

**COLLEGE OF LAW, SOCIAL AND CRIMINAL JUSTICE**

**ASSESSMENT BRIEF**

MODULE TITLE: **American Criminal Procedure and Evidence**

MODULE CODE: LAW6083

MODULE LEADER: Tom Nicklin

ISSUE DATE: w/c 22 January 2023

HAND IN DATE: MONDAY 13th MAY 2023, NO LATER THAN 3PM

HAND BACK DATE: **WITHIN 20 WORKING DAYS** (**11th June 2023)**

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| **Learning outcomes and assessment criteria specific to this assignment:**  On completion of this assignment, students should be able to demonstrate their ability to:   1. Critically analyse legal issues in the context of American Criminal Procedure and Evidence. 2. Undertake effective legal research skills in order to problem solve legal issues in the context of American Criminal Procedure and Evidence. 3. Evaluate sources of law. 4. Construct logical legal arguments using appropriate referencing, written English, style and form.   **Transferable skills**  This assessment will assist in development of the following transferable skills:   * Critical analysis * Practical application skills * Problem-solving * Academic essay writing skills * Legal research   **Penalties for late submission**  At time of publication the rules regarding late submission of work are:   1. Assessments submitted **up to 1 hour** after the published deadline will receive no penalty. 2. Assessments **submitted between one and 24 hours** after the published deadline will be reduced by 5% of the actual mark given by the tutor. 3. Assessments submitted **between 24 hours and five working days** after the published deadline will be reduced by 10% of the actual mark given by the tutor. 4. Work submitted **more than five working days** after the published deadline will not be marked and the student will be deemed to have failed an attempt at the assessment.   If a student has a support statement specifying additional time to complete coursework, the penalties will only apply from the alternative deadline provided by the statement.  **Importance of Taking Assessments**  It is important that you complete your assessment, otherwise it is classed as a failed attempt (unless you have made a successful EC claim relating to [Extenuating Circumstances](https://icity.bcu.ac.uk/student-affairs/appeals-and-resolutions/extenuating-circumstances-procedure)).  If you fail any of your modules you will have to re-take it, although there are limits on the number of times that you can re-take and you may even have to re-study a module you have failed. Having to re-sit or re-study modules means that your workload will be increased and you will be putting yourself under more pressure. You may even be liable to incur more fees if you are required to re-study a module.  The university does appreciate that there are times when you may be unable to take an assessment due to circumstances outside your control such as illness. If this is the case you need to make a formal claim for an extension or deferral, as without this you are expected to submit within the standard guidelines.  No tutor, module leader or course leader can grant any form of extension to the published deadlines - this is done by a separate team within the university to ensure consistency and fairness for all. For full guidance on what constitutes an exceptional circumstance and how to make a claim, please visit the [Extenuating Circumstances](https://icity.bcu.ac.uk/student-affairs/appeals-and-resolutions/extenuating-circumstances-procedure) page on iCity; you can also contact the [Student Support Team](https://icity.bcu.ac.uk/Student-Affairs/Contact-and-Find-Us/Index) for help. |

1. Assessment overview
   1. Method of assessment

The assessment consists of coursework worth 100% of your final grade.

**To pass this module, you must achieve a final overall mark of at least 40%. If your mark is less than 40%, you will be required to retake the assessment.**

* 1. Deadlines & submission

The deadline for submissions is: **13th May 2024, 3pm**.

Work must be submitted online via the link provided in the *Assessment* area of the module’s Moodle site. Please follow the University policy regarding online submission and submitting assessed material on time (see Page 2).

**Please retain a copy of your original assessment material for your own records.**

* 1. Word count

The word limit is 2000 words. 1800 words for Part A and you should fill in the blanks as required for Part B.

You should write no more than 2200 words. Anything beyond this will not be marked. Footnotes and bibliography will not be included in the word count unless it is apparent that you are including text in footnotes as a means of artificially disguising excessive length.

* 1. Assignment format

The formatting requirements are as follows:

* Word processor: please use Microsoft Word (available for free through BCU) and submit as a PDF (not as a Word Document*)*
* Font: Times New Roman or Arial
* Text size: 12
* Line spacing: double
* Margin size: normal
* Page numbering: include in header or footer
* Quotations: long quotations should be in a separate paragraph and indented, with single line spacing
* Footnotes: same font as main text, font size 10, single line spacing
* Referencing: you must use the Bluebook Citation Manual to style both your footnotes and bibliography.
* Word count: you must state both the word limit and the number of words used on the cover sheet

Cover sheet: you must attach the cover sheet, including your student number. Do not include your name anywhere, to allow for anonymous marking.

Material should be written in formal English and structured in a clear way to ensure that ideas are expressed effectively.

ALL facts, concepts and quotations should be referenced as appropriate using the Bluebook referencing system.

* 1. Tutor support

Support is available at any time throughout this module; simply contact your tutor if you need help. There are opportunities for practice (formative) tasks and assessments throughout the module. These will help you prepare for this final (summative) assessment.

**Detailed feedback on draft work is not possible. You should take advantage of the formative assessment opportunities throughout the module.** However, if you have any specific queries, or need additional support, you can contact your tutor at any time **up to one week prior to the deadline**

Please note that tutors are unable to indicate a provisional grade for your work at any point prior to the official release date. As such, it is requested that you do not ask tutors what grade your work is likely to achieve prior to final submission.

* 1. Plagiarism and Academic Misconduct

Any work you submit must be your own original work. Any work that is plagiarised - this means submitting any item of assessment which contains work produced by someone else in a way that makes it look as though it is your own work – will be subject to an academic misconduct review. This includes 'self-plagiarism' - you are not allowed to re-use work or significant sections from work, which you have already submitted for an assessment.

You are also not allowed to collude with others to produce work unless your assessment brief specifically outlines group work. Collusion means working with at least one other person to produce a piece of work that you then pass off as your own. You can discuss ideas for the work with other students, but you must not work with them to produce a piece of work together, you must not copy or share another student's work, and you must not lend your work (including drafts) to another student to allow them to copy your work.

If your piece of work is very similar to that of another student, you are likely to be accused of collusion. If you are found to have made your work available for another student to copy all or part of it, you may be referred for disciplinary action even after you have completed your award and are no longer a student of the University. You must not also falsify information, resources or data in any way.

These, and any other types of academic misconduct that are likely to give you an unfair advantage in an assessment, will be referred for investigation. [Academic misconduct](https://icity.bcu.ac.uk/Student-Affairs/Appeals-and-Resolutions/Academic-Misconduct-Procedure) threatens the standards of awards we make, so we take this matter extremely seriously indeed and any student found guilty of this will have penalties applied and in the most serious of cases students with be withdrawn from the course.

* 1. Artificial intelligence (AI) misuse

Any use of AI which means you have not independently demonstrated your own attainment is likely to be seen as academic misconduct. AI tools must only be used when the assessment instructions permit its use and where you are able to demonstrate that the final submission is the product of your own independent work and thinking.

1. Assessment Brief

It is the summer of 2023. You are working as an intern at the Sunshine State Justice Project, Florida. Your supervising attorney, Kathy Kessinger, is new to Florida and has taken on her first case at the Sunshine State Justice Project. The client’s name is Gerald Gerrard. He was convicted of second-degree murder for killing of his Boyfriend, Andreas Andrews, on August 14, 2023, and thereafter given a life sentence with the possibility of parole after serving 20 years. Kathy is now preparing for Gerrard’s direct appeal. Kathy sends you an email setting out the facts of the case and the issues in an email set out below.

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To: Summer Intern

From: Kathy Kessinger

Re: Gerrard – Post-conviction Relief – Case No. FL-2D-3729

Thanks for your help on the Gerrard case. There are two things I need your help with: (1) Drafting a legal memorandum on multiple issues, and (2) Completing a motion to appeal on the grounds of ineffective assistance of counsel. You’ll find my instructions for both below.

Legal Memo Instructions

We have just been assigned the Gerrard case and there are some issues that I’d like you to research and report back to me on.

Here’s some background information about the case. Gerrard and Andrews were in a long-term relationship for 10 years. By all accounts, it was a turbulent relationship fraught with allegations of domestic violence from both parties. The couple met in high school, and Andrews’ sister testified that she had seen Gerrard’s jealous side flair up on multiple occasions, often when Andrews was simply talking to other men in social settings. The couple lived together in the Sunny Heights apartment complex. Neighbors reported hearing frequent shouting and banging around well into the early hours of the morning. On several occasions the police were called but no charges were ever filed, and no further action was taken.

On July 28, 2022, it is alleged that Andrews told his sister that he had had enough of Gerrard’s jealousy-induced violent outbursts and that he was going to leave him for good. On August 12, 2022, Gerrard was pulled over by a police officer, who searched the vehicle on the grounds that he could smell marijuana. Gerrard denies smoking marijuana, and accused the officer of lying in order to search his car. When conducting the search of the vehicle, the officer located a bloody knife in the trunk. When questioned on the scene, Gerrard repeatedly apologized but gave no comment regarding why the knife was in the vehicle. Police then conducted a search of the apartment, and located the body of Andreas Andrews, who had been stabbed over 40 times. Gerrard denies killing Andrews, stating that he came across the body when he returned home from work and subsequently blacked out. He was convicted of second-degree murder and sentenced to life with a possibility of parole after 20 years.

He has written to us wanting help to challenge the constitutionality of the stop and search. He argues that he raised this with his defense counsel at the time, but they did not address the matter in court. He’s also raised a second issue with his defense counsel, where he alleges that, during his interrogation by police, his defense attorney fell asleep for a short period of time. Therefore, the three matters we must consider are:

1. Whether the stop and search of his vehicle was lawful, and;
2. Whether he has a valid case for ineffective assistance of counsel.
3. If he does have a valid case, what impact would that have?

Regardless of what we think about the nature of Gerrard’s actions, we should keep in mind our organization’s motto: *fiat justitia ruat caelum* (let justice be done though the heavens may fall). If his constitutional rights have been violated, we need to act. If one person’s rights are stepped on, no one’s rights are safe!

I have attached a couple of documents from the case file relating to the stop and search for you to use in your investigation. These include:

* The court transcripts from Gerrard’s testimony.
* The court transcripts from the officer who pulled him over and found the knife.
* An anonymous tip we received.

Using appropriate form and authorities, produce a Legal Memorandum that answers the following questions:

1. *What are the procedures and timelines for submitting a criminal appeal in Florida when someone has pled ‘not guilty’?*
2. *Did the officer have lawful grounds to stop and search the vehicle under the circumstances? Please explain the legal basis for your answer, drawing from relevant case law where necessary.*
3. *Does Gerrard have a claim for ineffective assistance of counsel? Please explain the legal basis for your answer, drawing from relevant case law where necessary.*

Motion to Set Aside Judgement on the Grounds of Ineffective Assistance of Counsel

If our appeal is successful, the case will likely be remanded for a retrial. Regardless of the outcome of your research, I’d rather be prepared so that we can file this as soon as possible. Please complete the template motion in Appendix A by filling in the blank spaces.

Thanks,

Kathy

Attorney

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PART A – 80% of the total marks (1800 words)

Your marks are allocated as follows:

1. Memo style, tone, and format, and written English - 10%
2. Application of bluebook citation rules - 10%
3. Q1 – 10%
4. Q2 – 10%
5. Q2 – 20%
6. Q3 – 20%

PART B – 20% of the total marks (Fill in the Blanks)

There are fifteen blank spaces in the motion in Appendix A (see below). Each blank is worth a certain number of marks, as stated in Appendix A.

1. Guidance notes

Note you must use the Bluebook referencing, and that this assessment is marked in accordance with the four learning outcomes for this module (see further details below).

Guidance on writing a legal memorandum and completing a legal pleading is provided throughout the module.

Recommended Reading

This list gives merely an indication of the works which you should consult in preparation for writing your essay. It is not exhaustive, and you should explore other sources and materials, e.g. by accessing the suggested reading noted in the module guide and following up references to journals etc. given in these works and held in the journal collection in the library, either in paper form or on-line. Students should also consult on-line databases, such as Westlaw International, to facilitate wider reading.

Gideon v. Wainwright, 372 U.S. 335 (1963)

*Strickland v. Washington*, 466 U.S. 668 (1984)

APPENDIX A

**IN THE CIRCUIT COURT OF ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA, \*

\*

v. \* Case No. TBC

\*

GERALD GERRARD \*

**MOTION TO SET ASIDE JUDGEMENT ON**

**THE GROUNDS OF INEFFECTIVE ASSISTANCE OF COUNSEL**

Gerald Gerrard respectfully moves this Court to set aside the judgement on the grounds of ineffective assistance of counsel. It is submitted that:

1. The \_\_\_\_\_ (1 mark) Amendment provides that the accused shall have “Assistance of Counsel for \_\_\_\_\_ (1 mark).” The Constitutional right to due process, equal protection of the laws, and right to assistance of counsel is provided to all citizens in the U.S. through the \_\_\_\_\_ (1 mark) Amendment.

2. The case of \_\_\_\_\_\_\_\_\_ **372** **U.S.** \_\_\_ (\_\_\_) (2 marks) extends that right to \_\_\_\_\_\_ (1 mark) trials, holding that the right to effective counsel is "fundamental and essential." ***Id.* at \_\_\_\_** (1 marks). See also **United States v. \_\_\_\_, 466 U.S. \_\_\_ (1984)** (2 marks) which emphasized that, of all the rights that an accused person has, “the right to be represented by counsel is by far the most pervasive, for it \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.” ***Id.* at** \_\_\_ (1 marks).

3. The case of \_\_\_\_\_\_\_\_ (3 marks) established a two-part test to determine whether counsel was ineffective. This test requires that

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (4 marks).

4. As a crucial defence was not investigated, he argues that counsel failed to meet the “\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of reasonableness." (2 marks) and that this \_\_\_\_\_\_\_\_ his ability to receive a fair trial. (1 mark)

5. Therefore, failure to grant the motion would deprive Mr. Gerrard of rights to due process, equal protection, a fair trial, and a reliable sentencing as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Florida law.

For these reasons, Mr. Gerrard respectfully moves this Court to grant this motion.

Respectfully submitted,

**Kathy Kessinger**

Sunshine State Justice Project

Jacksonville, Florida

**FL Bar No.: 987654**

**Tel: 205-123-5643**

**Email:** [**Kathrine**](mailto:Kathrine)**.Kessinger@SSJP.org**

**Address: 9800 Montgomery Blvd NE, Albuquerque, NM 87111, United States**

*Counsel for Gerald Gerrard*

1. Marking criteria

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **0 – 39%**  **Fail** | **40 – 49%**  **Pass** | | | **50 – 59%**  **Pass** | | **60 – 69%**  **Strong Pass** | | **70 – 79%**  **Very Strong Pass** | | **80 – 100%**  **Exceptionally Strong Pass** |
| Criterion 1  Mark: | **Critically analyse legal issues in the context of American Criminal Procedure and Evidence.** | | | | | | | | | | |
| Fails to undertake a critical analysis or undertakes one which lacks detail or range in sources and/or relies predominantly on inappropriate sources. | | Undertakes a critical analysis and which is limited, but satisfactory in its detail and the range and appropriateness of sources. | Undertakes a critical analysis which is adequate in its detail and the range and appropriateness of sources. | | Undertakes a critical analysis which is good in its detail and the range and appropriateness of sources. | | Undertakes a critical analysis which is excellent in its detail and the range and appropriateness of sources. | | Undertakes a critical analysis which is exemplary in its detail and the range and appropriateness of sources. | |
| Criterion 2  Mark: | **Undertake effective legal research skills in order to problem solve legal issues in the context of American Criminal Procedure and Evidence.** | | | | | | | | | | |
| Fails to undertake effective legal research and thereafter apply the findings of this research to problem solve legal issues. | | Undertakes limited legal research and thereafter provides satisfactory application of the findings to problem solve legal issues. | Undertakes adequate legal research and thereafter provides sound application of the findings to problem solve legal issues. | | Undertakes good legal research and thereafter provides a good application of the findings to problem solve legal issues. | | Undertakes excellent legal research and thereafter provides excellent application of the findings to problem solve legal issues. | | Undertakes exemplary legal research and thereafter provides exemplary application of the findings to problem solve legal issues. | |
| Criterion 3  Mark: | **Evaluate sources of law.** | | | | | | | | | | |
| Fails to evaluate sources of law. | | Provides a limited evaluation of sources of law. | Provides an adequate evaluation of sources of law. | | Provides a good evaluation of sources of law. | | Provides an excellent evaluation of sources of law. | | Provides an exemplary evaluation of sources of law. | |
| Criterion 4  Mark: | **Construct logical legal arguments using appropriate referencing, written English, style and form.** | | | | | | | | | | |
| Presents a legal argument/does not present a legal argument which makes no or little attempt to comply with the appropriate style and form or the BlueBook. | | Presents a legal argument which makes a limited attempt to comply with the appropriate style and form or the BlueBook. | Presents a legal argument which makes an adequate attempt to comply with the appropriate style and form or the BlueBook. | | Presents a legal argument which makes a good attempt to comply with the appropriate style and form or the BlueBook. | | Presents a legal argument which makes an excellent attempt to comply with the appropriate style and form or the BlueBook. | | Presents a legal argument which makes an exemplary attempt to comply with the appropriate style and form or the BlueBook. | |