Constitutional Law: Final Examination (January 7, 1972)

William & Mary Law School

Repository Citation

Copyright © 1972 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository. https://scholarship.law.wm.edu/exams
CONSTITUTIONAL LAW

Final Examination

January 7, 1972

INSTRUCTIONS:

The examination consists of three (3) questions totaling 100 points. Each question states the points given to such question, a suggested time limit and a maximum page limit. The maximum page limit was computed by counting one side of the page as one page. You may write on both sides of the page, but such will count as two pages. Think before you write and organize your answers carefully. If a question involves more than one issue, discuss each issue separately.

** * * * * *

I. (90 minutes - 45 points - 12 pages)

Smith, Jones, and Whitehead were all charged with burglary at the Knox Jewelry Store. Smith pleaded guilty to such charge and after trial, defendants Jones and Whitehead were arrested. Later, defendant Whitehead was also convicted in a separate trial of assault with intent to kill arising out of an attempted robbery and shooting of a taxi driver. The facts leading to the above pleas and convictions were as follows:

On March 14, 1971, approximately two weeks following the burglary of the jewelry store and one month following the assault on the taxi driver, the police received a tip from one of their most trusted informers (who had on many occasions provided them with valuable and accurate information) that the items taken from the jewelry store were being kept in Room 412 of the Bed & Board Hotel. The police presented, in affidavit form, to the local magistrate the fact of the informant's previous good record in providing information and the informant's information regarding the location of the stolen items. Based on such information the magistrate issued a search warrant for Room 412 of the Bed & Board Hotel.

At 3:00 p.m., March 14, 1971, two police officers, after learning from the hotel that the room was occupied by Jones, went up the fire escape of the hotel to the approximate vicinity of Room 412, putting themselves in a position where they could see into the room and overhear the conversations therein. Two other officers, possessing the warrant, stationed themselves in a hall closet close to the room. The four officers were in constant communication through the use of electronic transmitting and receiving devices.

At approximately 3:30 p.m. the same day, two men entered the room, later identified as Smith and Jones. A short time after Smith and Jones entered the room, the two officers on the fire escape overheard the following conversation:

Jones: I told you not to take all that junk. We'll never get rid of it. You should have done what I said — take only cash and big stones. Old man Knox carries nothing but junk.

Smith: I'll find a buyer and then you'll eat your words. If I listened to you, we'd never hit the Knox store in the first place. You're just like Whitehead — rip-off a taxi driver for twenty-five bucks — that's your speed.

After overhearing such conversation, the two officers on the fire escape informed the other officers to go in and execute the warrant. Thereupon, the two officers in the hall, by means of a pass key obtained from the hotel, entered the room unannounced, taking Smith and Jones by surprise. The warrant was served
on Jones. The officers then proceeded to execute the search warrant. All the jewelry taken from the store was located in a paper bag beneath the bed. In the bag was also a gun, which was later identified as belonging to Whitehead, being the same gun used in the assault on the taxi driver. After finding such items, both men were immediately placed under arrest. At such time, the following exchange took place:

**Officer:** You have the right to remain silent. Anything you say can and will be used against you in court. You also have the right to consult with a lawyer and to have a lawyer present with you during questioning. If you cannot afford a lawyer, one will be appointed for you. Do you understand these rights?

**Smith:** How did you know it was us?

**Jones:** Shut-up. Don’t say anything.

**Smith:** You can’t make me talk. I want a lawyer.

**Jones:** Me too. Get me a lawyer. I’m not saying nothing.

**Officer:** If you cooperate, we’ll go easy on you. Who else was in on the job with you? You’re a three-time loser, Smith, and you’ll go the habitual criminal route this time. That means life. If you cooperate, we’ll make sure they don’t throw a habitual criminal charge on you.

**Smith:** All right.

**Jones:** Shut up you fool.

**Smith:** We hit Knox. Whitehead was with us.

Smith and Jones were taken to the police station and formally charged with burglary. Within a few hours thereafter, Whitehead was arrested and properly warned of his constitutional rights. Whitehead refused to talk to the police until he had consulted with a lawyer. The next morning all three men were taken before the magistrate who fixed bail and set the date for the preliminary hearings. The local prosecuting attorney, following such initial appearance, told the men that by waiving the preliminary hearing, they would be evidencing their good faith and such waiver would speed up the trial. All three men agreed to waive the hearing since none could make bail. Indictments of Smith, Jones and Whitehead followed quickly. Two days prior to the arraignment (reading of the indictment), all three men were appointed counsel. The lawyer representing Smith upon verifying the prosecution’s intent to use the jewelry found in the room plus the incriminating statement made by Smith in the hotel room both before and after the officers entered the room, urged Smith to plead guilty to the burglary charge. Smith agreed and did so at the arraignment. Jones refused similar advice from his attorney and pled not guilty as did Whitehead, who also pled not guilty to the charge of assault with intent to kill.

Smith, prior to indictment and arraignment of the three men, was taken aside and told by the police that the judge would go easy on him in sentencing if he cooperated in securing some information from Whitehead. Smith agreed, was wired for sound so that he could transmit conversations and was placed in a cell with Whitehead. While Smith was wired for sound so that his conversations could be overheard by the officers, the following exchange took place:

**Smith:** If you plead guilty they’ll go easy on you.

**Whitehead:** If you had kept your mouth shut in the first place, we’d never have been arrested. It was your idea in the first place to hit the Knox store. Jones told you it was risky. But, no, you’re a big man now. Jones and I only went along because of you.

**Smith:** You and Jones -- a couple of small-time punks -- rip-off a poor old man for a few bucks.
I'd never have pulled the trigger on that old man if he hadn't tried to take off.

Following the indictment and arraignment of the men the police went to Jones who had steadfastly refused to talk on advice of counsel and confronted Jones with the conversation overheard between Smith and Whitehead. Counsel was not present. The following exchange took place:

Officer: Are you ready to talk now?  
Jones: Okay, we hit the jewelry store, but I had nothing to do with the taxi job - that was Whitehead.

At the trial of Jones, the following evidence was admitted:

1. Testimony of one of the officers stationed on the fire-escape at the Bed & Board Hotel, relating the content of the incriminating statement made by Jones in the hotel room prior to the entry of the officers and the arrest.
2. The jewelry seized in Room 412 pursuant to the search warrant.
3. Testimony of an officer relating to the conversation between such officer and Jones upon being confronted with the incriminating statements elicited from Whitehead during Whitehead's conversation with Smith.

At the trial of Whitehead for assault, the following evidence was admitted:

1. The testimony of an officer relating the content of the conversation overheard, by means of the electronic devices, between Smith and Whitehead that took place in the cell prior to the indictment and arraignment.
2. The revolver seized in Room 412, later properly identified as belonging to Whitehead and as the same gun used in the assault on the taxi driver.

QUESTIONS

1. On appeal of Jones' conviction, assuming that properly phrased and timely motions and objections were made by counsel relating to the evidence listed above and other factors surrounding the arrest and trial, what grounds for reversal on appeal should be argued? Explain fully the basis for such argument(s), including rebuttal of anticipated counter-arguments from the prosecution.
2. The same question as (1) above with regard to the trial of Whitehead.
3. In a habeas corpus action to set aside the guilty plea of Smith, what grounds should be argued on behalf of Smith? Explain fully the basis for such argument(s), including rebuttal of anticipated counter-arguments from the prosecution. Do not duplicate arguments previously made on behalf of the other two defendants. If any part of your answer is discussed in connection with such cases, merely make reference thereto and set forth the reason for the applicability to Smith's case.
The City of Columbia, following a court-ordered busing of several thousand white students to public schools having a predominantly black enrollment was facing massive resistance from many parents loosely joined under an organization called "SONS" (Save Our Neighborhood Schools.) The leaders of such organization were calling for a boycott of the schools, impeachment of the local federal judge who ordered the busing, and resignation of the members of the school board who had voted not to appeal the decision (upon the advice of counsel).

Several protest meetings organized by SONS had been attended by several thousand persons. On the evening of October 23, at one of the meetings of the SONS organization, Throm J. Shurmond, de facto president of such organization, made a speech in which he stated:

"All Christian residents of Columbia who believe in the right of parents to send their children to schools located in their own neighborhood must put an end to this madness. Since our elected representatives refuse to do anything, it is the sacred and moral obligation of everyone to make sure that those buses do not run again. The buses must be destroyed!"

A few hours following such speech, certain unknown persons, by use of explosives, destroyed four buses owned by the school system.

At such October 23 meeting, the members voted to hold a street march on City Hall on the afternoon of October 30, by a route beginning at the city park located approximately one mile from City Hall and past the offices of the Board of Education. In the local newspaper the following morning, the leaders of the SONS organization were quoted as stating that "approximately ten thousand persons will participate in such march".

On October 25, Shurmond, on behalf of the SONS organization, applied to the Department of Safety of the City of Columbia for a permit to hold the march on City Hall. The city ordinance under which such permits were authorized provided in full as follows:

"No parades, marches or demonstrations shall be permitted on the public streets, sidewalks or public grounds of the City of Columbia unless authorized by the Department of Public Safety at least twenty-four hours in advance."

Violation of the above-stated ordinance constituted a misdemeanor punishable by six months in the city workhouse and a fine of not more than $500.

The Department of Public Safety, based upon the destruction two nights earlier of the school buses and the fear of further violence, refused to grant the permit. On October 30, the march on City Hall was held in an orderly and peaceful manner despite the city's refusal to grant the permit. Shurmond and several other "leaders" of the SONS organization, participating in the march, were arrested and charged with violation of the aforesaid statute.

On November 2, Shurmond was indicted by a local grand jury under Section 2500 of the State Criminal Code. Such indictment was based upon the speech given by Shurmond at the October 23 meeting of the SONS organization. Section 2500 of the State Criminal Code is entitled "Inciting Unlawful Acts" which defines and makes criminal "promoting or encouraging others to commit unlawful acts, including urging or instigating other persons to commit such acts."

Other leaders of SONS were informed by the prosecuting attorney that they would be prosecuted under the above "Incitement" statute if at any future meetings of the SONS organization they urged resistance to the busing program of the city. On December 1, such leaders brought an action in the local federal district court seeking declaratory and injunctive relief, restraining the prosecutor from prosecuting or threatening to prosecute for violations of Section 2500.
The complaint alleged that the aforesaid statute on its face violated the First and Fourteenth Amendments to the Constitution and that threats to enforce such statute were not made in good faith with expectation of securing valid convictions, but were part of a plan to discourage the plaintiffs' from asserting their constitutional rights.

QUESTIONS

(1) In the prosecution of Shurmond and others for participating in the unauthorized march on City Hall, what constitutional defenses would you raise on their behalf? Explain fully.

(2) In the prosecution of Shurmond for violation of Section 2500 of the State Criminal Code, what constitutional defenses would you raise on his behalf? Explain fully.

(3) In the action in federal district court on the complaint of the other leaders of the SONS organizations, what issue (s), other than those that you will raise in defense of Shurmond for violation of Section 2500 of the State Criminal Code, should be considered by the federal district judge? Explain fully.
Defendants, three members of a cult named "The Sons of Kara Kohn" were arrested on the sidewalks of New York City. The facts leading to their arrest were as follows: Defendants had stationed themselves at the corner of 5th and 48th. Two of the defendants were standing on what they described as the "holy rug" in the middle of the sidewalk. The third defendant was selling literature of the faith to the pedestrian traffic. The defendants position was such that pedestrian traffic, although it could pass the defendants without going into the street, was forced into a small area of the sidewalk. The literature, although giving a brief history of the "movement" was devoted primarily to a detailed description of the dogma of the "faith". In essence, the literature stated that members of the faith were required to engage constantly, in both thought and deed, in assorted and varied group sexual practices (described in detail) many of which were in direct violation of the health and criminal codes of the city and state. Many of the "activities" were portrayed in pictorial form. Such practices were required, said the literature, to prepare "for the glorious life hereafter when the true fulfillment of the desires of man would be achieved." Failure to engage in such practices in the life on earth would "cause man to revolt" against the life hereafter where such activities were the sole purpose and objective of such life, all much to the displeasure of Kara Kohn," the ultimate judge of our love and mankind." The literature concluded with a call to everyone to be "saved" by joining the movement and adhering to its practices.

The defendants were charged with violating the following ordinances of the city:

Sec. 145 "No person or group of persons shall occupy or assemble on the public sidewalks in such a manner as to obstruct the free passage of others thereon."

Sec. 287 "No person or group of persons shall sell or distribute any obscene materials. A matter is "obscene" if, by contemporary community standards, and considered as a whole, its predominant appeal is to the prurient interest. As a matter of State public policy, obscenity is utterly without social redeeming value and constitutes a nuisance which should be abated.

The city prosecutor is willing to stipulate that the defendants are members of a religious organization, and to that extent are entitled to the full protection of the first amendment's religion clauses. He does not concede, obviously, that such clauses are a defense to the charges.

**QUESTION**

In the prosecution of the defendants for violation of §§ 145 and 287, what constitutional defenses to the charges would you raise on their behalf? Explain fully.