

UNIVERSITY OF UTAH
COLLEGE OF LAW

Criminal Procedure
Professor Paul Cassell

Fall, 2001
December 15, 2001

FINAL EXAMINATION

Instructions

This examination begins at the time indicated by the proctor. It is designed to be a three-hour examination with three questions of one hour each. Each of the three questions will be given equal weight in determining the final grade. You are given an extra hour to allocate as you see fit – **a total of four hours**. You must turn in your examination by the end of four hours.

This is essentially an open book examination. You may have the following materials with you: your textbook, the textbook supplement, my supplemental materials, and any supplemental materials distributed during the course, any outline that you may have prepared by yourself or with other students. You may not have the following materials: any commercial publications, hornbooks, or the like, in either printed or electronic form.

In accordance with standard law school procedure, do not write your name anywhere on your exam or any other information that could be used to identify you. Write your exam number on your exam. This permits evaluation without knowledge of the exam-taker's identity. If possible, please do not write in pencil (it is difficult to read).

Page limits: **if you are handwriting this exam, you are limited to a total of three bluebooks, one side of each page, every other line.** The three bluebook limit is a limit for the whole exam; for example, if you have space left over in the first bluebook after answering Question I, you can use that space for Question II, etc. **if you are typewriting this exam, you are limited to a total of 4300 words for the entire exam. (This word limit is roughly 13 pages).** **On the last line of the exam, please type in the number of words that your word processing package shows for the test.**

If you think that you need more facts for any question, identify the facts you need and state how they would affect your answer.

This examination consists of six pages (including this cover page). Please make sure you have all pages.

Good luck!

SPECIAL REMINDER – DO NOT DISCLOSE EXAM INFORMATION

As you know, at the request of various students, this exam is being offered at a number of different times.

If you are taking the test early, do not disclose any information about this exam to other students in the class. Even seemingly innocuous information – “The test was easy” or “the test was hard” – can lead to rumors that someone “knows” the test questions and can cause unnecessary anxiety among fellow students taking the test. Your cooperation in keeping the test confidential, which I know will be forthcoming, is very much appreciated.

QUESTION I

An anonymous informant told a detective that the Greg Gunner, a former sharpshooter in the National Guard, was growing illegal hallucinogenic mushrooms in his home in Rural City, Utah, and exchanging them with others for marijuana. (The possession of hallucinogenic mushrooms is forbidden by appropriate state law.) The tip provided Gunner's address and physical description, identified his vehicle, and pinpointed the location of the drugs inside a described home. Donna Detective confirmed the information as to Gunner's physical characteristics, address, vehicle, and description of the home. Detective also learned through a deputy police officer, Oliver Officer, that Gunner had served in the National Guard and that Gunner had once admitted to Officer that he (Gunner) used marijuana. Detective provided all of this information – and only this information – to the appropriate magistrate, who authorized a search warrant for “hallucinogenic mushrooms and any and all firearms.” The search warrant also particularly identified the residence of Gunner and his vehicle as the places to be searched.

Detective then traveled to Gunner's residence. As Detective parked on a public street in front of Gunner's home, she was able to exit her vehicle and look through an open window of the home and see an improvised greenhouse with many mushrooms, which based on her training and experience, Detective thought were probably illegal hallucinogenic mushrooms. Detective then knocked on the front door, and Gunner answered. Detective asked whether Gunner would mind if she looked around, and Gunner responded “&*@*##* get out!” At this point, Detective presented the search warrant. Gunner responded, “Fine, go ahead and look around, but I am leaving.” Detective insisted that Gunner remain at his home during the execution of the warrant and searched the pocket of the jacket he was wearing, discovering several marijuana cigarettes. Detective asked Gunner, “Who'd you get the ‘Doobie’ from?” to which Gunner replied, “I bought it from Oliver Officer, but he overcharged me – I never get a good price from him.”

Detective placed Gunner under arrest and then proceeded to search the home. In plain view in the front hall was a gun rack, with a rifle. Detective seized the rifle. Later, back at the station house, she learned (through a trace of the rifle's identification number) that the rifle had been stolen in a recent burglary at a sporting good store. Detective also searched the greenhouse, finding there illegal hallucinogenic mushroom plants growing next to other plants. Detective, who has extensive experience in narcotics investigations, immediately recognized these other plants as illegal opium plants and seized them along with the mushrooms.

Detective then went out to Gunner's car, which was parked on the public street in front of his house. She looked through the car's back window, and saw some more mushrooms hidden in a clear plastic baggie on the floor by the backseat of the vehicle. These mushrooms looked just like those she had seized in the greenhouse. Detective opened the rear door and seized the mushrooms, and then opened the trunk and noticed several packages wrapped in Christmas paper. She tore open the wrapping on the packages and found they were in fact several kilos of cocaine.

The prosecutor has charged Gunner with possession of the illegal hallucinogenic mushrooms found both in his home and his car, possession of marijuana cigarettes, possession of opium, theft of the rifle, and possession of cocaine with the intent to distribute. He wishes to use all of the evidence discovered during the execution of the warrant, including Gunner's statement.

Discuss the issues of criminal procedure that arise under the United States Constitution and the Utah Constitution. (Ignore all fruit of the poisonous tree issues.)

QUESTION II

The Park City police have received an anonymous tip that ex-con Danny Ocean and his gang are preparing to rob the Fifth National Bank in Rural City, Utah. To investigate their suspicions, on November 1, 2001, several officers, accompanied by a reporter from the newspaper, *The City Weekly*, drive on a public street to Ocean's ranch, which is on a ten acre lot. Ignoring the NO TRESPASSING signs, they then travel up a side dirt road until they are about two hundred yards from Ocean's house, where they encounter a fence. Remaining outside the fence, they use high-powered binoculars to scan the Ocean residence. Looking through the living room window, they see Ocean and ten other people assembling masks, gloves, blueprints, and other apparent indicators of a robbery being prepared.

The officers and the reporter then swoop down on the house, crashing through the front door. As the officers announce that they are police and display their guns, Ocean yells: [1] "Quick, get out of here before they figure out what we're up to." Officer Leon Linebacker (a former football player), however, tackles Ocean before he can get anywhere. Ocean then says: [2] "How'd you catch us this time – nice job, coppers!" Officer Linebacker, continuing to hold Ocean down, replies: "Well, someone inside gave us a tip." Ocean responds: [3] "That dirty rat, wait 'til I figure out who it is." The police officers then advise Ocean, from a written card that he has the following rights:

You have a right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning. You have the right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court. If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time.

Ocean agrees to waive his rights, and tells Linebacker: [4] "This was going to be our biggest job ever – a cool two million in cash. But maybe I need to talk to my lawyer before chatting any more with you guys." Linebacker replies: "Once you up and call for that lawyer, man, we can't do anything for you." Ocean responds: [5] "It will probably take that two million we were going to get to pay for a good lawyer, but I'm sure I don't want to talk to you any more." Linebacker responds: "Well, the next authority figure to look at your case will be that tie-wearing, three piece bloodsucker – a no-nonsense prosecutor from the Violent Crimes Unit, and God help you then, my man. So we'll just wait until you reconsider – but take your time." Ten

minutes later, Ocean says: [6] “If I tell you who was really behind the operation, can I get away with no jail.” Linebacker responds: “Things will go better for you if you help.” Ocean says: [7] “Okay, it was the Sinatra boys – they were going to get most of the money.” Three hours later at the station house, while Linebacker is processing Ocean, Ocean gives [8] a false date of birth.

Unbeknown to the Park City police, the FBI had also been investigating Ocean for suspected involvement in illegal gambling. On October 31, 2001, the FBI had obtained an arrest warrant for Ocean for the federal offense of using a means of interstate communication to facilitate an illegal gambling operation.

On November 2, 2001, FBI agents arrive at the Park City jail and give Ocean a full set of proper *Miranda* warnings, obtain a valid waiver of rights, and get [9] a confession from Ocean for involvement in the illegal gambling.

The state prosecutor has charged Ocean with the state offense of attempted armed robbery and wants to use statements [1] through [8] against Ocean, along with all of the items (mask, gloves, etc.) that the police seized from Ocean’s house when they arrested him. A federal prosecutor wants to use the confession (statement [9]) against Ocean in a federal prosecution for illegal gambling.

Discuss the issues of criminal procedure that arise under the United States Constitution and the Utah Constitution. (Ignore all fruit of the poisonous tree issues.)

QUESTION III

On December 1, 2001, the Salt Lake City police stopped Dave Driver at a roadblock set up as part of the Department’s “Winter Mobile Force.” The Department had provided a detailed description of the roadblock to the appropriate magistrate, who had evaluated all aspects of the roadblock, concluding that it would authorize only brief and minimally intrusive delays and would control officer discretion. The magistrate approved the plan. A notice of the roadblock was then provided in the *City Weekly*, a small, iconoclastic local newspaper.

Under the roadblock plan, all vehicles heading southbound at a particular location on State Street were stopped and the driver asked for a driver’s license and vehicle registration. Officers would also make a brief visual inspection of the exterior of the car for safety defects or other suspicious problems.

Doug Davis and his companion, Connie Companion, pulled over as directed when they drove up to the roadblock. From a quick glance at the rear licence plate, the officers determined that the car Davis was driving had a forged inspection sticker. The temporary registration that Davis produced also appeared to have been altered. The officers also noticed that Davis was not wearing a seat belt, a violation of the state traffic code.

The police then directed Davis to a side area of the roadblock (as indicated in the

approved roadblock plan for dealing with car that had problems). Davis hit the gas and tried to speed away. He was quickly blocked by several converging police cars. Companion then asked the police for permission to leave, but was told to remain in the vehicle.

After the police arrested Driver for evading arrest, improper registration, wearing no seat belt, and possession of a false registration document, they searched him and discovered a small vial crack cocaine in one of his pockets. A female officer was then called, who carefully searched Companion's clothing, finding some heroin. She gave Companion proper *Miranda* warnings, determined that Companion understood the warnings, and then asked Companion to waive her rights. Companion said "Maybe I should talk to a lawyer." The officer asked Companion why she wanted a lawyer, and Companion replied, "Well, I know about all the stuff in the trunk." Companion, however, refused to make other statements.

Police then turn to the locked trunk of the car, where they discover several kilos of cocaine.

At a later suppression hearing, Officer Sam Spangleson testified that the principal purpose of the roadblock was vehicular regulation in conjunction with a police program to increase police presence downtown. A secondary purpose was to curb drug activity through arrests that might develop from the stops of the vehicles. The district judge hearing the matter credited Spangleson's testimony on these issues.

The state prosecutor wishes to use all of the evidence that developed from the roadblock against Davis in a prosecution for various traffic offenses, evading arrest, and drug dealing. The prosecutor also wishes to introduce the kilos of cocaine, the heroin, and Companions statements in a prosecution against Companion for drug dealing.

Discuss the issues of criminal procedure that arise under the United States Constitution and the Utah Constitution. (Ignore all fruit of the poisonous tree issues.)