Essay questions from 2009 Crim Pro exam

Essay question 1 (50 points)

Tony Carroll, a 15 year old boy, approached undercover police officer Dunlap and offered to sell him one unit of crack for $20. Dunlap recognized Carroll as the son of Ray Womack, for whom there was an outstanding arrest warrant for non-support. Dunlap gave Carroll two marked ten dollar bills, but Carroll took off running. Dunlap pursued on foot and observed Carroll enter a house at 395 Stoddard Avenue. Dunlap followed Carroll through the front door, which was not locked. Dunlap did not knock or otherwise announce his presence. Ray Womack was sitting in the living room watching tv.

Dunlap said, “Ray Womack, as I live and breathe. You’re in big trouble. There’s an arrest warrant on you for not supporting your kid. I’m going to have to arrest you.”

Womack replied, “I know but I just haven’t had the money.”

”Right, but first your kid tried to sell me some crack -- which you probably sent him out to do. Where did he go?”

“He’s bedroom’s in the back.”

Dunlap cuffed Womack to a chair and went to the back bedroom, which was obviously the bedroom of a teenager. Carroll was not in the room. Dunlap saw a baggie of crack cocaine on the dresser. He seized that (1).

Looking around the bedroom, he noted a partially open cardboard box on the floor. He pulled back the top flap so he could see what was inside, and saw about fifty small baggies of crack cocaine. He seized them. (2).

Dunlap continued to search the house and found a fully automatic machine gun behind the washing machine. He seized that as well. (3) Dunlap did not find Carroll, who evidently had fled through the rear door.

Dunlap showed the cocaine and gun to Womack, who was handcuffed to a chair in the living room. Dunlap said, “You’re in big trouble – crack cocaine and a machine gun.” Womack replied, “Sure Dunlap, whatever you say.” (4) Dunlap arrested Womack for flagrant non-support and trafficking in cocaine, and took him to the police station.

At the station, Dunlap gave Womack the Miranda warnings and Womack waived his rights and agreed to talk. He claimed that he had been visiting his girl friend, Sue Carroll (Tony’s mother), who owned the house at 395 Stoddard. Womack said he wasn’t involved in Tony’s business and he didn’t know anything about the gun – that his statement to Dunlap at the house was just him “smarting off.”
The police continued to question Womack in shifts. At the end of an hour, Womack said, “Maybe I shouldn’t say anything else. Maybe I need a lawyer.”

Dunlap replied, “It’s up to you, but what do you need a lawyer for if you’ve got nothing to hide?

Womack replied, “Okay, the crack was mine.(5) You know that anyway. But that gun wasn’t mine and I want you guys to get me a lawyer.”

Dunlap immediately quit questioning Womack.

The next day, Womack was brought to court and arraigned by the judge on a complaint charging him with flagrant non-support, trafficking in cocaine, and possession of an automatic weapon. The judge appointed public defender Willa Macy and committed Womack to custody for inability to post a $25,000 bond.

Three days later, Dunlap visited Womack in jail, starting the conversation by saying, “Ray, how are you getting on?”

“Okay I guess all things considered . . . but that gun was not mine. I don’t know anything about that gun.”

“Ray do you want to talk about it?”

“I’ll tell you about the crack but the gun wasn’t mine.”

“You have the right to remain silent, anything you say can and will be used against you, you have the right to an . . .”

“I know all that.”

“I know you do. Will you waive your rights and talk to me?”

“Okay, but I’ve told you it wasn’t my gun. I didn’t know it was there.”

“Okay, tell me the truth and I’ll see to it you don’t get any additional time for the gun. You don’t want Sue to get charged with it, do you?”

“You wouldn’t.”

“Oh, but I would. That machine gun was behind her washing machine in her house. What’s that look like to you?”

“No, leave Sue and Tony out of this. It’s my gun – they didn’t know anything about it. Leave them out of this. It was mine.”(6)
Discuss the admissibility of the cocaine, the gun, and the statements.

Womack would testify he spent many nights with Sue Carroll at 395 Stoddard, but mostly stayed with his brother.

Sue Carroll confirmed the relationship -- Womack was her steady boyfriend and the father of her son, had the run of the house, slept over often, but didn’t live at 395 Stoddard.

Essay question 2 (30 points)

In a marked patrol car and in uniform, Trooper Fred Thomas patrolled I-95 as part of a drug interdiction team. He stopped speeding motorists that he thought might be transporting illegal drugs, questioned the drivers, and sometimes sought permission to search the car.

On September 15, near Richmond, Virginia, Officer Thomas stopped a black BMW with tinted windows and Florida plates, traveling 75 mph in a 65 mph zone. Thomas asked the driver, James Buchanon, for license and registration. Buchanon said his license was in his coat in the trunk, and he didn’t have the registration because the car belonged to his brother Charles, who lived in Orlando. Buchanon said he had borrowed the car from Charles to visit a friend in Washington.

Thomas asked Buchanon to get the license. Thomas watched when Buchanon opened the trunk to get his license. He saw a bag and a box-like object wrapped in black plastic. Thomas asked what was in the package. Buchanon said he didn’t know -- he was delivering it for his brother. Thomas asked if he could open it; Buchanon said he couldn’t because the package belonged to the brother.

Buchanon closed the trunk, and produced a Florida license in the name of James Buchanon.

Thomas took the license and told Buchanon to wait in Buchanon’s car. Thomas returned to his cruiser and radioed in the information on Buchanon’s license and the license plate number of the car. He also asked that Turbo, the drug-sniffing dog, be sent to the scene.

After 30 minutes he received the following information: Buchanon: valid license, convicted 10 years ago of felony assault with a firearm – 10 year sentence, paroled after two years, convicted 5 years ago of felony car theft, trafficking in cocaine, and felon in possession of a firearm – ten year sentence, released from prison two years ago, presently on parole, no outstanding warrants; Car: registered to Melissa Gomez in Orlando, no report of it being stolen; Turbo: sick with a head cold and unavailable.

Thomas returned to Buchanon’s car and asked him to get out which he did. He asked Buchanon if the name Melissa Gomez meant anything to him. Buchanon said it did not. Thomas then frisked Buchanon and found a loaded .38 pistol in his pocket. He retrieved the weapon and arrested Buchanon for the crime of possessing a firearm after being convicted of a felony. He then asked Buchanon if he could search the car. Buchanon said, “Why are you asking? You’ll search it no matter what I say.”
Thomas said, “Okay then, let’s have the keys.” Buchanon gave Thomas the keys; Thomas opened the trunk and unwrapped the plastic-wrapped object, in which he found a kilo of cocaine.

As it turned out, Melissa Gomez was Charles Buchanon’s girlfriend and went by the name of “Sissy.” She owned the car.

James Buchanon is charged with trafficking in cocaine and being a felon in possession of a firearm. He has moved to suppress the gun and cocaine.

Discuss the issues.

**Key to essay questions on this final**

Question 1

Seizure of baggie of cocaine in plain sight. Q: Did D have a right to be in the room?

   a) entry w/o warrant and w/o knock and announce. Justified on the basis of exigent circumstances – hot pursuit of a crack seller. Destruction of evidence, etc.

   b) entry into room – justified on basis of above.

   C) Consent by RW? Maybe.

Search of box and seizure of baggies

   a) not justified on basis of plain view

   b) not justified on basis of search for T – couldn’t be in box

   c) not justified on basis of pc for coke – could secure home while getting a warrant

   d) not justified on basis of RW’s consent – scope was to look for T

Search behind washer and seizure of gun

   a) same as above; did T reasonably believe T might be behind the washer?

   b) search incident to arrest of RW – not on the facts given

Standing of RW to complain. Clear as to gun – he had run of house. Less clear as to search of son’s bedroom. Non-custodial parent, clearly his son’s room.

1st statement – no Miranda
a) custody even though pre-arrest. Handcuffed, told he would be arrested.

b) interrogation – Was D’s statement interrogation? Likely to elicit a response? Intended to elicit a response? Reasonably appear to be seeking a response?

c) fruit of the poisonous tree? the bad searches? RW’s response was sarcastic but incriminating.

2d statement

a) fruit of the statement taken in the house – probably not

b) fruit of the bad searches – possibly. Miranda doesn’t attenuate

c) invocation of the right to remain silent? to an attorney?

d) was the response an attempt to talk him out of a clear request for counsel?

3d statement

a) 6th A right had attached

b) who initiated? Did RW express a willingness to talk before D asked if he wanted to talk?

c) significance of the botched Miranda warnings?

d) coercion and promises – voluntariness

e) fruit of the bad searches – but here attenuation

Question 2

1) The Whren issue – that the stop doesn’t violate the Fourth Amendment because there is a basis for the stop -- speeding -- and the officer’s motives don’t matter.

2) The plain view of the contents of the trunk pursuant to a legitimate request that the driver produce his license. This could be a factor in determining reasonable suspicion.

3) The length of the detention while checking license and registration. 30 minutes is probably reasonable.

4) Did Officer Thomas have reasonable suspicion that Buchanon was committing a crime after he received the information on Buchanon’s record and the ownership of the car and Buchanon didn’t know the name Melissa Gomez? If Thomas did have reasonable suspicion, what crime
would he have had suspicion of? Car theft? Trafficking in cocaine? Both? Did his reasonable suspicion of something warrant further detention? Asking Buchanon to get out of the car?

5) Did he have reasonable suspicion that Thomas was armed and dangerous to justify the frisk? Based on what -- that he didn’t know Gomez? The prior violent felony? Assumption that all drug dealers are carrying guns?

6) Basis for the search of the trunk?

   a) Incident to arrest -- but it was in the trunk, not the passenger compartment. Even under Belton (much less Gant) this would not be incident to arrest

   b) Probable cause -- was there probable cause to believe that the plastic wrapped package contained cocaine -- shape of object, story about the car, gun (assuming a legal arrest), source city -- but pretty thin for pc.

   c) consent -- a number of problems. Was the arrest legal? Did his ambiguous statement objectively manifest consent? He had denied consent earlier -- did the second statement override the first? But he seems to know he could refuse. There is further the question of actual/apparent authority. He earlier said that the package belonged to someone else. Could Thomas reasonably assume he had authority to allow it to be opened?

   d) Effect of Gant (if any). Reasonable to believe that evidence of the crime for which he was arrested (the gun) was in the trunk – less than pc? Does Gant extend this rationale to the trunk? Based on what T knew, was it reasonable to believe that evidence related to the gun was in the trunk?

   e) parole status – a bonus argument. He was on parole and had a lesser expectation of privacy.