

CRIMINAL PROCEDURE  
PROFESSOR KRAVITZ  
FALL SEMESTER – 1999

\*\*\*\*\*THE FINAL EXAMINATION\*\*\*\*\*

The examination consists of ten questions of equal weight. Each question is worth 10 points for a total of 100 points. There are six pages to this exam including the cover page.

Answer each question and state your reasoning directly and concisely. The longest answers are not always the best, however mere conclusions are insufficient to receive credit. Answer the questions in the order that they are asked. **THERE IS A PAGE LIMITATION FOR EACH QUESTION.** You are limited to one full page (both sides of one page) for each question.

Organization is very important. Read the question carefully. **LEGIBILITY IS APPRECIATED.**

Be sure to write your number on your blue book. You have three hours to take the examination. Budget your time wisely. When you are finished, take your exam to my office on the 5<sup>th</sup> floor and sign the exit sheet.

Enjoy the Holidays!

### QUESTION NUMBER ONE

Police officers obtained information suggesting that Apollo was involved in distributing marijuana. The officers had national guardsmen conduct a warrantless thermal scan of Apollo's home, which displayed the "heat signatures" of grow lights that the defendant was using to cultivate marijuana. The results of the scan were then used to obtain a warrant to search Apollo's home and to seize the plants and other evidence of his indoor growing operation.

A thermal imager detects waste heat emanating from a home. It records white spots on a dark background from which the government interprets what activities are taking place within the home. The imager cannot reproduce images or sounds, however the data obtained could reveal details such as the intimate activities of the occupants of the home.

**Q1: At trial, Apollo moved to suppress the fruits of the search pursuant to the warrant. You are the trial judge. Rule on the motion.**

### QUESTION NUMBER TWO

On January 1, 1999, Sgt. Neptune of the Utopia City Police applied for a warrant to search 100 Second Avenue in Utopia City. In support of his request, Sgt. Neptune prepared the following Affidavit for Search Warrant:

I, Sgt. Neptune, a duly qualified police officer in Utopia City with over 10 years experience became involved in an investigation concerning drug dealings being made at the above referenced address. During the week of December 1, 1998, I received information from a concerned citizen that drugs such as cocaine and marijuana were being used and sold at this address by one Bacchus. During the week of December 14, 1998, I again received information from a concerned citizen that the above mentioned drugs were still being used and sold at this address. Subsequently, I personally observed known drug users enter and exit the residence herein described. Wherefore, based upon my experience of over 10 years, my personal observations which corroborate the information from the concerned citizen, I request a search warrant be issued for this residence.

The magistrate issued the search warrant which was executed during the daytime on January 2, 1999. Drugs and drug paraphernalia were seized and Bacchus was charged with drug trafficking.

**Q2: Bacchus has moved to suppress the fruits of the search. You are the trial judge. Rule on the motion to suppress.**

### QUESTION NUMBER THREE

Regardless of your answer to question number two, assume that the "concerned citizen" described in the affidavit to the search warrant had related to Sgt. Neptune prior to the application for the search warrant that he never actually saw drugs being used and sold inside the premises. Instead, he related the information because Bacchus began dating his prior girlfriend, that he was very jealous of her relationship with Bacchus and that he refused to discuss Bacchus and his residence until he was paid \$500 and promised a share of any money obtained as a result of any forfeiture action that might be filed. Sgt. Neptune also knew at the time that the "concerned citizen" has a prior perjury conviction.

**Q3: (A) You have been appointed as counsel for Bacchus and have discovered the foregoing information during your investigation of the case. Does the information affect the Bacchus motion to suppress? How should you proceed? (B) You are the trial judge. Rule on the motion.**

### QUESTION NUMBER FOUR

Defendant Mercury, a convicted felon, was convicted of unlawful use of a weapon by a felon. At the hearing on his motion to suppress, Officer Mars testified that he and his partner were assigned to the special operations section of the Utopia City Police Department with the purpose of investigating narcotics activity. Mars was among eight officers in four marked cars traveling eastbound on Main Street, the last in a "caravan," He observed Mercury standing in front of 100 Main Street.

Mercury, who did not appear to be violating any laws and who was unknown to Mars at the time, looked in the officers' direction and then fled. Mars turned his vehicle around and continued to observe Mercury running through an alley. Mars noticed that Mercury was carrying a white opaque bag under his arm. Mars drove his car so that Mercury was cornered in the alley. Mars exited his car and stopped Mercury. Without announcing his office or asking any questions, he conducted a protective pat-down search of Mercury. Mars testified that he could not see inside the bag Mercury was carrying so he squeezed the bag and felt a very heavy, hard object "that had a similar shape to a revolver or a gun." Believing the object to be a gun, Mars opened the bag and found a .38 caliber handgun containing 5 live rounds of ammunition.

Mars further testified that he was on Main Street due to its "high narcotics traffic" and that based upon his experience, it was "common for there to be weapons in the near vicinity" and that he considered that fact as he approached "that specific scene."

**Q4: You are the trial judge. Rule on Mercury's motion to suppress.**

### QUESTION NUMBER FIVE

Utopia City drug interdiction officers were at the bus station to interrogate passengers arriving in or passing through the city. At about 2:30 a.m., a southbound bus arrived from New York. After the driver announced a 10 minute rest stop, Detective Uranus and two other officers, all dressed in civilian clothes, boarded the bus. Detective Uranus took the intercom and announced that the officers belonged to a drug interdiction unit and would interview passengers arriving from New York because it was a drug source city.

After questioning several passengers, Detective Uranus approached a 15 year old boy, Saturn, who was seated about three-quarters of the way to the rear. The officer asked where Saturn had boarded and where he was going, and asked to see his ticket. Saturn answered the questions and displayed his ticket, which reflected a trip from New York to Chicago through Utopia.

Det. Uranus asked Saturn if he was carrying drugs or weapons; Saturn said no. Uranus asked to search Saturn's bag; Saturn agreed but the search revealed nothing. Uranus next asked Saturn if he could pat him down. Saturn raised his arms in response. Uranus felt a large lump next to Saturn's ribs, lifted Saturn's shirt, and found a plastic bag containing 100 grams of crack cocaine. Saturn was arrested.

**Q5: Saturn filed a motion to suppress the crack cocaine. How should the court analyze the issues presented? Rule on the motion.**

### QUESTION NUMBER SIX

Adonis was arrested and charged with drug trafficking. He was arraigned, assigned counsel and released on bond. While out on bond awaiting trial, Detective Minerva approached Adonis at a local restaurant and asked him about the homicide of Diana, his former girlfriend. During the conversation, Adonis made several incriminating statements about his drug trafficking and the death of Diana. Subsequently, Adonis was also charged with the homicide of Diana.

**Q6: Adonis moved to suppress his statements to Detective Diana in both cases. Rule on the motion.**

### QUESTION NUMBER SEVEN

Daphne, Venus and Calypso operated a prostitution business. A decision was made by the Utopia Vice Squad to commence an investigation of Daphne, Venus and Calypso for prostitution and engaging in a corrupt activity (EPCA is Utopia's version of RICO). During the investigation of the prostitution business, officers of the Utopia Police Department placed an illegal wiretap on the phone of Calypso. During a tapped conversation, Venus called Calypso and explained that Daphne had a new customer list and wanted Venus and Calypso to start making cold calls to prospective clients.

Eventually, Daphne, Venus and Calypso were arrested for prostitution and EPCA. The prosecution notified the defendants that it intended to introduce the statement described above at their respective trials. Motions to suppress were filed on behalf of each defendant.

**Q7: You are the trial judge assigned to the cases of Daphne, Venus and Calypso. Rule on the motions to suppress.**

### QUESTION NUMBER EIGHT & NINE

Utopia detectives Vulcan and Atlas arrested Cupid for his role in a brutal murder of a woman earlier that evening. They took Cupid to an interrogation room where Cupid was advised of his Miranda rights, Cupid validly waived his rights and Cupid freely answered questions for a considerable period of time. Cupid did not deny having stabbed the victim, but claimed that he had acted in self-defense. Eventually, the discussion focused on the degree of crime that might be charged. At this point, the questioning proceeded as follows:

**Cupid:** How 'bout this. I'll help you. Let me talk to a lawyer and we'll get back together.

**Atlas:** You'll what?

**Vulcan:** Understand what happens when you get to an attorney. No attorney in his right mind is gonna' tell you to talk to the police.

**Cupid:** I just wanna' clarify a couple things in my mind. I know a lawyer's not gonna' tell me to talk to you. Let me talk to a lawyer a little bit and we'll get back—I promise I'll get back together with you.

**Vulcan:** You don't want to tell us what happened.

**Cupid:** No. It's too scary for me right now. I'd rather talk to a lawyer.

**Atlas:** Okay. Let me explain to you what's happened. You've basically invoked your right to an attorney. At this point, nothing that you can say can be used against you in court because you have invoked your right to have an attorney.

**Cupid:** Right.

**Vulcan:** I still would like to know what happened because I don't trust anything that anybody tells me after they've talked to an attorney – and the DA won't care either. And you may want a deal in this case.

**Atlas:** You've invoked your rights. Everything from this point on cannot be used against you. We're making that guarantee. The rest of our discussion is outside the rights you invoked. It can't be used against you.

**Cupid:** All right. This can't be used against me.

**Vulcan:** No, absolutely. It's right here. It's not—we're promising you, it's not going to be used against you – in the case in chief – okay? Just, this is for our understanding of what happened.

At that point, Cupid proceeded to tell the detectives a very different, and far more incriminating story. During the discussion, Cupid told the detectives where to find the murder weapon. A knife was recovered in a public trashcan where Cupid had instructed them to search.

**At his trial, Cupid moved to suppress (Q8) his statement and (Q9) the knife. You are the trial judge. Issue a ruling taking into account all relevant issues.**

#### QUESTION NUMBER TEN

Narcotics officer Nemesis observed Hercules sell eight ounces of cocaine to informant Iris. After performing a field test to confirm the presence of cocaine, Nemesis proceeded without a warrant to the home of Hercules, walked behind the house, and encountered Hercules sunning himself on his wooden deck beside the house. Nemesis identified himself as a narcotics agent, placed Hercules under arrest and after Miranda warnings were properly given and waived, he began to question Hercules on the deck about the earlier drug transaction. Hercules made incriminating statements about the drug sale. Hercules was then taken to the stationhouse.

At the stationhouse, Hercules was re-Mirandized and made a valid waiver of his Miranda rights. He then further incriminated himself in drug trafficking.

**Q10: At trial, Hercules moved to suppress both of his statements to Nemesis. You are the trial judge. Rule on the motion to suppress.**