself or herself in an examination is a violation of this policy and of the Code of Student Conduct.

4. A student should not remove a copy of the examination from the room during the exam time.

5. This is an open-book exam. You may use your textbook, class notes or any other written material, but you may not consult with any person about the exam. Use a bluebook for your answers. Please try to write neatly and use every other line in the bluebook(s).

6. When you have completed the examination, turn in this copy and your bluebook(s) to the proctor. Be sure to write your exam number, the name of this course and the name of the professor on your bluebook(s) or typed pages.

7. In addition, place your exam number in the space below. If you are prevented by the oath from placing your exam number in the space below, notify the student proctor of your reason when you turn in the examination.

I HAVE NEITHER GIVEN NOR RECEIVED UNAUTHORIZED AID IN TAKING THIS EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO SO.

Exam Number
Question ONE and TWO (60 points total)

Ray Reeves was employed by a construction company that specialized in home improvement projects. In June of 1996, Ralph was assigned to work on a home improvement project in a condominium located in an Air Force retirement community near Lackland Air Force Base in San Antonio, Texas. As Ray worked in the home of a retired air force officer, Buck Brady, and his wife Betty; Ray noticed that Betty often wore expensive jewelry. Ray observed Betty place the jewelry in the top dresser drawer in the Brady's bedroom, which was adjacent to the bathroom that Ray was hired to improve. After hearing the Brady's discuss a weekend trip that they planned to take, Ray decided to break into the Bradys condo and steal some of Betty's jewelry. Acting alone, Ray, who was not armed, forced open a window that Ray had discovered had a defective latch, entered the Brady condo, and took several rings and necklaces without encountering anyone. Ray was arrested about two weeks after the burglary after he had pawned Betty's jewelry. There was testimony at trial the jewelry that Ray took had a value of $7,500.

Ray's prior record consisted of an adjudication of delinquency in 1988 in a Texas juvenile court, when Ray was 16 years old, based upon possession of marijuana. Ray was granted juvenile probation, which he successfully completed. In 1990, when Ray was 18, he pleaded guilty to a charge of third degree felony theft in a Texas district court pursuant to a plea bargain which provided for deferred adjudication probation. Ray was granted early release from his probationary term in February, 1994, two months later, Ray was arrested again, this time for burglary. Ray was convicted in January, 1995 in a Texas district court for this offense and sentenced to prison for 10 years, but the judge granted Ray "shock probation" after serving 179 days in prison. Ray was still under probation supervision from his 1995 burglary conviction at the time of his arrest and conviction of the Brady burglary.

Question ONE (30 Points)

Assume that you have been hired by the district attorney's office in Bexar County and you have been asked to write a brief memo describing what sentence Ray Reeves might receive if Ray is convicted of burglary under 30.02 Texas Penal Code [see the appendix for the text of this statute]. Provide as much information as possible about the sentence that might be imposed without making representations that are misleading. Specifically, you should address the following questions:
(1) Is it possible for Ray to receive community supervision (probation)? If so, under what circumstances?

(2) If Ray is sentenced to prison, is it possible to make any informed statement about: (a) how long a sentence would be imposed; (b) whether Ray would have to serve the entire prison sentence imposed or whether some form of early release would be possible; (c) whether Ray would be subject to any form of supervision following his release from custody.

Question TWO (30 Points)

Using the same facts developed in Question ONE, except assume that Ray is being prosecuted in federal court under the assimilative crime provisions of the United States Code that allow the federal government to use a state statute (such as the Texas burglary statute, 30.02 Texas Penal Code) as the basis for prosecution in federal court and that you have been employed by the United States Attorneys Office. Answer the same questions as in Question ONE [see the statutory appendix for a copy of the appropriate substantive offense guideline from the Federal Sentence Guidelines],

Question Three (40 Points)

David Defendant was charged with robbery and tried in a Texas district court before a jury. During trial, the prosecutor made a reference to the Defendant's failure to testify, and suggested that Defendant's refusal to testify indicated his probable guilt. The defense objection to this argument was sustained, as was a defense motion to declare a mistrial. Defendant was again indicted for robbery based upon the same incident that formed the basis for the first trial, but this time, Defendant agreed to plead guilty in return for a five-year prison sentence. The trial court stated that it would impose the sentence provided for in the plea agreement. The trial court established a factual basis for the plea by obtaining Defendant's admission that he had committed the acts alleged in the indictment, accepted Defendant's plea of guilty, and assessed punishment at five years' imprisonment.

Defendant filed a timely notice of appeal in the Fourth Court of Appeals, and argued that: (1) the proceeds from the robbery discovered in Defendant's home were obtained in an illegal search and seizure; (2) Defendant's attorney provided ineffective assistance of counsel by failing to file a motion to suppress the evidence of the proceeds of the robbery found in Defendant's home; (3) Defendant's guilty plea was invalid
because the court completely failed to advise him about the immigration consequences of pleading guilty; (4) Defendant's second trial was barred by Double Jeopardy protections of both the State and Federal Constitutions because prosecutorial misconduct at the first trial forced Defendant to request a mistrial declaration; and (5) Defendant's sentence of five years' imprisonment was cruel and unusual punishment in light of the facts that Defendant had no previous criminal record and no one was injured in the robbery. Defendant's fourth ground of error, the Double Jeopardy claim is premised in part on the decision of the Court of Criminal Appeals in Bauder v. State, a case giving broader double jeopardy protections under the Texas Constitution than apply under the Fifth Amendment. Bauder was decided a month after Defendant's guilty plea, but Defendant argues that the holding in that case should be applied to him.

Without addressing the merits of Defendant's grounds of error, what procedural obstacles might prevent review of the merits of Defendant's claims on direct appeal? If Defendant does not prevail on direct appeal, discuss what procedural problems might prevent review of Defendant's claims in a later state or federal habeas corpus proceeding (again do not address the merits of defendant's claims). Briefly discuss the merits of Defendant's fifth claim, the Cruel and Unusual Punishment Clause claim (do not discuss the merits of any claim raised by Defendant except ground five).