

CRIMINAL PROCEDURE
PROFESSOR KRAVITZ
SUMMER SESSION --- 1995

THE FINAL EXAMINATION

This examination consists of twenty questions. They are each worth five points. Some may require more time to answer than others. The longest answers are not always the best. Organization is very important. Read the questions carefully. Answer in the order that they are asked. Do not use facts that appear subsequent to the questions asked.

There is a one page, single side limit on each question. Answer the question and state your reasoning directly and concisely. Budget your time.

You have three hours for the examination.

There are 9 pages to the exam.

District Attorney Harvey Dent was advised that several famous pieces of art were found desecrated at the Gotham City Art Museum. Someone had painted smiling red lips over many of the museum's classic paintings. As Dent and the curator toured the museum and assessed the considerable damage, they discovered that five valuable paintings by Picasso were missing.

District Attorney Dent left the museum and met with Commissioner Gordon the next morning. Both acknowledged that a theft of this magnitude could not take place in Gotham City without the knowledge of crime boss Carl Grissom. Dent and Gordon knew that Grissom had a weakness for tall, thin blondes. The two recruited news reporter Vicky Vale to invite Grissom to her apartment to spend the evening. Grissom accepted the invitation and Vale charmed Grissom until the next morning.

That evening, Dent and Grissom asked Lt. Eckhart, their best theft detective, to break into Grissom's home. Lt. Eckhart broke in and stole Grissom's briefcase containing details of the art thefts on a map of the Gotham City Art Museum. On the bottom of the map was the word "Joker" which Eckhart suspected was the pseudonym for Jack Napier, a confederate of Grissom.

Q.1: Is the map taken by Eckhart admissible in a criminal prosecution of Joker for theft?

Lt. Eckhart submitted the map of the Gotham City Art Museum to the crime lab. After examination, Joker's fingerprints were found on the map. Lt. Eckhart was aware of Joker's reputation in the underworld as an art thief. A confidential informant who had previously provided accurate information over ten times to Lt. Eckhart also related that Joker had participated in the art theft and that the informant had personally seen Joker outside the museum on the day of the theft.

Based on this information, Lt. Eckhart drove to the Joker's home. After knocking on the door and not receiving a reply, Lt. Eckhart let himself in and found Joker sleeping on the couch. He woke up Joker and informed him that he was under arrest for theft. He informed Joker of his Miranda rights and obtained a written waiver of the rights. Lt. Eckhart then asked why Joker had red lips drawn on the museum's treasures. Joker replied, "I don't know if its art, but I like the statement that red lips make!"

Q.2: Is the statement of Joker admissible in a prosecution of Joker for theft?

Joker was escorted out of his house and waited on the front lawn for a police cruiser. Joker asked Eckhart who else was arrested in connection with the art theft. Eckhart reread Joker his Miranda rights and obtained another waiver. Eckhart then informed Joker that the Penguin was also a suspect. The Joker replied that the Penguin and the Riddler should be arrested since they originally planned the theft.

Q.3: Is the statement of Joker admissible in a prosecution of Joker for theft?

Lt. Eckhart drove to Riddler's house, called Riddler outside and placed him under arrest. Riddler was told that he was being placed under arrest for the theft of the Picasso paintings. He was not read his Miranda rights. He was transported to the station without being questioned and placed in jail. At the jail he was read his Miranda rights and asked if he needed anything. The Riddler grabbed the telephone and unscrewed the mouthpiece. Eckhart yelled to Dent that Riddler wanted an attorney. Riddler was immediately taken to a jail cell without being questioned.

Two hours later, Commissioner Gordon went to Riddler's cell, read Riddler his Miranda rights and asked Riddler if he would waive his rights. Riddler signed a written waiver and agreed to be questioned. He stated that he was innocent and was at his maternal grandmother's house at the time of the theft. After the statement was made, a complaint for theft was filed at the clerk of court, a recognizance bond was secured for the Riddler and he was released from custody.

Q.4: At trial, Riddler moved to suppress his statement. May the prosecution use Riddler's statement at the time he was questioned?

During the interrogation of Riddler at the stationhouse, lawyer Steve Dallas arrived at the station and demanded to see Riddler. He had been called by Riddler's sister when she heard he was in jail. Dallas was denied access to Riddler as Riddler waived his rights. Riddler had never met Dallas and was not informed of his presence at the station.

Q.5: Reconsider your prior answer concerning the use of Riddler's statements at the time he was questioned. What is the significance of the appearance of Steve Dallas? What result?

The Riddler appeared in court the next day. Riddler was waiting alone outside the courtroom in anticipation of his court appearance. Unknown to Riddler, Lt. Eckhart was with a potential witness to the theft in the same hallway and asked the witness if she saw Riddler near the art museum on the day of the theft. She answered affirmatively. Shortly thereafter, Riddler appeared in court, was appointed counsel and had his case continued for a preliminary hearing.

Q.6: Determine and discuss whether the identification made by the witness is admissible.

Joker was charged with theft and appeared in court. He was also released on his own recognizance. Shortly thereafter, Joker began to plot the murder of an eyewitness to the art theft.

Commissioner Gordon and Lt. Eckhart were told by a confidential informant that Joker was planning to kill a witness to the homicide. They asked Snitch, a confidential informant, to engage Joker in conversation in order to determine whether Joker was really planning a homicide. They agreed to pay Snitch \$500.00 if Snitch was successful in finding out whether a homicide was planned.

Snitch befriended Joker and Joker began to confide in Snitch. After several attempts to engage Joker in conversation about the art museum theft, Joker related that he committed the theft with the help of the Riddler and the Penguin. He further related that he would be found not guilty as soon as he murdered the eyewitness.

Joker was then indicted for planning to kill a prosecution witness.

Q.7: Discuss the admissibility of Joker's statements to Snitch in relation to all of the pending charges against Joker.

The Penguin was informed that both Joker and the Riddler had been charged with the Gotham Art Museum theft. Fearing that he would be arrested next, Penguin packed a suitcase and left for the airport where he planned to fly to Paris, France. The Penguin carefully put a stolen Picasso in his suitcase which he intended to sell in Europe.

At the airport, Penguin was recognized by airport security employed by the police department. Although airport security was advised that Penguin might be leaving Gotham City, no arrest warrant had been issued for Penguin's arrest. Airport security had been advised that it was doubtful that probable cause existed for Penguin's arrest.

When Penguin checked his luggage, security sent for a dog to sniff the luggage for the scent of canvass and paint. In order to accomplish this, a special dog was needed and it took 100 minutes to bring the dog to the airport. The dog alerted to the presence of canvass and paint. Meanwhile, Penguin's plane departed without his luggage being placed on the plane.

When the dog alerted, airport-security impounded the suitcase and drafted a warrant to search. Because it was the weekend, no magistrate was available to issue a search warrant. Seventy-two hours later a magistrate issued a warrant to search and the search of the suitcase revealed the Picasso. Meanwhile Penguin landed in Paris and did not have his suitcase. He flew home immediately.

Q.8: Discuss the admissibility at Penguin's trial of the Picasso painting found in Penguin's suitcase.

When Penguin arrived from France at the Gotham City airport, he was placed under arrest based on all the information gathered during the investigation. He was not informed of his Miranda rights, but was asked where the other stolen Picasso paintings were hidden. He related that they were hidden in his garage. The officers secured a search warrant for the garage and found three additional Picasso paintings.

Q.9: Discuss the admissibility of the three Picasso paintings at Penguin's trial for theft.

Commissioner Gordon and District Attorney Dent had not heard from Vicky Vale since her interlude with Grissom several days earlier. Gordon and Dent sent Lt. Eckhart to find Vale and determine whether she was still cooperating with the police. A confidential informant had disclosed that Vale and Grissom had taken out a marriage license at the courthouse.

Eckhart, driving an unmarked vehicle, spotted Vale driving her car down the street and noticed that she was weaving within her lane of traffic and going 36 in a 30 mile per hour zone. Grissom was a passenger in her car. Eckhart pulled Vale over and placed her under arrest for speed and weaving. He then conducted a search incident to arrest and discovered a stolen Picasso in the trunk of the vehicle. He then arrested Vale for possession of stolen property.

Q.10: Discuss the admissibility of the stolen Picasso found in Vale's car in Vale's trial for possession of stolen property.

Q.11: Discuss the admissibility of the stolen Picasso found in Vale's car in Grissom's trial for possession of stolen property.

At Vale's subsequent trial for receiving stolen property, assume that the judge was troubled by the search of Vale's trunk (without regard for your answer to Q.10). The prosecution then argued that the Picasso would have been found during a subsequent inventory search of Vale's vehicle and therefore should be held admissible. Vale objected.

Q.12: Discuss the argument of the prosecution and rule on the admissibility of the stolen Picasso.

The Gotham City Prosecutor's Office moved to forfeit the automobile that Vicky Vale was driving because it was used during a criminal offense. The forfeiture code provision provided that "upon conviction of specified unlawful activity, all right, title and interest in property vests in the Gotham City government." One of the offenses enumerated in the definition of specified unlawful activity was receiving stolen property.

Vicky Vale had recently been declared bankrupt. Her only asset was the vehicle she was driving which was purchased for her by her parents. Rather than be represented by a public defender, she contacted you to represent her and asked you to seek an order permitting the car to be sold to pay for your attorney fees.

Q.13: What arguments would you make to the Gotham court concerning the sale of Vale's automobile to pay for your attorney fees?

Gus Grissom was not immediately charged with receiving stolen property, concerning the Picasso found in the trunk of Vale's car. After leaving the scene, he got in his own car and started to drive out of the city. A Gotham City patrolman noticed that Grissom was speeding, turned on his flashers, and flagged Grissom to the side of the roadway. Grissom got out of his vehicle as the officer approached. The officer informed Grissom that he was speeding. Upon checking Grissom's license, the officer stated, "You're the Grissom that is the suspect in the art thefts." Grissom stated, "Just give me the ticket and let me go." The officer asked Grissom whether he really planned the thefts and Grissom related that "no one else in the city could have pulled a job like that." No Miranda rights were given. Grissom was then arrested by the officer for theft.

Q.14: Discuss the admissibility of Grissom's statement.

Lt. Dent decided to seek a search warrant for Grissom's residence on the west side of the Gotham River. He drafted the following affidavit in support of the motion to search based on their investigation:

For five days prior to the Gotham City Art Museum theft, Gus Grissom was seen leaving his Apartment on the west-side of the Gotham City river and traveling to the east side near the art museum. Grissom would leave at 8:00 a.m. and enter an apartment building, 100 Thinker Drive, overlooking the art museum. Grissom would leave the apartment and return to his apartment on the west side of the river at 4:00 p.m.

A telephone check revealed that the apartment overlooking the art museum had two telephones listed under the name of Jack Mapier and carrying the numbers WY 4-0029 and WY 4-0136.

Jack Mapier and Gus Grissom are known to this affiant and to federal law enforcement agents and local law enforcement agents as art thieves and associates of art thieves.

I have been informed by a confidential reliable informant that Gus Grissom planned the Gotham City Art Museum theft from 100 Thinker Drive and that currently a stolen Picasso painting is hidden in the apartment.

On the basis of this information, the magistrate issued a warrant to search for a stolen Picasso painting at 100 Thinker Drive. A stolen Picasso was found in a closet in the bedroom. During a search of the residence, unlabeled pills were found in the medicine chest. They were sent to the crime lab and identified as morphine.

Q.15: Discuss the admissibility of the Picasso painting.

Q.16: Discuss the admissibility of the morphine tablets in Grissom's subsequent trial for possession of controlled substances.

Joker, Riddler and Penguin were charged with theft and scheduled for a joint trial. They jointly retained the services of Gerry Spence, a nationally known defense attorney who

successfully represented clients such as Imelda Marcos and the estate of Karen Silkwood. In fact, Mr. Spence had not lost a criminal trial in ten years.

At a pretrial hearing, the prosecution objected to the joint representation. The prosecution told the judge that it intended to offer one of the three defendants a dismissal in return for cooperation and testimony against the others. In addition, Mr. Spence had previously represented Gus Grissom in a criminal trial and intended to represent Grissom at his upcoming trial. The prosecution related that if Mr. Spence represented Joker, Riddler and Penguin, it would be unlikely they would cooperate and testify against Grissom at his upcoming trial.

Spence produced written waivers of conflict free representation from the three defendants. The trial judge examined each defendant and ascertained that they did want to cooperate and had pooled their money in order to retain Spence.

Q.17: Discuss the applicable law and determine whether Mr. Spence should be disqualified from representing any of the defendants.

At the trial of Riddler, Riddler testified that he was at his maternal grandmother's house at the time of the art museum theft (See facts preceding Q.4). In an effort to impeach Riddler, the prosecutor asked him why he didn't give this explanation to Lt. Eckhart at the time he was arrested and prior to being taken to the stationhouse.

Q.18: Discuss the propriety of the prosecutor's cross-examination of Riddler and determine whether it should be permitted.

At her trial for receiving stolen property, Vicky Vale testified that at the time the Picasso was placed in the trunk of her automobile, she was unaware that the painting was stolen. On cross-examination, the prosecutor asked her if she had ever been convicted of a theft offense in order to impeach her credibility.

Vale had been convicted three years earlier of misdemeanor shoplifting. She was not represented by counsel and the court record was silent concerning whether she made a knowing, intelligent and voluntary waiver of counsel. There was no transcript made at the shoplifting hearing.

Q.19: Discuss the propriety of the prosecutor's cross-examination of Vale and determine whether it should be permitted.

Q.20: Write a punchline for this cartoon. All answers written in English will receive five points.