

CRIMINAL PROCEDURE MID-TERM EXAMINATION – SPRING 2006

1. Please write only on one side of the paper, and use ink. Please write legibly.
2. This is a closed book exam.
3. The midterm consists of one question. Good luck.

At 2:00 a.m. on December 15, a near-sighted, insomniac, seventy-five year-old woman, Molly Witness, was looking out the window of her second-floor Main Street apartment when she saw somebody walk up to the front of a closed grocery store across the street, smash one of its window panes, and enter the store. Moments later, as Witness continued to watch, having found her glasses in the meantime, the person emerged from the store and stood for a moment on the street near a street lamp, looking up and down the street. The person then ran away, leaving Mrs. Witness's sight. Less than three minutes had passed since she first noticed the person outside the store, and the person was, for most of that three minutes, out of sight inside the store. Mrs. Witness called the police, who arrived moments later to find the safe in the grocery store broken open, and money missing. During her call to the police, Mrs. Witness described the person as "a clean-shaven, short, slightly-built man, wearing dark clothing."

Twenty minutes after the grocery store burglary, and ten blocks away, a similar smash-and-grab burglary took place at an electronics store. Responding to a silent alarm, the police reached that store within minutes of the burglary. Three blocks away, patrolling police officers, who had heard only reports of the two burglaries and of Witness's description of a perpetrator, saw Sally Suspect, wearing dark clothing, running. She slowed down to a walk when she saw the police car, and the police pulled over and parked.

Sergeant Melvin Dudley, accompanied by Officer Doug Rothstein, approached Suspect, saying, "Excuse me, I'd like to talk to you." When Suspect kept walking, Dudley said, "I'm afraid I must ask you to stop, ma'am." Suspect then stopped, and Dudley asked her where she was going. Suspect replied, "I'm going home." Dudley asked, "where are you coming from?" Suspect answered: "a bar." Dudley followed up with further questions about the bar, Suspect's reason for running, and whether Suspect had seen anything suspicious. Suspect claimed not to remember the name of the bar nor its exact location, and said she was running because she was in a hurry to get home out of the cold. Dudley then said: "Have a seat in the police car; it sure is cold outside tonight." Suspect complied.

Rothstein also entered the car and sat beside Suspect, while Dudley got into the driver's seat and turned to face Suspect. Suspect was a twenty-three year-old woman, 5 feet, 5 inches tall, weighing about 120 pounds. Dudley stood 6 feet, 4 inches tall, and was powerfully built. Rothstein was of average height and build. Dudley told Suspect then that the police were investigating a burglary that had just taken place nearby, and that Suspect very closely matched two eyewitnesses' descriptions of the burglar, and that the witnesses had reported that the suspect fled in exactly the direction in which Suspect was heading. After a pause, in which the Suspect could be seen to be sweating, she answered: "You got me. But it wasn't my idea. I was only the lookout. You want my friend Bruno." "Good for you," Dudley replied. "We'll talk about it more at the station." Dudley and Rothstein then drove Suspect to the police station, where she was booked on suspicion of burglary, and placed in a holding cell.

At the station, about thirty minutes after putting Suspect in the holding cell, Dudley went to the cell and read Suspect the Miranda warnings. When asked whether she understood and

would waive her rights, Suspect said, "whatever." Dudley proceeded to question Suspect about the two burglaries. Suspect denied any involvement in the grocery store burglary, and repeated the statement claiming only to be a lookout for Bruno in the electronics store burglary. After two hours of questioning, Suspect said, "I don't want to talk about this any more without a lawyer." Dudley then ended the questioning.

Thirty minutes later, at about 6:00 a.m., Dudley brought Suspect again into the booking room. Meanwhile, Rothstein had brought Mrs. Witness to the station, to see if she could identify Suspect as the person who robbed the grocery store. Dudley and Rothstein decided to bring the witness and Suspect face-to-face, hoping that Witness would identify Suspect, and that Suspect would change her mind about answering questions. When Dudley entered the room where Witness waited, Witness said -- "yes, she's definitely the one. I'm sure of it." Sergeant Dudley then led Suspect back to the jail cell, and on the way, Suspect said, "all right -- I'll tell you everything." Dudley then reminded Suspect of her Miranda rights, and Suspect agreed to waive those rights. Suspect then gave a full confession to both burglaries, in which she implicated herself and Bruno. She told Dudley that she had used a bat to break the windows, while Bruno had stood watch. After the second burglary, Bruno had taken the proceeds in one direction, while Suspect fled in the other. She told Dudley that the bat she had used to break the windows was hidden behind a certain dumpster. Dudley sent Rothstein to look for the bat, and Rothstein succeeded in recovering it. Within days, the police also arrested Bruno. Both he and Suspect quickly posted bail, and were released pending trial.

Three weeks later, the grand jury indicted Suspect and Bruno with the grocery store burglary, and indicted Bruno for the electronics store burglary. The prosecution hoped to reach an agreement with Suspect, according to which she would plead guilty to the grocery store burglary and testify against Bruno, and the prosecution would drop charges relating to the electronics store burglary. At their arraignment, Suspect and Bruno requested, and the court appointed, different lawyers to represent each of them. After secret negotiations with Suspect and her lawyer, Suspect agreed to wear a hidden recording device for the purpose of recording her conversations with Bruno. The police instructed Suspect not to ask Bruno any questions about the crimes, but just to find opportunities to engage in private conversations with him. Accordingly, Suspect called Bruno to invite him to lunch. While the two ate at a local diner, Suspect mentioned that she was very satisfied with her lawyer. Bruno responded -- "Well, I'm not satisfied with mine. I need a lawyer who can lie and cheat for me, and this guy's a sap."

Several weeks later, a prosecutor went to Suspect's house to talk about the crimes and prepare her to testify at Bruno's trial. Suspect's lawyer had planned also to attend, but because of an emergency could not do so, but called the prosecutor to tell her to go ahead and talk with Suspect anyway. The prosecutor and Suspect talked about the case, and Suspect gave a thorough account of the events surrounding both burglaries. Several weeks later, Suspect changed her mind about cooperating with the prosecution, and informed the prosecutor that she would not testify against Bruno. The prosecutor then indicted Suspect in the electronics store burglary. Bruno and Suspect now await trial, and both defendants have filed motions to suppress the

- (1) Suspect's statements to Rothstein and Dudley when they found her on the night of the burglaries;
- (2) Suspect's statements at the police station later that same night;
- (3) Identification evidence relating to Mrs. Witness's testimony;
- (4) The baseball bat;
- (5) Bruno's statement to Suspect at the diner;
- (6) Suspect's statement to the prosecutor at her house.

You are a new prosecutor in the District Attorney's office. Both defendants have raised all plausible arguments, and the D.A. has asked you to draft an internal memo analyzing the legal arguments for and against suppression, and predicting which items of evidence the prosecution will be able to use at trial. You should describe the defense and the prosecution arguments in enough detail to explain the reasoning behind your predictions.