

Spring 2014
ADVANCED CRIMINAL PROCEDURE MID-TERM QUIZ
Professor Rodriguez

YOUR STUDENT ID NUMBER: ___ ___ ___ ___ ___ ___ -- 59

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENT OR A CELL PHONE OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.

INSTRUCTIONS:

1. Do not use your own scrap paper. Instead, please take one (1) blue book, mark it as "Scrap." and use it as scrap paper. **Your scrap blue book must be turned in together with the exam packet at the end of the exam.**
2. Your **ANSWERS TO PARTS 1 & 2 MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET**, which you will turn in at the end of the exam.
3. Please do not identify yourself in the exam packet in any way other than by student ID. Please do not write any information that might reveal who you are.
4. This is a closed-book examination. Other than writing implements, you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room.

This exam consists of [2] parts for a **total of 70 Points** and will account for **25% of your semester grade.**

The total time for the exam is **1 hour and 15 minutes.**

Part One consists of **5** true/false or fill-in questions worth **2** point each, for a total value of **10 points**;

Part Two consists of **8** directed, short answer questions (some of which consist of two parts), for a total value of **60 points**;

I will give a **15 minute** warning, at which point no one may leave the room until the exam ends.

I will also warn you when there are **5 minutes** left and **1 minute** left. When I call time, you are to stop writing immediately.

GOOD LUCK !!!

PART ONE (Each Question in this section is worth 2 points)

1. Officer McGuinness a Boston PD plainclothes detective was observing the actions of two men on a city street corner at approximately 2:30 one the afternoon. The men acted suspiciously, walking back and forth along a particular stretch of the sidewalk peering into the window of a particular store. Fearing that the men may be armed and planning to rob the store, Officer McGuinness approached the men and identified himself as a police officer.

What level of information or standard of evidence must Officer McGuinness possess to conduct a Terry Stop and Pat Frisk?

2. Officer Santiago observed Stanley Robinson driving a 1965 vintage Cadillac Coupe DeVille down Main Street. Officer Santiago had previously interacted with Robinson four days earlier for operating a motor vehicle without a valid driver’s license. Officer Santiago ran Robinson’s information through the Registry of Motor Vehicles and determined that he still did not have a valid license.

What level of information or standard of evidence must Officer Santiago possess to make an arrest of Stanley Robinson?

3. Officers from the Lawrence Police Department received reliable and credible information that an adult male who is suffering from mental illness is carrying a firearm.

In the Commonwealth of Massachusetts what level of information or standard of evidence must the officers possess to effect a Fourth Amendment seizure of this person on the basis that it rises to a public safety issue?

4. If a seizure or search is found to be unreasonable, then the police contact will be found to have violated the Fourth Amendment as well as Article 14 of the Massachusetts Declaration of Rights. True [] False []

5. **Finish the following statement of law:** The courts in Massachusetts require that _____ be based on _____ to believe that the suspect _____, _____, or _____, to commit a crime.

PART TWO

The section below consists of questions in the form of hypotheticals, each of which describes a situation from which a particular criminal charge is likely to be brought and which is, therefore, governed by a specific rule of law. Each question requires that you identify the specific rule, or rules, that will control the result and requires a short answer, written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Limit your answer to the space provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question

Question 1 (This question is worth 5 points)

At or about 1:15 A.M. on September 10, 1988, the State police received an anonymous telephone call stating that two white males, one of whom was named Wayne, had just purchased narcotics in Chelsea and would be heading for Bridgton, Maine. The caller said they would be driving in a silver Hyundai automobile with Maine registration 440-44T. The police thereafter set up one surveillance position on the northbound side of Interstate 95, and another on Route 1 north. At about 2 A.M., A State Trooper observed two white males in a silver Hyundai with the indicated registration number pass his surveillance point on Interstate Route 95.

Where the police received their information from an anonymous tipster, the reliability of “reasonable suspicion” in Massachusetts must be evaluated based on what two-prong test (which was formerly used on the federal level)? **Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.**

Question 3 (This question is worth 4 points)

While on patrol officers receive a report of a man causing malicious damage to a parked motor vehicle, an arrestable offense in this jurisdiction. When the officers arrive on scene they observe George Jefferson breaking the vehicle's windows with a crow bar and based on their observations the officers make a warrantless arrest.

Under *Jenkins v. Chief Justice of the District Court*, 416 Mass. 221 (1993) what is the Massachusetts rule regarding a prompt determination of probable cause and what is the remedy if a *Jenkins* violation occurs?

Question 4 (This question is worth 5 points)

The police, acting on probable cause to believe that the defendant, Jennifer Smith, had committed a murder two days earlier, and without first obtaining an arrest warrant proceeded to Smith's apartment to arrest her. When they arrived at the apartment light and music were emanating from inside. There was no response to their knock. The police then broke into the apartment. Smith was found hiding underneath her bed and she was arrested.

As Smith's attorney what constitutional argument will you raise regarding Smith's arrest which took place inside of her dwelling and how is the court likely to rule on your argument? **Fully state the applicable rule of law in your answer and apply the ROL the facts in your analysis.**



Spring 2014
ADVANCED CRIMINAL PROCEDURE FINAL EXAM
Professor Rodriguez

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This exam consists of:

Part One: 12 questions, each worth 5 points **with the exception of # 6** which is worth 10 points;

Part Two: 1 question worth 15 points,

for a **total of 80 Points** and will account for **75% of your semester grade.**

In addition, if you have extra time, there is a Bonus Section at the end consisting of 10 questions, each worth 2 points, with which you may supplement your score.

The total time for the exam is **3 hours.**

I will give a **15 minute** warning, at which point no one may leave the room until the exam ends.

I will also warn you when there are **5 minutes** left and **1 minute** left. When I call time, you are to stop writing immediately.

GOOD LUCK !!!

PART ONE (each question in this section is worth 5 points)

Question # 1 (5 points)

James was the Principal of a High School in Massachusetts at which Sam, a 17 year-old, was a senior. One day, James called Sam to his office to discuss his absenteeism from school. A month earlier James had found Sam in possession of marijuana while at school. During the meeting to discuss Sam’s absenteeism James smelled a strong odor of marijuana coming from Sam. James asked Sam if he had been smoking marijuana, which Sam denied. James then searched Sam’s clothing but, finding nothing, sent Sam back to class.

While Sam was in class, James went to Sam’s locker and found a lock on the handle. James obtained some bolt cutters from a storage room and cut the lock. Upon opening the locker, James saw a handgun and several large, clear, plastic bags containing what appeared to be marijuana on the floor of the locker. James called Sam down to his office and without imparting Miranda warnings James began to question him about the drugs and the handgun. Sam initially denied having any knowledge or involvement with the drugs and the handgun, but then James began to scream at Sam. Becoming afraid, Sam told James that he had received everything from a guy named Mark who lived a block from the High School. James then called the police who took Sam into custody for Possession with Intent to Distribute a Class D Substance (marijuana) and illegal possession of a firearm.

As Defense counsel for Sam you file a motion in the district court seeking to suppress all statements made by Sam to James arguing a violation of his Article 12 Massachusetts Declaration of Rights and his Fifth Amendment right under the United States Constitution. How will the Court likely rule on the motion and why?

Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

Question # 10 (5 points)

In South Boston on St. Patrick's Day evening, 1993, snow and misty rain covered the roads with a dark sheen of ice. At approximately 10:30 P.M., Tommy O'Sullivan was operating his four-wheel drive Jeep Wagoneer on North Street. He was bringing a corned beef sandwich from Donnelly's Tavern to his invalid mother, who he had been visiting. While waiting for the food to be prepared O'Sullivan had ordered at least two beers. Once the food was ready, O'Sullivan left the Tavern to bring the sandwich to his mother. While traveling at an excessive rate of speed, O'Sullivan rammed the rear of a vehicle being driven by Paul Eagan. Neither driver was physically injured. Eagan's car was, however, inoperable. O'Sullivan got out of his car and staggered toward Eagan's car. Eagan observed that O'Sullivan was unsteady on his feet, nervous, and agitated in an angry manner. O'Sullivan was also speaking in so slurred a fashion that Eagan could not understand him. Eagan quickly concluded that O'Sullivan was drunk. Concerned that his mother's corn beef sandwich was getting cold O'Sullivan got back in his car and drove his passenger and himself home.

Shortly after O'Sullivan's departure the police arrived on scene to investigate the accident which procedure lasted for approximately one hour. Officer Huckleberry then traveled to O'Sullivan's apartment to speak with him concerning the accident. Officer Huckleberry knocked on O'Sullivan's door several times, however he did not receive a response from anyone inside the apartment. Officer Huckleberry could hear the television inside the apartment and saw lights on inside the apartment from the street. Frustrated that O'Sullivan would not open the door Officer Huckleberry forced his way into the apartment and subsequently arrested O'Sullivan for Operating Under the Influence of an Intoxicating Liquor.

After being booked and advised of his rights, O'Sullivan elected to take a breathalyzer test. The test yielded two reliable readings of 0.15, well above the blood alcohol level that leads to license suspension. During the booking and testing procedure, two officers watched O'Sullivan for more than twenty minutes and noted the strong odor of alcohol on his breath, the unsteadiness of his gait, and the glassy redness of his eyes.

Question # 12 (5 points)

Officers from the Randolph Police Department went to a local small grocery store in their city to investigate a report that the owner may have threatened one of his customers with a shotgun. While in the workplace, police also detected a strong odor of marijuana in his office. After arresting and handcuffing him police asked him where the marijuana was. He told them that it was in the drawer of his desk. The police then seized it.

As defense counsel for the store owner what constitutional arguments would you raise in a motion to suppress and how is the court likely to rule on the motion?

Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

PART TWO (this question is worth 15 points)**Question # 13.**

Late in the evening of July 3, 1994, the defendant, Joyce Magee and her boyfriend, Roger Marquet, began a heated and emotional discussion that lasted into the morning hours. In the course of the argument, Joyce became upset and sobbed repeatedly. She told Marquet that “she needed help” and that, if Marquet knew “what she had done, he would not want to be with her.” Marquet assumed that Joyce was referring to the death of her twenty-eight day old son in 1988, which she referred to on occasion. At about 4 A.M. on July 4, the two decided to go to the police station in Dracut to get help in having her committed to a mental health facility.

When they arrived at the police station at approximately 5 A.M., Marquet told Dracut police Captain Smokey the Bear (Captain) that Joyce needed help and needed to talk to someone about the death of her baby in 1988. Marquet told the police that at the time it had been ruled a SIDS death, but there may have been more to it.

Captain asked Joyce if she wanted to talk to which she nodded her head. Captain brought her to a small office in the police station where, at her request, Marquet joined them. Captain read Joyce her *Miranda* rights and she orally agreed to waive them. When advised of her right to have an attorney present, Joyce responded that she did not know any attorney to call or how to get one to the police station at that hour. Captain responded by stating that she could call anyone she wished.

Captain then questioned Joyce. During the interview, she repeatedly asked for help and to be committed. Captain understood her to be asking for the help of a trained mental health professional. In response to these requests, Captain told Joyce that she would get help if she explained what she needed and what the problem was. In the course of the questioning, she spoke about the circumstances leading up to the death of her son in 1988, and she indicated that it may not have been caused by SIDS. When pressed for the details of her involvement in the child's death, Joyce repeatedly refused to answer Captain's questions. She said that if she told the police what she thought had happened they would arrest her. Throughout the interview with Captain, Joyce was exhausted, emotionally distraught, and disheveled, and her responses to questions were interrupted by periods of sobbing and shaking.

At approximately 5:50 A.M., Dracut Detective Steve Austin arrived to continue the questioning. He was informed that Joyce was seeking help and that she was upset about the death of her son in 1988. Austin administered a second set of *Miranda* warnings at about 6 A.M.; at that time, Joyce signed a form acknowledging that she waived her rights. Austin conducted his interview of Joyce in the same room where Captain's interview had occurred. Present were Joyce, Marquet, Captain, and Austin. Austin's questioning focused on her role in her son's death. Joyce continued to refuse to answer questions about her direct involvement. She also continued to ask for help in being

involuntarily committed to a mental health facility. She continued to look distraught and disheveled, with periods of sobbing and shaking.

After about twenty-five more minutes of questioning, Captain and Austin told Joyce they had called for assistance, and asked her and Marquet to wait until the additional people arrived. She and Marquet were offered food and coffee, and accepted coffee. At about 9 A.M., State Trooper Anthony Vincenzo Baretta arrived, along with an assistant district attorney. Baretta was briefed by Captain and Austin about the morning's events and Joyce's statements regarding the death of her son and her request for help.

During the next two hours, Baretta questioned Joyce regarding the death of her son. The questioning took place in the same office as the prior interviews, with Marquet, Captain, and Austin present. In response to the Joyce's requests for help, Baretta said he would help with her problem, but that he needed more information before he could do so. During the interview with Baretta, Joyce was tense and distraught, although her forceful crying had stopped.

Miranda warnings were administered at some time after Baretta began questioning her. During the questioning, she eventually stated that "she believed she had suffocated her child." Baretta typed the substance of the statement onto his computer and printed it out for her to sign. She looked over the three pages, made minor corrections and then signed the statement. By then it was noon. After Joyce signed the statement, she was told that arrangements had been made for a mental health evaluation at Solomon Mental Health Center in Lowell (Solomon). Marquet then drove Joyce to Solomon, with police following.

The duty nurse at Solomon noted that Joyce was distraught and disheveled on arrival, that her eyes were red, indicating prolonged crying, that she was crying forcefully at times, and was suffering from lack of sleep. She told the nurse that she had no memory of actually asphyxiating her son but that she felt responsible for his death. Based on the Joyce's extreme level of distress and her suicidal ideation, she was involuntarily committed to Anna Jacques Hospital in Newburyport. A few days later, Dracut police arrested her there, charging her with the murder of her son.

As Defense counsel for Joyce Magee what constitutional and Massachusetts Declaration of Rights arguments will you raise regarding the validity of the *Miranda* waiver and what Massachusetts rule or procedure will you use as part of your argument. How is the court likely to rule on your arguments and why?

Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

BONUS POINTS (each bonus question is worth 2 points)

Bonus Question # 1

To be voluntary the waiver of Miranda must be voluntarily, knowingly and intelligently given. True or False

Bonus Question # 2

In *Commonwealth v. McNulty* the SJC held that police are obligated to “appraise the defendant of a specific communication from his attorney that bore directly on the right to counsel.” True or False

Bonus Question # 3

In *Commonwealth v. Mavredakis* the SJC held “We established a bright line rule, providing that police whenever practical should stop questioning and inform the suspect immediately of attempts of an attorney identifying himself or herself as counsel acting on the suspect’s behalf to contact the suspect.” True or False

Bonus Question # 4

In *Commonwealth v. Rosario* the SJC held “It is important to recognize that . . . The period of safe harbor questioning commences upon formerly booking the defendant and concludes six hours later without regard to when court is in session.” True or False

Bonus Question # 5

In *Montejo v. Louisiana* the USSC held “police may initiate questioning toward a suspect even where that suspect had been appointed counsel by the court. It will be up to the defendant to either waive the Miranda rights or invoke his or her right to counsel under the circumstances.” True or False

(GO ON TO THE NEXT PAGE)

Bonus Question # 6

You arrest a male for burglary and read him his rights, but he refuses to talk to you. He is booked and placed in a cell. A short while later, while you are filling in as the booking officer, another officer brings in your neighbor on a suspended license charge. Your neighbor is an upstanding member of the community with no other criminal history. He did not know his license had been suspended for failing to pay an out-of-state parking ticket. You tell this gentleman that he will be released when the magistrate arrives but that he will have to be placed in a cell. He is concerned about his safety and you explain that he will be okay but placed in a cell next to a guy charged with burglary. You mention that this burglar is probably responsible for other crimes in the community but that he will not talk to you. Later, when your neighbor is taken from the cell to be released by the magistrate he tells you the guy in the next cell, the burglar, was saying how dumb the cops are and bragged about all the B&Es he had committed and where he

had hidden the stolen goods. The information provided by your neighbor is so good you are able to obtain a search warrant for the location where you find a lot of stolen goods. You are able to also solve several past B&Es.

Counsel for the burglar files a motion to suppress all evidence because it was unlawfully obtained. The motion will likely be:

- A. Approved, because the burglar was coerced.
- B. Approved, because you used your neighbor as an agent of the state
- C. Denied, because the information to establish probable cause came from a known witness
- D. Denied, because you gave the burglar his Miranda warnings

Bonus Question # 7

At twelve noon on Saturday, Plymouth police effected the arrest of "Sonny Black" for an armed robbery of a pawn shop that occurred the day before. During the armed robbery, "Sonny Black" stole a rare painting of President William Jefferson Clinton and his personal secretary. Sonny was brought to the station and photographed, fingerprinted, and booked. At approximately 7:00 p.m., on Saturday, police detectives administered the Miranda warnings to him for the first time. He stated that he understood the Miranda warnings and effected a knowing and intelligent waiver of those rights. He then made various incriminating statements to police detectives concerning this rare painting.

If his attorney files a motion objecting to the admissibility of the statement as a violation of the safe harbor rule, the motion will most likely be:

- A. Granted, because "Sonny Black" had already been formally charged in Plymouth
- B. Granted, as a violation of the defendant's Fifth Amendment Right to Remain Silent
- C. Denied, if the police also imparted and received a written or recorded waiver from the defendant of his right to prompt presentment
- D. Denied, since the police received a knowing and intelligent waiver from the defendant concerning his Miranda rights

Bonus Question # 8

Weymouth police are conducting an intensive investigation concerning the murder of two females whose bodies were discovered on an abandoned road. Subsequently, Detective MacGillicutty of the Weymouth, police department effects the arrest of one "Sonny Red" for the double homicide. During the arraignment the following morning in the District Court an attorney is appointed to represent "Sonny Red". The attorney informs him not to speak with anyone regarding the charges. After a bail hearing, "Sonny Red" is transported to the county house of correction to await trial. The next day, Weymouth and Hingham Detectives go to the House of Correction and question "Sonny Red" about an unrelated larceny that had occurred a year earlier in Hingham. After informing him of the Miranda warnings, he makes a number of incriminating admissions concerning the larceny. According to the laws of the Commonwealth of Massachusetts, which of the following is true concerning the admissions made by "Sonny Red" concerning the unrelated larceny:

- A. since "Sonny Red" was arraigned in the District Court, his subsequent statements concerning the unrelated larceny will be inadmissible without the presence of counsel
- B. the statements concerning the unrelated larceny will be inadmissible since "Sonny Red" had already been formally charged
- C. the statements concerning the unrelated larceny will be inadmissible since the police initiated the questioning
- D. the statements concerning the unrelated larceny will be admissible since the prohibition against police interrogation under the circumstances is "offense specific"

Bonus Question # 9

According to the law of the Commonwealth of Massachusetts, when does the right to an attorney attach pursuant to the 6th Amendment for a non-corporeal identification:

- A. at the arraignment
- B. at the time of arrest
- C. during the booking procedure
- D. there is no 6th Amendment Right to Counsel for a non-corporeal identification

(GO ON TO THE NEXT QUESTION)

Bonus Question # 10

Eddie is placed under arrest for a past burglary. After being booked, Eddie is administered the Miranda warnings. Eddie imparts a knowing, intelligent and valid waiver. During the subsequent interrogation an attorney telephones the police department and states that she represents Eddie. The attorney explains that she desires to talk to Eddie immediately.

Given the fact that Eddie has already waived his 5th Amendment Right to Counsel, what duty, if any, would the police have under these circumstances?

- A. police must immediately cease the interrogation until the arrival of the attorney at police headquarters
- B. police have a duty to immediately cease the interrogation and notify Eddie that the attorney is on the telephone
- C. the police now have a duty not to discuss the matter any further with the defendant without the presence of counsel
- D. since the attorney has invoked the right to counsel in behalf of this client, police have a duty to refrain from further interrogation

Spring 2016
ADVANCED CRIMINAL PROCEDURE FINAL EXAM
Professor Rodriguez

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This exam consists of three parts for a **total of 205 Points** and will account for **80% of your semester grade**. The total time for the exam is **three hours**.

Part One consists of a **10** Multiple Choice worth **2** points each for a total value of **20 points**;

Part Two consists of one essay question worth **40** points;

Part Three consists of a 18 directed, short answer questions. The point value for each question is noted following the hypothetical. The total value of this section is: **145 points**;

I will give a **15 minute** warning at which point no one may leave the room until the exam ends.

I will also warn you when there are **5 minutes** left and **1 minute** left. When I call time, you are to stop writing immediately.

PART ONE – CONSISTS of 10 MULTIPLE CHOICE Questions (Circle the letter of the best answer choice. Each questions is worth 2 points. Suggested time for completion of this section is 30 minutes)

1. While on patrol you observe a Pontiac Grand Am spinning its tires as it pulls away from a stop sign. You activate your blue lights and signal the driver to pull over, which he does. You ask for his license and registration and he produces both items. You then return to your cruiser and write a citation for excessive noise. When you return to the stopped vehicle you ask the operator if he has any drugs in the vehicle. When he replies “no,” you ask for his consent to search the vehicle. He agrees and you start searching the inside of the vehicle where you locate two morphine pills on the floor under the passenger seat. Upon showing them to the driver he mutters, “Damn, I forgot about them.” You then arrest him.

His lawyer files a motion to suppress the pills. The motion will be:

- A. denied, because he gave you consent to search;
 - B. approved, because you cited him for the wrong violation;
 - C. denied, because you found the pills in plain view;
 - D. approved, because the stop was for a CMVI, the citation was written and there was no reason to further the delay.
2. Eddie is placed under arrest for a past burglary. After being booked, Eddie is administered the Miranda warnings. Eddie imparts a knowing, intelligent and valid waiver. During the subsequent interrogation an attorney telephones the police department and states that she represents Eddie. The attorney explains that she desires to talk to Eddie immediately.

Given the fact that Eddie has already waived his 5th Amendment Right to Counsel, what duty, if any, would the police have under these circumstances?

- A. police must immediately cease the interrogation until the arrival of the attorney at police headquarters
- B. police have a duty to immediately cease the interrogation and notify Eddie that the attorney is on the telephone
- C. the police now have a duty not to discuss the matter any further with the defendant without the presence of counsel
- D. since the attorney has invoked the right to counsel in behalf of this client, police have a duty to refrain from further interrogation

2. According to the laws of the Commonwealth of Massachusetts, when does the right to an attorney attach pursuant to the 6th Amendment for a non-corporeal identification:
 - A. at the arraignment;
 - B. at the time of arrest;
 - C. during the booking procedure;
 - D. there is no 6th Amendment Right to Counsel for non-corporeal identification.

3. You are walking an assigned route in your town at 3:15am. You suddenly hear a loud sound, as if glass is breaking, emanating from an alley-way. There have been a number of recent breaks reported in this area. You go to the alley and see a young male running toward your location. You tell him to stop and he complies with your order. You ask him his name, address, and where he is going. He refuses to answer saying, "look, am I under arrest or not?" You tell him that he is not under arrest but he is not free to leave until such time as you assure yourself that nothing is amiss in the alley, and that rear doors and windows of businesses need to be checked by yourself and other responding officers. He states to you that he is not going to stay and begins to walk away from you and two other officers who have come to assist you.

In this situation you:

- A. could lawfully use reasonable force (not deadly force) to keep the male at the scene, even to the extent of using handcuffs;
 - B. have no right to hold the male at the scene against his will, since the action would amount to an arrest; an arrest made by you without the requisite of probable cause;
 - C. could hold the male at the scene, but not search, nor frisk, his clothing in any way, since such an action would be unreasonable given the circumstances prevailing at the time;
 - D. could lawfully place the male under arrest for "being abroad in the nighttime and not giving you a good account of himself."

4. At 11:00pm two police officers on patrol receive a radio broadcast instructing them to be on alert for a blue Chevy hatchback with a Caucasian driver and registration plate 735-KLW. The driver is reported to have pointed a handgun, possibly an automatic, at a group of people at Main and Elm Street in their town.

Within minutes, a Chevy with a Caucasian driver, and the reported license plate number comes into the officers' view for the direction of Main and Elm Streets. Using backup cruisers for assistance, the officers force the Chevy to the side of the road by blocking it

front and rear. With guns drawn, the officers approach the driver and order him out of the vehicle. The officers see an automatic weapon on the floor of the car and the driver is placed under arrest.

The defendant sought to suppress the confiscation of the weapon, arguing that the officers' conduct - - - in forcing him off the road, blocking his car and approaching him at gunpoint - - - constituted an arrest, not a mere threshold inquiry, under *Terry v. Ohio*, and that the officers did not have probable cause to arrest him at the moment of the stop.

In view of the facts:

- A. the officers' conduct was reasonably necessary to effect an investigatory detention under *Terry v. Ohio*;
 - B. the officers' conduct "was not proportional to the degree of suspicion, which prompted the intrusion", therefore it was improper;
 - C. The officers' conduct was improper because it involved an excessive display of force, amounting to an arrest;
 - D. It is a well-established rule of law that whenever a police officer stops a vehicle by boxing it in and approaching the driver at gunpoint, said officer has automatically made an arrest of the person by virtue of the amount of force used.
5. While approaching a motor vehicle that Officer Smith stopped for speeding, she observes the lone operator bend down as if to retrieve from or to place something under his seat. Officer Smith walks up to the operator and requests his license and registration. After checking these documents to see that they are in order, Officer Smith decides not to cite the operator and returns both the license and registration to the operator. However, still concerned that the operator may be armed with a weapon from under the front seat, Officer Smith orders the operator out from his vehicle. As the operator is exiting from the vehicle, Smith observes a small bag of cocaine on the seat. The operator is immediately arrested. A Board of Probation check confirms that the defendant has been convicted of trafficking in Class A and B substances in the past. Officer Smith then conducts a search of the trunk and discovers a large amount of heroin.

The discovery of the cocaine after the operator was given the exit order will be:

- A. permissible because of the initial observations made by Smith of the operator;
- B. permissible because of the results of the Board of Probation (BOP) check;
- C. impermissible since Smith's exit order followed the justifiable threshold inquiry;
- D. impermissible because Smith exit order preceded the justifiable threshold inquiry.

6. Using the same facts as #6 above, the discovery of the heroin in the trunk under these circumstances will be:
- A. permissible since the discovery of the cocaine coupled with the results of the Board of Probation (BOP) check provide the requisite justification to lawfully search the trunk;
 - B. permissible because Smith had probable cause to lawfully effect the trunk search;
 - C. impermissible since the discovery of the cocaine coupled with the results of the Board of Probation (BOP) check did not amount to probable cause;
 - D. impermissible under the Fruit of the Poisonous Tree Doctrine.
7. While on patrol you observe a motor vehicle, occupied by two males, parked in front of a fire hydrant. Without putting your emergency lights on you park behind the vehicle and approach it from the passenger side. The driver is smoking a cigar and both occupants are very nervous. You can detect a faint odor of marijuana so you order both the passenger and operator from the vehicle. You ask both if they have anything on them. The passenger says they smoked a joint a little while ago but that he has a "little crack for myself." He produces a very small bag that appears to contain crack cocaine. You arrest him and charge him under 94C. If a motion is filed to suppress the cocaine it will likely be:
- A. denied, because the smell of marijuana gave you probable cause to search under the automobile exception doctrine;
 - B. approved because pulling your cruiser in back of the vehicle amounted to a stop;
 - C. approved because your probable cause indicated the presence of marijuana, but you only found cocaine;
 - D. approved because you had no reason to order the occupants from the vehicle.

8. According to the laws of the Commonwealth of Massachusetts, which of the following is true concerning the activation of a police cruiser's emergency lights:
- A. police officer may only engage the overhead emergency lights if probable cause exists;
 - B. a police officer may only engage the overhead emergency lights if reasonable suspicion exists concerning a crime;
 - C. Whenever a police officer engages an occupied vehicle by activating the overhead emergency lights, the 4th Amendment will require some level of reasonableness;
 - D. a police officer may only activate the overhead emergency lights during a public emergency.
9. The police receive a report of a disturbance concerning a certain apartment located on Third Street. When the police arrive they overhear a very loud party going on. Police then knock and announce their presence. The door is opened by one of the party goers. Police immediately observe four persons seated at a table doing lines of cocaine. These four persons immediately look up and observe the officers at the threshold. The table is on the other side of the room from the threshold. Police immediately move in and effect an arrest of all four persons for possession of cocaine. If the suspects file a motion to suppress, the motion will most likely be:
- A. granted, since the initial call concerned a disturbance.
 - B. granted, since the police did not have valid consent to effect entry under the circumstances.
 - C. denied, since the police had probable cause that a crime was being committed prior to knocking on the door.
 - D. denied, since the police had exigent circumstances under the circumstances.

PART TWO – ESSAY QUESTION (This question is worth 40 points. Suggested time for completion is 36 minutes)

Part Two consists of one essay question in the form of a hypothetical which describes a situation from which particular procedural issues arise and which are, therefore, governed by specific criminal procedural rules. The questions require that you identify the specific rule, or rules, that will control the result and requires a clear, concise and complete answer, written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Limit your answer to procedural questions and to the space provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.

QUESTION 1:

Belinda lived in a two—apartment brownstone. She never trusted her neighbor Ben, who lived in the other apartment and who hosted rambunctious parties and left beer bottles and garbage all over their shared backyard. Last Friday, after she arrived home from work, Belinda heard loud banging and a commotion from Ben’s house. A few minutes later, she looked out into their backyard and saw Ben wheeling a cart across the lawn with an upside down human leg sticking out of the cart, He appeared to dump the leg into their joint dumpster. She called the police and told them what she had seen.

When the police arrived, they spoke to Belinda who let them into the backyard to search. The police upon looking into the dumpster discovered a severed human leg which they seized. The police also found the cart and observed what appeared to be blood droplets. The blood from the cart and the leg found in the dumpster was later tested and found to be from the victim, later identified as Priscilla.

The police then forced their way into Ben’s apartment with their weapons drawn, and found Ben in his kitchen, holding a knife, and standing over Priscilla’s dismembered body. Ben dropped the knife and ran. The officers tackled and handcuffed him. All the while Ben was mumbling that he was sorry and that he had “taken all kinds of pills.” The police read Ben his *Miranda* rights and arrested him. Because Ben claimed to have taken all kinds of pills, the officers took him to the hospital prior to booking him to conduct a blood test, which showed no medication in Ben’s system.

At the police station, and after being read his *Miranda* rights a second time, Ben told the police that he met Priscilla and her boyfriend, Bob at a bar that afternoon. Bob and Priscilla went

PART THREE - DIRECTED, SHORT-ANSWER QUESTIONS

Part Three consists of 18 questions in the form of hypotheticals each of which describes a situation from which particular procedural issues arise and which are, therefore, governed by specific criminal procedural rules. Each question requires that you identify the specific rule, or rules, that will control the result and requires a short answer, written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Limit your answer to procedural questions and to the space provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.

QUESTION 1:

While on cruiser patrol, an officer from the Canton Police Department observes a motor vehicle fail to come to a complete stop at a posted stop sign. The officer activates her emergency lights and stops the vehicle. When the officer approaches the driver's side window she smells the strong freshly burnt odor of marijuana emanating from inside the vehicle. The officer issues an exit order to the defendant and then conducts an evidentiary type search of the defendant's person. Finding no drugs on the defendant's person the officer turns her attention to the interior of the motor vehicle and begins searching the interior compartment of the vehicle for marijuana. In a backpack on the back seat the officer discovers "about an ounce" of marijuana and she subsequently arrests and charges the defendant with the unlawful possession of a class D substance.

After being newly sworn in as an attorney in the Commonwealth of Massachusetts you land a job as an associate attorney in a small criminal practice. The owner of firm assigns the defendant's case to you and instructs you to draft the appropriate motion(s) to suppress the evidence seized by the police. What constitutional and Massachusetts Declaration of Rights violations will you allege in your motion(s) and how should the court rule on these motion(s) and why? (This Question is Worth **10 Points**)

ID NUMBER: ____ _

Do Not Write in This Space

(Turn The Page For The Next Question)

QUESTION 11:

Officer Holcroft was traveling on main street in his marked police cruiser when the defendant, Eric Jewell, pulled out of the parking lot of Lucky’s Tavern and almost struck Officer Holcroft’s police cruiser. Officer Holcroft followed Jewell and observed his vehicle cross the double yellow solid line twice, fail to keep right, and almost strike a parked vehicle. Officer Holcroft activated his emergency lights and followed Jewell for quite some distance. At no point in time did Jewell ever stop and pull his vehicle over after Officer Holcroft had activated his emergency lights. Holcroft continued to follow Jewell with his emergency lights activated down a couple of small side streets and eventually into a small private driveway. Jewell drove into the driveway and then opened the garage door with the remote control. Jewell pulled into the garage and Officer Holcroft exited his police cruiser and began verbally issuing exit orders to Jewell. When Officer Holcroft entered the garage Jewell exited his vehicle and engaged Officer Holcroft in a physical confrontation. Officer Holcroft was able to subdue and arrest Jewell and charged him with Operating to Endanger, Operating Under the Influence of an Intoxicating Liquor, Failure to Stop for a Police Officer and various other moving violations. Jewell hired a lawyer who filed a motion to dismiss Jewell’s arrest arguing that the police made a warrantless entry into Jewell’s garage and a warrantless arrest of Jewell. Was Officer Holcroft’s entry into the garage and subsequent arrest of Jewell lawful or unlawful?

LAWFUL or UNLAWFUL

In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Part of the Question is Worth **5 Points**)

QUESTION 12:

Cambridge police officers arrested William White Jr., on two (2) outstanding warrants, one for a previous restraining order violation, and the second for a previous, unrelated, drug offense. When the officers brought White Jr., into the booking room they advised the Officer-in-Charge (OIC) that White Jr. had a number of pills in various containers on his person at the time of his arrest. When the OIC asked what the pills were the officers shrugged their shoulders and stated they didn't know. An officer who was not directly involved in the booking of White Jr., took the pills with him to the report room and conducted a Google internet search of the pills by using the imprinted code on the pills. The internet search indicated that the pills were methadone, a Class B substance in the Commonwealth of Massachusetts, for which a valid prescription is required to lawfully possess the pills. When White Jr. was asked if he had such a prescription he laughed and stated, "no, I get that shit on the street for half price." The arresting officer charged White Jr. with the unlawful possession of a Class B substance in addition to the two out-standing warrants. If White Jr.'s lawyer files a motion to suppress the pills which were identified during the booking room inventory policy how should the court rule on the motion?

DENY THE MOTION or GRANT THE MOTION

In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Part of the Question is Worth **5 Points**)

QUESTION 14:

Beverly police officers arrested the defendant for the murder of her estranged boyfriend. The defendant was brought back to police headquarters where she was later questioned by the police about her involvement in the murder of her boyfriend. Attorney Raymond Buso contacted the Beverly Police Department and identified himself as the defendant’s attorney. Attorney Buso instructed the officer who answered the phone to relay the following messages to both his client and the police detectives:

- (1) he represented the defendant
- (2) he wanted to speak to the defendant
- (3) the police were to tell the defendant that “he,[Buso] said not to talk to the police,” and;
- (4) [Buso] would be at the station shortly.

After the officer hung up the phone with Attorney Buso he stated, “hey asshole, I don’t work for you, deliver your own damn messages!” and never relayed the messages to either the defendant or the detectives.

An hour later, prior to Attorney Buso’s arrival, the defendant gave a number of incriminating statements to the police regarding her role in the murder of her boyfriend.

Are the incriminating statements made after Attorney Buso’s phone call to the police station admissible as part of the Prosecution’s case-in-chief?

YES or NO

In the space provided below recite the applicable Massachusetts rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Part of the Question is Worth **5 Points**)

QUESTION 18:

Police were called to the home of Mr. & Mrs. Smith for a report of a domestic disturbance. Mrs. Smith told the police that she and her husband were having marital problems primarily due to finances as well as her husband's continued use of cocaine. Mr. Smith explained to the police that he had recently lost his job when the company he worked at for more than 10 years had relocated to another state. Mr. Smith also denied that he used cocaine and countered that it was his wife who abused drugs and alcohol. One of the officers, Sergeant Murray, went to speak with Mrs. Smith, and, when they returned, she not only renewed her complaints about her husband's drug use, but also volunteered that there were " 'items of drug evidence' " in the house. Sergeant Murray asked Mr. Smith for permission to search the house, which he unequivocally refused.

The sergeant turned to Mrs. Smith for consent to search, which she readily gave. She led the officer upstairs to a bedroom that she identified as Mr. Smith's, where the sergeant noticed a section of a drinking straw with a powdery residue he suspected was cocaine. He then left the house to get an evidence bag from his car and to call the district attorney's office, which instructed him to stop the search and apply for a warrant. When Sergeant Murray returned to the house, Mrs. Smith withdrew her consent.

The police took the straw to the police station along with the Smiths. After getting a search warrant they returned to the house and seized further evidence of drug use on the basis of which Mr. Smith was indicted for possession of cocaine.

If Mr. Smith's attorney files a motion to suppress the evidence found inside the home how should the Judge rule on the motion and why? (This Question is worth **5 Points**) **Limit your answer to the space provided.**
