

Criminal Procedure I Professor Moskowitz Final Exam Spring, 2005

PART II: ESSAY QUESTION

OUTLINE OF ISSUES

I. Yes, he's my lover.

A. Fruit of unreasonable seizure?

1. Seizure? Yes: Command, uniform.
2. Unreasonable? Informant presumed underworld, unreliable, lousy basis of knowledge, no corroboration.

B. Fruit of *Miranda* violation?

1. Custody? Not from mere *Terry* stop. *Berkemer*.
2. Interrogation? Probably. Like *Ferro*.

II. Yes, one with some pictures of some beautiful boys.

A. Fruit of prior unreasonable stop? Attenuation? Time between tree & fruit was very brief, and stop led to C's question which led to statement, so seems foreseeable.

B. Fruit of prior *Miranda* violation? No. *Elstad*.

C. Fruit of illegal arrest? Probable cause?

D. Fruit of new *Miranda* violation?

1. Did M *waive* rights? He understood right to counsel, but said nothing re right to silence.
2. Did M *invoke* right to counsel? I guess I should. . . . seems not clear invocation, like *Davis*.

III. Magazine

A. Fruit of prior unreasonable stop?

1. Attenuation? Time between tree & fruit was very brief, and stop led to C's question which led to statement and magazine, so seems foreseeable.

2. But perhaps C would have *inevitably discovered* magazine during SIVA or search at police station.

B. Fruit of prior *Miranda* violation? No. *Elstad*.