

Part III – Essay (40 Points)
Recommended Time: 1 hour

The following essay question should be answered in a blue book or typed.

San Francisco P.D. dispatch receives an anonymous call to 911, indicating that a white female in her early 20's, dressed in black pants and a black sweatshirt with the hood pulled up, is "ranting" in an incoherent manner near the bus stop at McAllister and Gough Streets. The anonymous caller indicates that the young woman has a large knife, which she is waving around in the air.

Officer Cash Nidges responds to the area and observes a young white female, in her late teens, dressed in dark blue jeans and wearing a black sweatshirt (without the hood up), standing near the bus stop. The young woman is not holding a weapon, and is standing quietly, rocking back and forth. As Officer Nidges approaches the young woman, she begins to mutter something that he cannot understand. Nidges asks the woman for identification, and she begins to reach into her front pants pocket. Fearing that she may have a knife, Officer Nidges orders the young woman to take her hand out of her pocket; when she complies, he conducts a pat search. Officer Nidges feels a small plastic coin bag containing a powder substance in the woman's front pants pocket. Nidges has been a police officer for some 20 years, and has previously served on San Francisco's narcotics squad. He has participated in the investigation and arrest of hundreds of individuals for possession of cocaine and/or methamphetamine for personal use, and knows that most individuals carry those substances in small plastic coin bags. Officer Nidges believes the item in the woman's pocket is such a coin bag containing illegal drugs. He reaches into the woman's front pants pocket and retrieves a small plastic coin bag containing a white powder, which presumptively tests positive for cocaine. Officer Nidges places the young woman, later identified as Nancy Smart, under arrest for possession of cocaine. He then conducts a thorough search of her person and a backpack lying nearby (which she identifies as belonging to her), finding a large folding knife in the backpack. Officer Nidges asks Smart whether she has any additional drugs in her possession, and Smart indicates that she has more cocaine in her car, which is parked in front of her house, several blocks away.

After a backup officer arrives to transport Smart to the police station, Officer Nidges locates Smart's car and searches it (using a key that Smart gave him to gain access). He finds a large baggie of cocaine under the front seat, and several other baggies of cocaine, \$5,000. in cash, and a revolver in the trunk. Officer Nidges seizes all these items and books them into evidence at the police station and has Smart's car impounded. Nidges contacts Smart at the police station and advises her of her *Miranda* rights. Ms. Smart responds that she will "only talk to her attorney." Officer Nidges proceeds to book Smart for simple possession of cocaine (for personal use), possession of cocaine for sale, illegal possession of a knife, and illegal possession of a firearm.

(cont'd on next page)

The next morning, Detective Douglas contacts Smart in her cell at county jail, and obtains a waiver of her *Miranda* rights. He then interviews her, without counsel present, about a recent string of automobile burglaries in the neighborhood where she lives. Smart admits committing several of the burglaries. The District Attorney files a complaint later that day, charging Smart with simple possession of cocaine, possession of cocaine for sale, illegal possession of a knife, and illegal possession of a firearm. Detective Douglas later conducts a live lineup for the five auto burglary victims, without counsel for Smart being present. All five victims view the lineup at the same time, and each hears the others' identifications of Smart as the person who burglarized their cars. However, each victim had previously given a detailed description of the suspect in the burglaries (which closely matched Smart's appearance), and each was positive in his identification of Smart as the perpetrator. All of the burglaries had taken place within a couple of days of the lineup procedure. The complaint is amended to add five counts of second degree burglary.

Smart moves to suppress all physical evidence seized by the police, her statements to both Officer Nidges and Detective Douglas, and the results of the identification procedure. What results and why?

END OF EXAM

Grading Outline—Crim Pro I—Spring 2009

- I. **Detention v. Consensual Encounter:** *Botick/Drayton* test.
- II. **Asking for ID—**Make detention? *Miranda* issue (custody under *Berkemer*? Interrogation under *Innis*?)
- III. **Pat search—**becomes a detention at this point. *Terry/Sibron* test for detention and for pat search. *Florida v. J.L./Dolly* re: info from anonymous informant [*Gates/Aguilar/Spinelli*]. *Dickerson* re: removal of object.
- IV. **Arrest—***Watson* re: AW needed; *Gates* test for p.c.
- V. **SIA—***Chimel* test.
- VI. ***Miranda* violation re: question about more drugs—**Custody/interrogation under *Berkemer/Innis*. *Elstad/Patane* re: subsequent statements & physical evidence.
- VII. **Search of car.**
 - A. SIA auto—*Belton/Atwater* test; *Thornton*.
 - B. Auto exception—*Carroll/Carney* test.
 - C. Consent search—Implied? Voluntary? (**Bustamonte**).
 - D. Impound/inventory search (*Bertrine*) & inevitable discovery (*Nix*).
- VIII. **Invocation of *Miranda* right to counsel—** *Davis* re: unambiguous.
- IX. **Det. Douglas contacts: *Edwards* violation (vs. *Mosely*)?**
Knowing/intelligent/voluntary *Miranda* waiver (*Johnson v. Zerbst*)?
- X. **Live lineup—**Violation of 6th A right to counsel? (*Wade/Gilbert*) Attach? (*Brewer*) Offense specific. (*McNeil/Cobb/Blockburger*) Due process violation? (*Stovall v. Denno*)—otherwise reliable?
- XI. **F.O.P.T. issues—***Wong Sun*.