

**Criminal Procedure
Midterm Examination
Professor Charles Temple
October 12, 2009**

EXAM # _____

Instructions:

You have 90 minutes to complete this mid-term exam. As you know, there are two essay questions. I strongly recommend that you spend 45 minutes on each question. Each question is worth 15 points for a total of 30 points.

If you are writing your answers to the exam, please use the front side of each page. You should not write on both sides of the page. You are allowed to write on each line of the blue book. You must write your exam number on each blue book. I ask that you write in a legible fashion.

If you are answering your exam through use of a laptop, I simply ask that you follow all of the instructions for the use of the laptop. Please make sure that you place your exam number on your answers.

You may use your textbook (Tomkovicz & White) during the exam. You may refer to any marginal notes you have made in your textbook. You may not have class notes or any outlines/study aids in the exam. You are also allowed to have your syllabus in the exam.

You do not have to format your answers in a court-type format (i.e. don't write the caption, docket number, etc.). The answers should be in essay form.

Good luck!

Question No. 1 (15 points):

On October 2, 2009, the defendant was arrested for the murder of Professor Temple in the Jury Box Café at Pierce Law Center. Since the murder occurred on a Friday afternoon prior to Professor Temple leaving for the golf course, the defendant was held without bail over the weekend at the House of Corrections prior to his arraignment on Monday. The defendant was held in the Receiving and Discharge Unit of the Merrimack County House of Corrections. As he was going through a booking procedure at the House of Corrections, the defendant asked a correctional officer the following question: "How is the professor? – I really rung his academic bell."

The correctional officer immediately notified the Concord Police Department of this particular statement. Detective Jones of the Concord Police Department came to the jail on Sunday and met with the defendant. He provided the defendant with Miranda warnings. The defendant refused to initial or sign the Miranda warnings and waiver form. He indicated to the detective that he was diagnosed with a bipolar condition, severe depression, and an anxiety disorder. He further advised the detective that the House of Corrections had not allowed him to take any of his medications since his arrest on Friday.

The detective gave the defendant a lecture on cooperation with the police and its impact on future proceedings. The defendant responded by saying that he was just too nervous to sign the form. The detective then called the defendant a coward and handcuffed him to a chair in the cell. He advised the defendant to think about the professor's skull for awhile.

Two hours later the detective returned and fully advised the defendant of his Miranda rights again. The defendant refused to sign the form, and the detective told him he would be back in an hour or so. The defendant responded by saying, "Just let me out of these cuffs and I'll give you all the details." The officer released the cuffs from the defendant's wrists, and he explained that he landed one punch to the left side of Professor's Temple head in the lunch line at the Jury Box Café. The defendant stated that he hit Temple because he had cut the line and received a huge discount from Café Manager Chad Smith.

On Monday, October 5, 2009, the defendant was arraigned on an indictment for Second Degree Murder in the Concord District Court. On October 6, 2009, Detective Jones returned to the House of Corrections. He advised a correctional officer that the defendant had "a big mouth." He directed the correctional officer

to hang around the defendant in the day room at the Merrimack County House of Corrections. He advised the correctional officer to just strike up a conversation with the defendant about Professor Temple's golf game. The correctional officer spent about 2 hours in the day room with the defendant. He made several comments about Professor Temple's golf game. At one point, the defendant responded that Temple is a "piece of golf crap who deserved to have his eggshell cranium busted."

You are a judge in the Merrimack County Superior Court. The defense has filed a Motion to Suppress all of the statements made by the defendant. Please issue a detailed ruling on the Motion to Suppress the defendant's statements.

Question No. 2 (15 points):

On September 1, 2009, a neighbor became suspicious of the activities at the defendant's home located at 10 Washington Street in Concord, New Hampshire. The neighbor had observed several large commercial-type trucks pulling into the defendant's driveway during the early morning hours for several weeks. The neighbor became curious and decided to climb a 12 foot stockade fence the defendant had erected around his property. There were also 70 foot pine trees surrounding the defendant's back yard. The neighbor climbed the defendant's fence without the defendant's permission. He viewed the back yard and observed about 100 marijuana plants.

The neighbor made an anonymous report on a crime line number to the Concord Police Department. The Concord Police Department then set up surveillance across from 10 Washington Street from September 2, 2009 until October 2, 2009. The surveillance revealed multiple commercial vehicles going in and out of the residence at about 1:00 a.m. for 4 weeks. Additionally, the surveillance revealed bright lighting in the cellar area of the residence 24 hours a day over the course of the entire month.

The narcotic detectives for the Concord Police Department viewed all of this activity as consistent with a marijuana growing operation. The detectives also know the defendant as a marijuana dealer pursuant to other intelligence in related cases.

The Concord Police Department was able to obtain records from a public utility company regarding electrical use at the defendant's residence. The electric use was over 50 times above normal electrical usage for a residence home.

The surveillance team reported that there was an odor of marijuana plants emanating from the back yard over the month long surveillance. The narcotics detectives reported the odor as consistent with substantial marijuana plant growth.

The Concord Police Department hired a logging company to bring in a hydraulic lift in order to obtain a view of the defendant's back yard. The view was completely blocked out by the 12 foot stockade fence and the substantial pine tree growth that surrounded the property. The hydraulic lift was placed on the neighbor's property and the detective viewed the back yard from a height of 70 feet, just above the tree line. The detective took photographs of the back yard and

the photographs revealed over 100 marijuana plants in a garden surrounded by another 12 foot stockade fence.

The narcotics detectives then prepared a search warrant and an affidavit in support of the search warrant. The search warrant affidavit gave the details of the anonymous tip, all of the surveillance observations, the electric records, and the photographs of the property. The affidavit provided all of the qualifications of the various narcotic detectives involved in the surveillance/investigation. The affidavit also stated that there were other pending investigations regarding the defendant's drug dealing.

The Concord District Court issued a search warrant based on the Concord Police Department's search warrant application. A search of the defendant's property yielded 110 marijuana plants. The defendant was charged with one count of felony Marijuana Manufacturing.

You are an Assistant Merrimack County Attorney assigned to the prosecution of the defendant. Your supervisor has asked you to do a memorandum that addresses the anticipated suppression issues the defense will raise in this case regarding the entire investigation from the original tip through the issuance of the search warrant. Please make sure that you address any and all issues from the beginning of the investigation through the issuance of the search warrant.