

CRIMINAL PROCEDURE
PROF. KRAVITZ
NIGHT SECTION
FALL SEMESTER, 1990

There are ten questions. They are of equal weight. Read the questions carefully. Answer only what is asked. The longest answers are not always the best.

You have three hours for the examination. No more and probably not much less.

BUDGET YOUR TIME

Good Luck and Enjoy the Holidays

100 points

FIFTEEN POINTS

During the summer of 1989, David Mooney lived in a small niche beneath Interstate 91 in New Haven, Connecticut. The girders overhead served as shelves, some 14 boxes on the ground as a chest of drawers. Slabs of the concrete roadway were his bedroom walls. On one of them hung a Playboy calendar. This is where Mooney called his home.

Mooney, who had lost a carpentry job and then had feuded with his roommate, moved to his niche approximately one year earlier. The site, up an embankment and obscured by shrubbery, was almost impossible to see. Mooney departed from the spot each morning to wash in a nearby reservoir, taking care not to be seen whenever he left. He left behind his Walkman, his cassettes and hundreds of dollars in coins he kept in his duffel bag--money, he said, which came from tips that his girlfriend earned at a nearby restaurant. His property was always undisturbed when he returned.

Mooney has since exchanged that lair for a cell in the Connecticut state prison where he is serving fifty years for felony murder and robbery of Hardluck as well as a stint for possession of cocaine. The robbery and felony murder convictions were based in part on evidence seized when the police entered the secluded, isolated spot where he had been living. At no time did they secure a search warrant.

Mooney had been implicated in the felony murder and robbery by another suspect in the case named Sunny. About an hour later, the police found his niche beneath the bridge where they spotted his chest of drawers which they searched. Inside the drawers were found coins and

bloody trousers which the police claimed linked Mooney to the crimes.

(1) At trial, Mooney moved to suppress the search of his niche. The trial court overruled the motion and underneath Interstate 91. The coins and trousers were admitted into evidence. You are the appellate court. Discuss all relevant issues and rule on Mooney's appeal.

FIVE POINTS

A... Shortly thereafter, Mooney was driving on Interstate 91 when he was stopped for speeding by trooper Benny. Trooper Benny was unaware that Mooney was a suspect in a homicide and unaware of the prior search underneath Interstate 91. Before exiting his vehicle, trooper Benny conducted a radio check and learned that Mooney's vehicle was properly licensed. Upon approaching the vehicle, trooper Benny noticed Mooney "jumping around" inside the vehicle 20 bending down twice. Finally, Mooney exited his vehicle and walked briskly toward trooper Benny.

At that point, the officer had Mooney place his hands on the rear of his car and frisked him for weapons. During the frisk, the trooper felt a small rectangular object in the defendant's front pants pocket. He was not sure what the object was; it was about one and one half inches long and one-fourth inch thick. Trooper Benny testified that he believed the object could be a razor blade wrapped in something. Trooper Benny took the object from the defendant's pocket and observed that it was a small white envelope, which he later described as a "druggist fold." From his training and experience, trooper Benny testified that he was familiar with such an object's being used to hold drugs. Upon opening the envelope, trooper Benny found a substance later determined to be cocaine. Mooney was charged with possession of Cocaine.

It (2) The trial court denied Mooney's motion to suppress and he is convicted. You are the appellate court. Decide Mooney's appeal concerning his conviction for possession of cocaine.

FIVE POINTS

After trooper Benny placed Mooney under arrest for possession of cocaine, he handcuffed him and placed him in the back of the cruiser. The back of the cruiser did not have door handles from inside. Trooper Benny then searched the inside of the car and found a wallet allegedly belonging to Hardluck in the locked glove compartment. At the time of this search, trooper Benny was unaware that Hardluck had been found strangled one week earlier. Trooper Benny seized the wallet which was later introduced into evidence at Mooney's homicide trial.

(3) At trial, Mooney's motion to suppress the wallet was overruled and it was admitted into evidence. You are the appellate court. Decide Mooney's appeal concerning the admissibility of the wallet.

TEN POINTS

After trooper Benny found the wallet of Hardluck, he searched the trunk of the car and found a blood stained belt which allegedly belonged to Hardluck. The car was then towed to an impoundment lot. Aboney moved to suppress the belt. The state argued that there was probable cause for the search of the automobile and, in the alternative, the belt was properly taken pursuant to an inventory search of the vehicle.

At trial, Mooney's motion to suppress the belt was overruled and the belt was admitted into evidence. You are the appellate court. Decide Mooney's appeal concerning the Admissibility of the belt.

FIFTEEN POINTS

Mooney was arrested by Trooper Benny for possession of cocaine and transported to the police station. He was immediately processed and put in a jail cell with Judas. Unknown to Mooney, Judas was at that time a paid informer for the FBI. That night Judas learned that Mooney was a suspect in Hardluck's murder and talked to him about it with inconclusive results. Later that evening, Judas talked with his FBI controller, Agent Jepeto, who said he should find out more about the matter.

Hardluck was a well known advocate for prison reform in the New Haven area. Judas went to Mooney and informed him that he was in for some rough treatment from other inmates due to the rumors circulating in the prison that Mooney was responsible for Hardluck's death. Mooney was approximately 5 feet tall and weighed 120 pounds. Judas was six feet tall and had previously been a professional boxer. With this in mind, Judas told Mooney that he would protect him in jail if Mooney told him the truth about the death of Hardluck. Otherwise, Judas informed Mooney that he was "dead meat." Mooney then admitted the killing and gave details about the crime statements, which were later admitted in Mooney's murder trial.

(5) At trial Mooney moved to suppress his statements to Judas. The motion was overruled. You are the appellate court. Decide Mooney's appeal concerning the admissibility of statements made to Judas.

TEN POINTS

Later that evening, Detective Javert of the homicide squad was permitted to meet with Mooney in the jail. Mooney was read his Miranda rights and asked, "You did say I could have an attorney if I wanted one?" Detective Javert answered that he did have the right to an attorney. Mooney explained that he had tried to reach an attorney by calling collect from the jail telephone, however he had been unsuccessful in finding an attorney who would accept his collect call. Detective Javert re-read the Miranda rights and again asked Mooney if he wished to waive his rights. Mooney waived his rights and made an incriminating statement.

(6) At trial Mooney moved to suppress his statement to Detective Javert. The motion was overruled. You are the appellate court. Decide Mooney's appeal concerning the statement made to Detective Javert.

TEN POINTS

The incriminating statement made by Mooney referred to a potential witness named Tightmouth. Tightmouth, an alleged member of the Mafia, had seen Mooney with Hardluck on the night of Hardluck's death.

Tightmouth was incarcerated and awaiting trial. Detective Javert interviewed Tightmouth and offered to drop his charges if he testified against Mooney. Tightmouth readily agreed.

Regardless of your answer to question 6, assume Mooney's statements were held inadmissible for a violation of Miranda.

(7) Mooney's motion to suppress the testimony of Tightmouth was overruled, however. You are the appellate court. Determine the propriety of the trial court's ruling.

TEN POINTS

The next morning, Mooney was scheduled for an initial co-appearance. He was taken before a magistrate where he was appointed counsel and pled not guilty to robbery, felony murder and possession of cocaine. At the same time, Detective Javert arranged for a potential witness to the homicide to be in the courtroom in order to determine whether the witness could identify Mooney as the perpetrator of the homicide. When Mooney's case was called and he approached the bench, the witness informed Detective Javert that Mooney resembled the man who killed Hardluck.

(8) At trial, Mooney moved to suppress the identification made by the witness. The motion was overruled. You are the appellate court. Decide Mooney's appeal, concerning the admissibility of the identification testimony.

TEN POINTS

One month later, Mooney was indicted for robbery, felony murder and possession of cocaine. Prior to trial he requested a severance of the cocaine charge from the robbery and felony murder charges.

(9) The trial court overruled Mooney's motion for a severance. You are the appellate court. Decide Mooney's appeal concerning the propriety of the trial court's ruling denying a severance.

TEN POINT

During trial, Mooney demanded to testify. Mooney always maintained that he was innocent. Prior to trial he had informed his attorney Hardluck was killed by Sunny. Mooney explained that he accompanied Sunny and Hardluck to Hardluck's apartment where they drank heavily. He further explained that he had left the apartment to purchase more liquor and when he returned, Sunny had killed Hardluck and took his belongings, some of which were later found in Mooney's car. The car had been taken by Sunny after the homicide and returned days later.

At trial, Mooney told his attorney that although he was innocent, the jury probably would not believe him. Therefore, he was going to testify that he was at his mother's on the night of the homicide and had lent his car to Sunny earlier in the evening.

Mooney's attorney pleaded with Mooney to tell the truth to the jury. Mooney refused. The attorney then stated, "If you testify that you were at your mother's home, I will inform the judge that you are lying and, if called, I will testify against you." Mooney subsequently refused to testify in his own behalf.

(11) Mooney was convicted of all charges. You are the appellate court. Mooney claims that he was denied a fair trial because his attorney's threat to testify against him denied him a fair trial. Discuss all relevant issues and determine whether Mooney was deprived of a fair trial.