CrimPro Final S96

CRIMINAL PROCEDURE FINAL

SPRING 96-- FORTUNE

You have three hours for the test -- closed book and notes. Please write on every other line. Three essays and five short answer questions.

Question A (50%) Like our exercises, this problem includes the fact statements of the witnesses. You are the law clerk for the defense attorney representing Smathers. Your job is to identify and analyze the grounds for a suppression motion. Identify and analyze all issues, even though you feel the defense would not prevail on that issue.

Metro Detective Krupke received an anonymous tip that Professor Shelly Smathers, a chemistry teacher at Enormous State University, was making methamphetamine in a chemistry lab on the EU campus. Krupke consulted Paul Plotz, head of Campus Police and Security, about the matter. Krupke and Plotz questioned Smathers, who indignantly denied the charge and refused consent to search "his" laboratory. Carl Cooper, the head of the department, was equally indignant and non-cooperative. Plotz and Krupke ascertained that the lab in question was on the third floor of the Chemistry building and faced the Office Tower, some 500 feet away. The top floor of the Office Tower contains several large meeting rooms which are not normally open to the public.

With Plotz's consent and cooperation Krupke set up surveillance in one of the meeting rooms. He used a 20 power telescope which gave him the equivalent of vision from 25 feet. Krupke observed no activity in the room till the night of January 13th. On that evening, from about 8:30 to 10:30 Krupke observed Smathers mixing what Krupke thought might be methamphetamine. At 10:30 Krupke observed Smathers dismantle the lab, load bottles into a box and leave the lab. Krupke alerted Plotz and they entered the lab with Plotz's passkey at about 11:00 pm. They found the lab in disarray.
and seemingly abandoned. The bottles were empty and in the trash container. The apparatus had been dismantled and was in the trash container. They took the trash from the container to the Metro crime lab that night and a chemist found traces of meth on the apparatus and traces of the components of meth on the bottles. Krupke stopped Smathers as he was getting in his car the next morning. Krupke searched the car, found meth in the trunk, and arrested Smathers.

Statement of Shelly Smathers

I was an associate professor of Chemistry at Enormous University, a state institution of higher learning. For the last four or five years I've made various controlled substances in my laboratory, selling them to a middleman in Cincinnati. This was necessary to supplement my meager academic salary. The laboratory I've used in a small research lab next to my office. It's assigned to me by Carl Cooper, the Chair of the Department, and no one else uses it. The only other people with keys, to the best of my knowledge, are the custodial staff, campus security, and Dr. Cooper.

In January a metro detective named Krupke and a campus cop named Plotz came to my office to question me about making methamphetamine. I had been very discreet and it didn't appear they had any concrete information so I blufft it out -- denied everything and refused consent to search my lab. They asked Dr. Cooper for consent and he also refused -- but he looked at me kind of funny.

I didn't go back to the lab for several days, though I had the ingredients to make a substantial amount of meth in the lab. Finally, on January 13, I went back, made up what I had, emptied the bottles of components and discarded the containers and apparatus. I wasn't abandoning the lab or quitting my job. I was merely getting out of the illegal drug business. I intended to take the meth I had made to Cincinnati and
resume the life of an honest boring college professor. I took the containers of meth
home in a cardboard box. The next day, Saturday the ~4~, I was arrested

Detective Krupke as I left the house. I had put the box containing the meth in my trunk
and was standing next to the car when Krupke suddenly appeared and demanded my
keys so he could open the trunk. I gave him the keys and he found the meth. He
arrested me for trafficking in a controlled substance.

I've since learned that Detective Krupke spied on me from the Office Tower and he
and Plotz entered my lab with a passkey after I left on the night of the 13th.

Statement of Carl Cooper

My name is Carl Cooper, chair of the Chemistry Department at Enormous U. I don't
know which offends me more -- that one of my teachers was making illegal
substances or that the police entered a lab without my consent and stole things out of
the trash. When Mr. Plotz and Mr. Krupke asked for permission to search the lab I told
them absolutely not. I wasn't going to have the police around harassing my teachers.
The only persons authorized to go in a teacher's lab without permission are the
custodial staff and me.

Unfortunately I had to suspend Dr. Smathers when he was arrested for making
methamphetamine in his lab. I had no idea this was going on. He apparently was
using EU lab equipment and chemicals paid for by the University in his illegal activity.

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Statement of Paul Plotz

I'm the head of campus security at Enormous U, a state institution. In January I got a
call from Detective Karl Krupke who said he had a tip that a chemistry professor
named Smathers was making metamphetatmine in his lab in the Chemistry Building.
That's a serious charge and Krupke and I talked about how to handle it. I suggested
we confront Smathers and see if he would consent to a search. We confronted him but he got angry and refused consent. The Department head, a guy named Cooper, came by and he got angry too.

I suggested we go to the President but Krupke didn't want to scare Smathers. He wanted to set up an observation post and I set him and his telescope up in the Board of Trustees room on the top floor of the Office Tower.

The third night (Friday the 13th!) I got a call from Krupke that Smathers was in the lab making something. I went to the observation post and took a look through Krupke's scope. Smathers was making something but we couldn't tell what. About 10:30 he started dismantling everything, emptying bottles, and throwing things away. I thought he was maybe going to run. He left about 10:30 and Krupke and I went to the lab to see what we could find. I used my passkey and we entered the lab. It looked as if he had left and wasn't coming back. The trash can was full of empty bottles and apparatus, which we bagged up. Krupke took it with him and left.

As far as I'm concerned I had every right to enter that lab. It's University property and I'm charged with campus security. Smathers could have been making a bomb up there for all I know.

Statement of Karl Krupke

I've been a narcotics detective here in Metro City for the past ten years. In early January we received an anonymous tip that Professor Shelly Smathers, a chemistry teacher at Enormous State University, was making methamphetamine in a chemistry lab on the EU campus and selling it in Cincinnati. I couldn't confirm the information. I consulted Paul Plotz, head of Campus Police and Security, about the matter. Plotz suggested we question Smathers. We found him in his office, identified ourselves and asked permission to search his office and lab. He was indignant, denied criminal activity, and refused consent. I could just tell the guy was guilty. Carl Cooper, the head
of the department, came by and was equally indignant and non-cooperative -- though I
don't think he knew what was going on.

Plotz and I went outside and I noted that a person could see into the lab, which was
on the third floor, from the Office Tower about 500 feet away. I asked Plotz if we could

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set up surveillance in the Tower. He set me up in a large meeting room on the top
floor. I used a 20 power telescope and focused it on the lab. It looked like I was about
25 feet away.

No activity until the night of January 13th. About 8:30 that night the light in the lab
came on and I observed Smathers mixing something that I believed to be
methamphetamine. I called Plotz and he came over. At about 10:30 Smathers
dismantled the apparatus, emptied bottles in the sink, and packed other bottled in a
box. He left. Plotz and I entered the lab with Plotz's passkey at about 11:00 pm. I
found no methamphetamine but in the trash container in the lab I found empty bottles
and discarded apparatus which I thought might contain traces of meth. The lab was in
disarray and it looked like Smathers might not be coming back. I took the trash from
the container to the Metro crime lab that night and a chemist confirmed that the bottles
had contained the components of meth and there were traces of meth on some of the
apparatus.

I set up surveillance that night on Smathers's house and waited for him to leave the
house. The next morning he left the house carrying a large cardboard box, which he
put in the trunk of his car. I approached him, identified myself, and asked what was in
the trunk. He said "nothing," and I asked him if I could look. He gave me the keys. I
opened the trunk and the box that was inside. I found bottles of a clear liquid labeled
"Meth -- 90%" I arrested him for trafficking in a controlled substance and took the
bottles from the trunk. The lab analyzed the contents as methamphetamine.
Assume there are no statutes, regulations, or procedures which apply to the issues raised by this problem

Question B (20%). On March 1, Officer Peter Brooks received an anonymous "Crimestopper" tip that Fred Farmer was growing marijuana in his house at 625 Rose Street. The tipster said she had been in the house a month before and seen a copy of "High Times" on the table, smelled pot (which she recognized from her college days), and seen what she thought was residue from marijuana cigarettes in the ashtray. She said Farmer drove a 1968 Volkswagen van, with the vanity plate "IMNXTC."

Brooks ascertained that Fred Farmer owned a 1968 VW van with the aforementioned vanity plate and that he lived at 625 Rose Street. On April 1, Brooks prepared an affidavit to obtain a search warrant from the local magistrate. The affidavit recited the information above, although it described the tipster's observations as "having seen marijuana" rather than "having seen what she thought was marijuana residue."

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On April 1, the magistrate issued a warrant which authorized the search of the "premises at 625 Rose Street" for marijuana and paraphernalia.

On May 1, Brooks executed the warrant. He found nothing in the house but he found marijuana under grow lights in the garage.

Identify and discuss the issues.

Question C. (20%) An arrest warrant was issued for 18 year old Chucky Carpenter for a series of household burglaries. Officers O'Brien and O'Halloran went to the home Chucky shared with his mother to serve the warrant. Mrs. Carpenter let the officers in and said Chucky was in the kitchen. O'Brien and O'Halloran entered the kitchen. They were in uniform and armed but their weapons were not drawn. O'Brien sat at the table
and O'Halloran stood at the door. O'Brien recorded the interview and following is a
transcript of the conversation between O'Brien, Chucky, and Chucky's mother.

0: Chucky, we've got a warrant for your arrest for the burglary of the home of Claudia
Samuels.

C: I don't know nothing about that.

0: Well, Chucky you know about it.

C: Yeah, I might know about it.

0: And what do you know?

C: Aren't you guys supposed to read me my rights or something?

0: Okay, Chucky, you have the right to remain silent. You don't have to talk unless
you want to. Do you understand that?

C: Yeah, my mom said I should have a lawyer. She said you guys would try to
railroad me.

0: Your mom let us in. Do you want me to bring her in here?

C: Yeah. I want to talk to my mom.

(O'Halloran leaves and returns with Mrs. Carpenter)

Mrs.C: Chucky, what did you do?

C: Nothing Mom. Nothing.

Mrs. C: You broke in Mrs. Samuels house. Don't lie to me. Who put you up to it?

C: It was Johnny, Mom. It wasn't my idea.

0: Who's Johnny?

Mrs. C: Johnny Magliore. Worthless kid that's always hanging around here.

0: Let me finish reading you your rights Chucky. Anything you say can and will be
used against you. You have the right to a lawyer when you go to court . . .

C: I'd like that

Mrs. C: He's going to need a lawyer all right.

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0: And you have a right to have a lawyer appointed for you if you can't afford a lawyer. Do you understand that?

C: Yeah

0: Are you willing to talk to me now?

C: Yeah. . . I mean I really don't know. I think I need to talk to a lawyer.

0: If you want to talk to me I'll listen . . . but I can't get a lawyer for you now.

C: What?

Mrs. C: Tell him what happened Chucky.

C: Mom, I don't know....

Mrs. C: This is your mother talking. Tell the man what happened.

C: Johnny Magliore and I broke in Ms. Samuels house and stole her tv and her video player. It was his idea. We sold the stuff for $50 and bought some grass.

Chucky now seeks to suppress the incriminating statements in this transcript.

Identify and discuss the issues.

Question D (10%): Short answer

1) What is the line between a "Terry stop" and a "Police Citizen encounter?"

2) Give an example in which a passenger in a car would have standing to complain of a search of the car.

3) What is the difference between use immunity and transactional immunity?

4) Give an example of a search or seizure which would be legal if performed for administrative purposes but would be illegal if done to seek evidence for a criminal prosecution.

5) Under what circumstances will a post-arrest, pre-indictment showup (i.e. one person lineup) be suppressed?