St. Mary's University School of Law

Instructions

1.   This examination consists of three (3) questions and five
(5) pages, including this page as the first (and including a 1-
page appendix of relevant statutes and guidelines).

2.   You will have two (2) hours in which to complete the
examination.

3.   St. Mary's Law School prohibits the disclosure of
information that might aid a professor in identifying the author
of an examination. Any attempt by a student to identify himself
or herself in an examination is a violation of this policy and of
the Code of Student Conduct.

4.   A student should not remove a copy of the examination from
the room during the exam time.

5.   This is an open-book exam. You may use your textbook, class
notes or any other written material, but you may not consult with
any person about the exam. Use a bluebook for your answers.
Please try to write neatly and use every other line in the
bluebook(s).

6.   When you have completed the examination, turn in this copy
and your bluebook(s) to the proctor. Be sure to write your exam
number, the name of this course and the name of the professor on
your bluebook(s) or typed pages.

7.   In addition, place your exam number in the space below. If
you are prevented by the oath from placing your exam number in
the space below, notify the student proctor of your reason when
you turn in the examination.

        I HAVE NEITHER GIVEN NOR RECEIVED UNAUTHORIZED AID IN
        TAKING THIS EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO
        SO.

        _____
        Exam Number

Question ONE and TWO (60 points total)

Ray Reeves was employed by a construction company that specialized in home improvement projects. In June of 1996, Ralph was assigned to work on a home improvement project in a condiminium located in an Air Force retirement community near Lackland Air Force Base in San Antonio, Texas. As Ray worked in the home of a retired air force officer, Buck Brady, and his wife Betty; Ray noticed that Betty often wore expensive jewelry. Ray observed Betty place the jewelry in the top dresser drawer in the Brady's bedroom, which was adjacent to the bathroom that Ray was hired to improve. After hearing the Brady's discuss a weekend trip that they planned to take, Ray decided to break into the Bradys condo and steal some of Betty's jewelry. Acting alone, Ray, who was not armed, forced open a window that Ray had discovered had a defective latch, entered the Brady condo, and took several rings and necklaces without encountering anyone. Ray was arrested about two weeks after the burglary after he had pawned Betty's jewelry. There was testimony at trial the jewelry that Ray took had a value of $7,500.

Ray's prior record consisted of an adjudication of delinquency in 1988 in a Texas juvenile court, when Ray was 16 years old, based upon possession of marijuana. Ray was granted juvenile probation, which he successfully completed. In 1990, when Ray was 18, he pleaded guilty to a charge of third degree felony theft in a Texas district court pursuant to a plea bargain which provided for deferred adjudication probation. Ray was granted early release from his probationary term in February, 1994, two months later, Ray was arrested again, this time for burglary. Ray was convicted in January, 1995 in a Texas district court for this offense and sentenced to prison for 10 years, but the judge granted Ray "shock probation" after serving 179 days in prison. Ray was still under probation supervision from his 1995 burglary conviction at the time of his arrest and conviction of the Brady burglary.

Question ONE (30 Points)

Assume that you have been hired by the district attorney's office in Bexar County and you have been asked to write a brief memo describing what sentence Ray Reeves might receive if Ray is convicted of burglary under 30.02 Texas Penal Code [see the appendix for the text of this statute]. Provide as much information as possible about the sentence that might be imposed without making representations that are misleading. Specifically, you should address the following questions:

(1)   Is it possible for Ray to receive community supervision
(probation)?   If so, under what circumstances?

(2)   If Ray is sentenced to prison, is it possible to make
any informed statement about: (a) how long a sentence would be
imposed;   (b) whether Ray would have to serve the entire prison
sentence imposed or whether some form of early release would be
possible;   (c) whether Ray would be subject to any form of
supervision following his release from custody.

Question TWO (30 Points)

Using the same facts developed in Question ONE, except
assume that Ray is being prosecuted in federal court under the
assimilative crime provisions of the United States Code that
allow the federal government to use a state statute (such as the
Texas burglary statute, 30.02 Texas Penal Code) as the basis for
prosecution in federal court and that you have been employed by
the United States Attorneys Office. Answer the same questions as
in Question ONE [see the statutory appendix for a copy of the
appropriate substantive offense guideline from the Federal
Sentence Guidelines],

Question Three   (40 Points)

David Defendant was charged with robbery and tried in a
Texas district court before a jury. During trial, the prosecutor
made a reference to the Defendant's failure to testify, and
suggested that Defendant's refusal to testify indicated his
probable guilt. The defense objection to this argument was
sustained, as was a defense motion to declare a mistrial.
Defendant was again indicted for robbery based upon the same
incident that formed the basis for the first trial, but this
time, Defendant agreed to plead guilty in return for a five-year
prison sentence. The trial court stated that it would impose the
sentence provided for in the plea agreement. The trial court
established a factual basis for the plea by obtaining Defendant's
admission that he had committed the acts alleged in the
indictment, accepted Defendant's plea of guilty, and assessed
punishment at five years' imprisonment.

Defendant filed a timely notice of appeal in the Fourth
Court of Appeals, and argued that: (1) the proceeds from the
robbery discovered in Defendant's home were obtained in an
illegal search and seizure; (2) Defendant's attorney provided
ineffective assistance of counsel by failing to file a motion to
suppress the evidence of the proceeds of the robbery found in
Defendant's home; (3) Defendant's guilty plea was invalid

because the court completely failed to advise him about the
immigration consequences of pleading guilty; (4) Defendant's
second trial was barred by Double Jeopardy protections of both
the State and Federal Constitutions because prosecutorial
misconduct at the first trial forced Defendant to request a
mistrial declaration; and (5) Defendant's sentence of five
years' imprisonment was cruel and unusual punishment in light of
the facts that Defendant had no previous criminal record and no
one was injured in the robbery. Defendant's fourth ground of
error, the Double Jeopardy claim is premised in part on the
decision of the Court of Criminal Appeals in **Bauder v. State**, a
case giving broader double jeopardy protections under the Texas
Constitution than apply under the Fifth Amendment. *Bauder* was
decided a month after Defendant's guilty plea, but Defenant
argues that the holding in that case should be applied to him.

**Without addressing the merits of Defendant's grounds of
error**, what procedural obstacles might prevent review of the
merits of Defendant's claims on direct appeal? If Defendant does
not prevail on direct appeal, discuss what procedural problems
might prevent review of Defendant's claims in a later state or
federal habeas corpus proceeding (again **do not address the merits
of defendant's claims**). Briefly discuss the merits of
Defendant's fifth claim, the Cruel and Unusual Punishment Clause
claim (do not discuss the merits of any claim raised by Defendant
except ground five).