



The University of New Mexico

School of Law Library
MSC11 6080
1 University of New Mexico
Albuquerque, NM 87131-0001
Telephone (505) 277-0939
FAX (505) 277-0068

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is no to be "used for any purpose other that private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

on the camping trip, but died in December 2002. Before Sun left on the 2001 camping trip, he left his laptop computer and office key with his office mate, Brian Moon, a codefendant. Moon's counsel confirms this, but says Moon will not take the stand at the upcoming joint trial of the six defendants.

A trial date of April 25 was set at the March 12 arraignment, but the judge got tied up with some trials in older cases and reset the trial for May 25, 2003

Since I have never handled a criminal case before, and since you took Criminal Procedure II in law school, I am going to need your help in sorting all this out. Please tell me what we should do

Problem 2

You are defending Tammy Faye, an evangelical minister indicted for embezzling funds from a TV ministry and falsifying evidence. During the State court voir dire, the prosecutor uses peremptory challenges to excuse the four jurors, all female, who belong to evangelical sects. What do you do and what is the likely result?

After the jury is selected and sworn, you object to the prosecutor's opening statement comment that Faye "clammed up and took the 5th when she was arrested." The judge asks what remedy you are seeking. What do you say and why?

One of your key defense witnesses is Oral Swagger, the director of the missionary wing of the ministry and severed codefendant who has not yet been brought to trial. He testifies on the first morning of your direct examination of him that the funds in question were not embezzled at all, but were used to buy supplies for their missionaries in foreign countries, where all transactions had to be handled in cash. Over the lunch hour, you meet with him and his attorney to go over the planned afternoon testimony. His attorney has to go meet a new client and tells the two of you to continue without her. When you ask Swagger to explain the handling of the withdrawn funds, he asks, "Are you asking what we really did with the money or what my testimony is going to be?" When he sees your surprised look, he says, "Look, I thought you knew that this is all a lie, but don't worry, I did fine this morning and I'll do fine this afternoon—I'm a natural salesman." What do you do now and why?

When you later confront your client about what Swagger has said, she tells you to forget about it because the devil has been tormenting him and making him see things that aren't there. She insists that the missionary story is true, although you suspect strongly that it is a lie by the time she says she wants to take the stand and tell the jury about it. She wants to testify tomorrow. What do you do now and why?

The prosecution calls Swagger as its first rebuttal witness. He testifies that his prior testimony was perjury and that your client put him up to it. What do you do now?

The jury returns a verdict of guilty of embezzlement, which carries a maximum ten year sentence, and not guilty of destruction of evidence. The judge announces at sentencing that even though this is Faye's first criminal charge, he has received letters from her two previous ministries alleging that this is not Faye's first theft. In addition, the statute provides that if the judge finds by a preponderance of the evidence that the embezzlement was from a charitable or religious organization, there is a five year minimum sentence that must be imposed. Finally, he states that he is convinced she was guilty of destroying evidence, notwithstanding the verdict. He gives her five years.

Two days after sentencing and before you file your notice of appeal, you learn that Amy Simple, a witness previously unknown to you, had told the prosecutor before trial that she had learned from her former estranged lover, the choir director, that he had taken the money and fixed the books so the blame would be shifted to Tammy Faye. The prosecutor did not believe the witness because she seemed to be on a vendetta against her former lover, so he had not disclosed the information to the defense. The prosecutor placed in a desk the bank documents connected with the withdrawal of some of the funds which Simple gave to the prosecutor to check for the choir director's fingerprints, but it appears they accidentally were discarded when he was promoted to a larger office. What do you do now?

Problem 3

To: You, my law clerk

May 9, 2003

From: Me, the federal district judge you work for

I want you to look over a 28 USC Sec. 2254 habeas corpus petition that was recently filed and brief me on the issues and your suggested resolutions. These are the facts that were developed in the federal record habeas proceedings.

The indigent defendant, Moses Outlaw, was convicted of capital murder and sentenced to die in the New Mexico death chamber for a drive-by killing of a witness. It turns out that his appointed lawyer, Dan Dreamer, had previously represented the murder victim, Sam Snitch, on a gang-related murder charge, and had worked out a deal for that victim to testify against several other gang members in exchange for a plea to a reduced charge. In fact, Dreamer was still Snitch's lawyer when Snitch was killed. The same judge appointed Dreamer in both cases. This information was unknown to Outlaw until his appellate counsel found out about it after Outlaw's conviction.

Another fact unknown to Outlaw is that Dreamer was addicted to heroin throughout his representation of Outlaw. Outlaw did notice that Dreamer was drowsy during the trial and actually fell asleep for at least a few minutes during the prosecutor's cross of Outlaw and a few minutes during the prosecutor's summation. Dreamer did conduct some brief cross-examinations and a direct examination of Mr. Outlaw.

Dreamer also objected at trial to the admission of a shotgun shell found in his car during a search based on an anonymous tip that Outlaw might have drugs in the car. The

trial judge denied the motion on the ground that it was not presented before trial, as required by the State rules of criminal procedure.

For his summation, Dreamer simply said, "Ladies and gentlemen, you have your job to do and I have mine. I remind you that it is the burden of the State to prove Mr. Outlaw's guilt beyond a reasonable doubt. Never forget that. I trust that you will make the right decision."

Outlaw was tried with a co-defendant, Jimmy Jasper, whose redacted confession was introduced at the joint trial. When Dreamer responded with "I object," the prosecutor offered to redact the confession to change the references in the statement from "Outlaw and me shot Snitch" to "another person and me Shot Snitch." The judge then admitted the revised statement. Jasper testified and repudiated the confession, saying the police questioners had kept trying to get him to get him to admit he and Outlaw had killed the Snitch, but he kept telling them to write it up any way they wanted to, but it was not true.

Outlaw was appointed a new attorney for his direct appeal, and that lawyer found out about the trial lawyer's addiction but did not raise ineffective assistance of counsel as an issue in the appeal. All other issues were argued unsuccessfully.

A new counsel was appointed to represent Outlaw in his State habeas proceedings, and that lawyer raised all issues except those relating to Jasper's statements, because he claims he was not paid enough by the State to read the trial transcript.

Federal habeas counsel have now presented all issues related to the above facts.

(END OF EXAMINATION)