Constitutional Law III (Criminal Procedure): Final Examination (May 14, 1973)

William & Mary Law School
CONSTITUTIONAL LAW III
(CRIMINAL PROCEDURE)
FINAL EXAMINATION

May 14, 1972

Instructor's name: Mr. Williamson

Instructions:

The examination consists of five (5) questions totaling 100 points. Each question states the points given to such question and a suggested time limit. Think before you write and organize your answers carefully. If the question involves more than one issue, discuss each issue separately.

1. 15 points - 25 minutes

Defendant and several other individuals were apprehended while in the process of the commission of a bank robbery. The police had surrounded the bank and ordered the man, still inside along with several employees and customers of the bank, to come out single file with their hands above their heads. At first, the man refused to surrender. After several requests by the police to give themselves up, the defendant alone walked out of the bank and handed the police his gun. The defendant was handcuffed and taken to a squad car where he was placed under guard while the police persuaded the remaining men to give up. At no time was he given his Miranda warnings.

For a period of three hours the defendant sat in the squad car under heavy armed guard. The defendant did not speak nor did the police ask any questions. Finally, the defendant made the following statement: "I think the bank guard I shot in there is dead." At the trial, the officers who were guarding the defendant at the time each testified as to the aforesaid statement. The defendant objected to such testimony. How should the court rule on the defendant's objection?

2. 25 points - 50 minutes

Defendant Smith, was convicted of felony murder and rape. The following facts were established at the trial and constitute the record on appeal:

On the evening of October 1, 1972, five year old Karen Jones was found dead amid debris behind the apartment complex located at 102 6th Street. On the day of her death she had been visiting her grandfather who resided in the apartment. Upon discovering the body, the police "sealed off" 102 6th street, allowing no one to enter or leave. All male occupants were subjected to questioning. During the course of this procedure, two uniformed officers knocked on the door of the defendant's apartment. The uncontradicted testimony of the officers was that they knocked and announced that "we're police officers and that a small child had been killed and we'd like to come in." The defendant's response was something like "Come in, I'd like to help."

Once inside the apartment the officers immediately observed scratches on the defendant's face and that he looked as though he had just taken a bath. The room was in disarray with candy strewn about the floor. The defendant was then subjected to a visual search of his pubic area revealing the presence of what appeared to be blood. At this point the officers informed the defendant that he was under arrest.
The clothing worn by the defendant at the time of arrest and a pair of work pants found lying on the top of a hamper located in the room to which the police originally gained entry were seized.

The defendant was taken to police headquarters where a benzidine test (a chemical test which reacts to the presence of the peroxidase enzyme, an enzyme present in blood and a few other substances, notably citrus fruits) was conducted. The test was positive as to his right hand and penis. Chemical analysis revealed the presence of type O blood (defendant has type A blood; the victim’s was type O) on the work pants taken from defendant’s apartment.

All of the above was admitted as evidence at trial over the objection of the defendant. Prior to the trial, defendant had moved to suppress all evidence obtained by the police, i.e., their observations, the inspection of his pubic area (both in the apartment and the subsequent test), the seizure of clothing and the subsequent chemical analysis. How should the court rule on appeal?

3. 20 points - 35 minutes

The following facts were developed at a hearing on a motion to suppress. The district court entered an order denying the motion and the defendant has appealed.

On October 21, an application for a search warrant was made in Municipal Court by James Dean, a police detective. The application was supported by Dean’s affidavit which provided in relevant part as follows:

I received information from a reliable confidential informant who stated that [the defendant] was involved in the above described burglary. Witnesses to the burglary reported having seen a 1962 Ford station wagon in the vicinity about the time the offense was committed. The defendant presently has registered in his name a 1962 Ford station wagon.

That since that time I received information from Frank Long, a special agent of the FBI, who stated that on October 13, he had occasion to observe the defendant unloading a box from his 1962 Ford station wagon believed to contain merchandise taken in the burglary. Such material was taken into a dwelling located at 700 16th Avenue”.

Dean testified under oath before the issuing magistrate revealing the name of the informer. The magistrate recognized the informant as a person who had previously given information upon which the judge had acted and which proved correct.

Based upon the officer’s written affidavit and sworn testimony, the warrant was issued and executed by the police the next day (October 22). In the house described in the affidavit, the police found merchandise taken in the burglary.

How should the court rule on appeal? Discuss all issues fairly presented.
4. 20 points - 35 minutes

Defendant – appellant was convicted of possession of an unregistered firearm in violation of 26 U.S.C. §5861(d). In the district court the following facts were developed and constitute the record on appeal:

On the night of October 11, a complaint was filed with the Wythe City Police that Jones [the defendant] and two other men had abducted the complainant at gunpoint and taken him to Jones’ home where they committed an aggravated battery and armed robbery. The other two men were immediately taken into custody. At the time the two men were arrested, the police seized a weapon of the type the complaining witness alleged had been used in the robbery.

The next day the police, armed with a properly issued arrest warrant proceeded to Jones’ residence for the purpose of securing his arrest. They knocked on his door and received a response from a female voice inside, inquiring as to the identity of the knocker. After announcing their office and their intent to arrest Jones, and upon hearing no reply but a “rustling” noise, the officers broke down the door and entered with guns drawn.

Their initial entry carried them into the kitchen. To the officers’ left was a doorway leading to a bedroom. As they entered, Jones and a woman were emerging from the bedroom; another unidentified male was seated at a table in the kitchen. Jones was immediately advised of his arrest, ordered to raise his hands, and was frisked after being placed against the kitchen wall opposite the bedroom entrance.

One of the officers then walked to the bedroom door and looked inside. Observing a figure on a bed to the left, the officer turned on the room light and determined that an infant child was lying on the bed. The officer entered the room and walked to the bed to “see that the baby was all right.” He was followed into the bedroom by a second officer, who, looking about the room, observed and seized the weapon upon which the conviction was based.

On appeal, the defendant contends that the firearm was illegally seized and that the lower court erred in denying his motion to suppress the evidentiary use of that item at his trial. How should the court rule? Explain fully.

5. 20 points - 35 minutes

Pursuant to 28 U.S.C. §2241, defendant petitions the district court for a writ of habeas corpus contending that his conviction and sentence were imposed in violation of his constitutional rights to a speedy trial as guaranteed by the 6th and 14th Amendments to the Constitution and his right to “fundamental procedural fairness” required by the 14th Amendment.

Petitioner’s claim is based upon the following sequence of events occurring between June, 1969 and March, 1973:
June 12, 1969 - Petitioner embezzled $5,000 from his employer.

August 15, 1969 - Petitioner is sentenced to 24 months in the state penitentiary on another charge.

October 15, 1969 - Petitioner's former employer filed a "complaint" with the sheriff's office alleging that the petitioner embezzled $5,000 from his business.

August, 1971 - Petitioner is released from custody.

August, 1971 - Petitioner is indicted on charges of embezzlement arising out of the "complaint" filed in October, 1969, is immediately arrested and confined to jail while awaiting trial.

March, 1973 - Petitioner is tried and convicted on the embezzlement charge.

How should the court rule on petitioner's claims? Explain fully.