

Exam No. _____

Final Examination—Grade Summary

Part 1—Multiple Choice 40 /40

Part 2—Short Answer 37 /40

Part 3—Essay 40 /40

Total Points: 117 /120 = A

Great job!

Grading Outline—Essay—Criminal Procedure I, Summer 2009

___ **I. Pursuit of car & detention**—Detention v. Consensual Encounter (*Bostick/Drayton/Hodari*); detention of car—*Terry/Sibron/Wardlow*. *Whren* issue. Ordering out (*Mimms/Wilson*).

___ **II. Pat search**—*Terry/Sibron*.

___ **IV. Arrest**—Arrest warrant? (*Watson*). Probable cause? (*Gates*).

___ **V. Search of car**—SLA? (*Belton/Atwater/Thornton/Gant*). Auto exception? (*Carroll/Carney*). P.C.? (*Chambers*). (Do “pat search” of passenger compartment under *Long*? Results provide P.C.?) Impound/inventory search? (*Bertrine*) via inevitable discovery (*Nix*). F.O.P.T. of any prior illegality? (*Wong Sun/Brown* factors).

___ **VI. Arrest for gun & drugs** (same issues as above). S blurts out “Give me a break, man!...” —*Miranda* violation? Custody? (*Berkemer*). Interrogation? (*Innis*). [Custody, but *no* interrogation.] Officer says, “Admit it, you were selling...” S responds, “Yeah, you got me man...” Same analysis [*is* interrogation]. *Miranda* violation as to second statement. As to both statements, voluntary under 14thA due process/5thA? (T.O.C. test.) May be used to impeach if only *Miranda* violation. (*Harris*) (not at all if involuntary). F.O.P.T. of any prior illegality? (See above.)

___ **VII. Statement at police station**: Initial interview, prior to S invoking: Waiver of *Miranda* rights (*Zerbst*); F.O.P.T. of prior *Miranda* violation? (*Elstad/Seibert*). After S invokes right to remain silent: questioning stops—scrupulously honored. (*Mosley*). Voluntary? (see above). F.O.P.T. of any other prior illegality (see above.)

___ **VIII. Detective Anderson’s interview**: OK under *Mosley* (go thru *Mosley* factors & analysis)? F.O.P.T. first *Miranda* violation? (*Elstad/Seibert*). 6th A right to counsel attached. (*Brewer/Rothgery*). Not violation cuz 6th A offense specific (*McNeill*) & this interview re: unrelated crime (otherwise have to do *Cobb/Blockburger* analysis). *Montejo* overruled *Jackson*; *Miranda* waiver sufficient to waive 6th A right to counsel, in any event. Voluntary? (See above.) F.O.P.T. of any other prior illegality? (See above.)

___ **IX. F.O.P.T. generally** (if not done in each section, above.)

ID:

Name:

Exam Name: CrimProl_Sepulveda_UL09

Instructor: Sepulveda

Grade: _____

Essay.

Reasonable suspicion/terry stop

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Court in Terry stated that a temporary detention is a seizure under the 4th amendment but they seemd to use the analysis of (Camara) case to state the intrusion was less than for search and arrest so probable cause was not required so a lower standard of reasonable suspicion was established (name that by later cases).

Under Terry a police officer may detain a reasonable police officer would have reasonable suspicion to believe criminal activity was afoot and suspect was connected to it. Here Officer Quick was patrolling an area known to be a high drug trafficking area and recognized the witness from a prior drug trafficking contacts, that might not be enough to have reasonable suspicion but after defendant run the stop sign he would have reasonable suspicion since to stop the car and see what was going on since the combination of the area and suspect prior record and violation of a stop sign should be enough to stop the car. Under *Wardlow* nervous behavior and evasive behavior are material factors in determining reasonable suspicion. so from the fact that the officer violated a traffic law and according to *Atwater* there is no need to breach the peace to stop under Terry we can state that the officer had the required reasonable suspicion (RS) to stop the person after the running of stop sign. According to *Whren* it doesn't matter if the officer wanted to stop suspect because he suspected drug trafficking (pretext stop) because the subjective belief of the officer is irrelevant as long as as reasonable officer could have made the stop. Here if the officer did not have reasonable suspicion after the running of the stop sign he sure did after the person could not stop and actually speed away from the officer. Under *Wardlow* case headlong flight coupled with the fact that suspect is a known drug trafficker and is in a

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durg area is enough to create RS and plus he broke more traffic laws by running the stop signs.

Under Mimms the officer can order the driver out of the car without further RS then required for the stop (he can even order the passenger out under Wilson) when the person started to reach under the seat and would not listen to the officer there was defently enough RS to detain for futher investigation. According to Royar a detetion must be limited in length to last as long as necessary to effacuate the purposoe of the stop, and according to Sharp there is no time ridged time limit ont eh stop (but at some point a detention will become a defacto stop). when determining RS the officer must make reasonable infrences in light of his experence, from artculable facts (not inchoiate and unparticularized hunches and suspesions)(Cortez), here the officer used his 5 year experince as a narcotics investigator and got enough resonable suspesion to believe that this person could be armed and dangerous, which is what is requried under Sibrone to condcut a limted frisk and and pat of the outer layer of clothing (this search is limted to weapons (Terry)). the pat and firsk was reasonable under the TOC test. The officer did not find anything.

SIA

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the officer was legally entiled to arrest the suspect under watson since he had broken many misdemeanors including reckless driving and evading police officer, watson stated that police may arrest for misdemanors committed in there presence here the officer saw the violations and therefore had the requist probable casue (PC). So according to

Roberson/Gustofson the police can search a person after a lawful arrest and the cases stated that this type of search was reasonable under the 4th amendment and did not require any form of PC other than the one required for the arrest. According to Atwater/Belton the court created a brightline rule that if the person is an occupant or recent occupant (Thornton - here he approached the officer so he initiated the contact but still valid under Thornton) then after a valid arrest the police may search the car's passenger compartment including glove compartment and any containers inside the car, this including passenger containers. The purpose of the search incident to arrest was limited to protect the police so they can search for weapons and destruction of evidence. But Atwater stated that SIA doesn't give right to search trunk since no danger involved since hard to open trunk while handcuffed and retrieve weapon or destroy evidence. The problem is that the officer put D in to the car after handcuffing him, this is a problem now since Gant's decision came out limiting the authority of Belton, the Gant court stated that after the person is in handcuffs and in the back of police car the police may not SIA but they also stated that police may search if they had reason to believe that car contained evidence related to the crime for which suspect was arrested for. Here the suspect is arrested for the crime of misdemeanor reckless driving and evading the police officer so it is hard to say what type of evidence could be related to this crime that can be found in car. but maybe the officer can state that the person was putting something under the driver seat and that the reason he was evading the police officer was that he had contraband (drugs) in the car. so this might work and the gun found would be admissible but the search of the trunk could not work under SIA since they can't search the trunk. Also the prosecution might claim frisk of the car based on long since the officer might believe weapons are in the car but this seems to be far

Good

stretch.

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So the search of the SIA arrest of the car trunk might be a violation of the defendant's right under the SIA arrest so the evidence found in car might be excluded under the exclusionary rule which states that if evidence obtained from a violation of the a constitutional right the it is inadmissible in the person's case in chief (Mapp). But still could be used to impeach the person. so the FOPT might come in to play, derived from Wong Sun case which states that whether granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of the primary illegality, or instead by means significantly distinguishable to be purged of the primary taint. Here the police will claim inevitable discovery (Nix) which requires the police to show by the preponderance of the evidence that they would have ultimately gotten the evidence by other lawful means. Here they would use the inventory search (Bertrine) which is where the police impound the car and can search the entire car including the trunk. this is proper as long as there is a procedure in place for the inventory search. and that is in the facts that the car was impounded.

The prosecution will also claim that the auto exception will apply since they had probable cause to believe that there might be drugs in the car from the fact that the person was evading the police he was a known drug dealer and was in a high drug area. So there could be probable cause for search (fair probability that contraband or evidence related to a crime will be found in a particular place). Under Carney/Caral the police need to have probable cause to search the vehicle without a warrant the court found there is less of an expectation of privacy in a car than in a home due to regulations of the car and the fact

doubt
enough
for
P.C.

it can be moved easily (lost of evidence) . Under chambers the police must have probable cause to believe that specific contraband or evidence of crime will be found in the particular car. Here the police suspected that the person had drugs on him based on the fact that he ran from the police and was in a drug area (wardlow). So I think the popping of the trunk was valid under the auto exception. so the evidence found in trunk should be admissible.

The blurring of the confession:

Miranda was created to protect the public from coercion, the prosecution can not use statements stemming from a custodial interrogation unless there are procedural safeguards to protect the defendant's 5th amendment right against self incrimination.

The police must give miranda warnings to a person who has considered to be in custody and when they are going to interrogate him. Custody is defined (berkmire) as an objective test from view point of defendant, whether a reasonable person would understand that his freedom of movement was restricted to a degree associated with formal arrest, here the defendant was actually under arrest so there is no problem that custody is met. interrogation is defined by Innis court, an objective test view point of police officer, express questioning or functional equivalent, functional equivalent is defined as words or actions that a reasonable officer should know will reasonably likely elicit incriminating responses. Here the person blurted out that i don't normally deal drugs there was no interrogation here rather the defendant voluntarily gave a confession. so the blurted out statement is not in violation of miranda and therefore is admissible confession since not also coerced or under duress.

But then the officer's response was a clear violation of Miranda, we have established that custody was there now the officer asked a direct question, so the statement defendant made to the question if the officer to admit it man is not admissible. BUT may be used for impeachment purposes under Harris I.

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good

the Miranda waiver was received we have a Elstad analysis. Here the police had violation of Miranda and there after got another confession after a valid Miranda waiver. Here we can say that the FOPT would not apply to not allow the second confession since Elstad will apply, the court in Elstad stated that if the police violated Miranda but it was non-coercive (voluntarily and no duress) then the second Miranda warning and confession could be admissible in case of chief, the court rejected the cat out of the bag theory. The court created a test later on under Seibert which create factor in order to make sure that police were not using Elstad to get around Miranda the factors are 1) the detail and completeness of the first round of question and answer, 2) the overlapping of content between the first and second interrogation, 3) the time and setting of the first and second questioning, 4) the continuity of the person conducting the questioning and 5) finally how the second round of questioning seems to be a continuous of the first. here the first interrogation was brief and the answer was also short. the setting of the second questioning was different and the person was also different. the timing factor was also met since the officer drove the person to the police station and the setting was met since the first one was in the car and second was in police station, and the second was a lot more detailed since it lasted for about an hour so there would not be much overlapping. so the confession was admissible.

and the content /answers werer different then the first round.

He claim right to silence so Mosely must apply the police must scrupulously honor the defednant's right to silence and the factors to consider are, the proximity of the time from first questioning to second, must be differnet crime, second questioning must be by differnet person, miranda warnings must be given and waived, and setting must be differnet from the first round of questioning. Here the police quickly stoppe asking quesitons so they met mosely so far.

a compalin was file so 6th amendme applied under Browery and Rothgery where right to counsel 6th amenment applies whe offical judical proceddings have been initated.

So jackson might would come into play whcih stated tha tplice may not ask further quesitons after the perosn has invoked right to consle so no waiver of 6th by mirand warning but then came patterson whcih stated that perosn must first invoke the right here he did not so the the miranda waiver 2 days later was valid and that waiver of mirand was enough to waive 6th amendment right whic had not been invoked.. Plus then came Mcneal which stated that if the 6th amdnemnt has attached the right is offense specific so the police could go back and ask the person about adiffernt related crime and the mirand waiver would be enough to since the 6th ammdment had not attached to the unreated homicide(no judical proceddings had begun). Plus the confession in violatin of 6th amendmt could be used to impeach a perosn under Harvey. These cases after Jackson were a wya the court limted the effect of jackson and then came montjo which changed everything by overruling Jackson it stated that

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after a person has had official judicial proceeding initiated against them they can waive their right to 6th amendment even for the same offense through waiving their Miranda rights.

Under the Mosely factors (above) the confession to the murder is valid and admissible since it was two days after he invoked right to silence, it was for a different unrelated crime (so no need for Cobbs and Blockburger), it was for a different crime, the person asking questions was different, and it was in a different place since first one was in interrogation room and second was in his cell. so the second confession was valid because Mosely was met and the Miranda waiver was enough to waive right to 6th amendment (Montejo)/McNeal.

This is a very good essay -
 I gave you all possible points.
 Just note: you do need to work on a few things re: style: (1) watch typos - you have a lot of them; (2) In several areas, your analysis reads like a stream of consciousness - state rules & then apply to facts to analyze et reach a conclusion; (3) Try indenting your 9's; and (4) use headings & sub headings & bolding issues to break up what otherwise is a run-on solid block.

long

Good effort!!

END OF EXAM