

Exam Number: \_\_\_\_\_  
Confirmation Code: \_\_\_\_\_

**GEORGETOWN UNIVERSITY LAW CENTER  
EXAMINATION IN CRIMINAL JUSTICE  
(3 HOURS 30 MINUTES)**

Professor Alice Ristroph

December 8, 2009

**INSTRUCTIONS:**

1. This exam consists of 5 pages, including this cover page. Please be sure your exam is complete.
2. Please put your exam number on this sheet and on your examination books or your typed response. Please be sure that you use your exam number (not your student ID or social security number). Return this copy of the examination questions along with your handwritten or typed response.
3. This is an OPEN book exam. You may use your casebook and any printed materials you have brought with you. You may use a laptop to write the exam in accordance with the proctor's instructions, but during the exam you may not access electronic materials or the internet via your laptop or any other electronic device. You may not consult with other students during the exam.
4. The exam consists of two questions. Question I is worth 70 points and Question II is worth 30 points. It is recommended that you spend approximately two hours on Question I and one hour on Question II. You have an additional 30 minutes to allot as you wish, for a total exam time of 3 hours and 30 minutes.
5. Be aware that each question may present multiple issues. You should allocate your time and written response on the basis of relative importance of each issue and the depth of analysis required for that issue. If you think that you need more facts to address any issue, identify the additional facts and explain how they would affect your answer.
6. If you are writing the essay by hand, please write legibly in blue or black ink. I cannot give you credit for responses I cannot read. Please write on one side of the page only. If you are typing your exam, please double-space, use 12-point font, and leave margins of at least one inch.
7. There is no page limit or word limit for either question. Keep in mind, however, that well-organized and succinct responses are likely to receive more points than repetitive, meandering, or otherwise disorganized responses. I will give credit for typed responses or written answers in an examination book; I will not give credit for any other notes you submit on scrap paper.
8. *Laptop users: To write your exam answers, use a blank document screen to access the exam template in Word or WordPerfect as directed by the proctor(s). Laptop users are not permitted to access other documents, outlines, notes, files, etc. on their hard drives and are not permitted to access the Internet. Personal Digital Assistants (PDA) and other electronic devices that store information may NOT be used in the exam room.*

**PLEASE DO NOT TURN THE PAGE UNTIL THE PROCTOR GIVES THE SIGNAL.**

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**Question I (70 points)** (recommended time: 2 hours)

Donny Bardo owns and operates Bardo Construction, which is apparently very profitable. At any rate, Bardo leads a lavish lifestyle and owns a beautiful mansion. For over a year, rumors have circulated that Bardo Construction is a front for an organized crime ring.

Every December, Bardo and his wife host an elaborate holiday party for friends and family. On the evening of the party, Officers Jackson and Adams were conducting routine surveillance of the Bardo home. They were parked on a public street near the Bardo home. Both officers were in uniform, but their car was unmarked. As they watched guests approach and enter the home, the officers noticed that all guests appeared to be in costume. This gave Officer Jackson an idea. “We aren’t going to learn anything from out here,” he said. “Why don’t I stroll over and see if my uniform will get me inside.” Officer Adams didn’t think this was a good idea, but Jackson insisted. “Bardo is a dangerous guy, and anything could be happening in there right now. People might be getting hurt even as we sit out here and do nothing,” Jackson said. Jackson left the car, crossed the street and fell in step behind a couple dressed as pirates. But as he approached the front door of the Bardo home, he realized that a tuxedoed man at the door was collecting printed invitations and checking names against a guest list. Jackson ducked away from the front door, then walked around to the back of the house. There, more costumed guests were on a terrace, and Jackson joined them briefly. He took a champagne glass, then entered through the open back door. Inside, he moved from room to room until he came to a study. On the desk was a pile of white powder and a rolled-up bill, as well as a file folder labeled “Bardo Construction / Invoices.” Jackson put the powder in an evidence bag and took it, along with the file folder.

On his way back out, Jackson recognized Jimmy Vincent among the party guests. Vincent had recently been indicted for fraud charges and posted bail, but as Jackson knew, a new arrest warrant had just been issued on drug trafficking charges. Jackson decided to arrest Vincent. As Jackson walked up, Vincent noticed him and laughed. “Hey, great costume,” he said to Jackson. “You’re about as close as the law will ever get to Bardo.” “Really? Why is that?” replied Jackson. “Man, if you’re here, you know Donny,” Vincent said. “He covers his tracks better than anyone. Me, I sometimes get sloppy. I think I must have bilked the wrong person, somebody with connections, and now I’ve got these fraud charges. But Donny is careful, and he pays the right bribes, and I don’t think they’ll get him for anything—not fraud, drugs, not even the murders.” At

that point, Jackson told Vincent that his uniform was not a costume, and placed Vincent under arrest. He was reading Vincent his *Miranda* rights when Officer Adams walked up. “Oh, you got Vincent already,” Adams said to Jackson. “I got a report that he was here, and I was coming to find him. I asked the guy in the tux at the front door if I could come in, and he waved me through.” As Jackson put handcuffs on Vincent, Adams opened drawers on a table nearby. In one drawer, he found three marijuana cigarettes, which he seized. Adams then looked quickly in adjoining rooms, including the study, while Jackson searched Vincent’s pockets, finding a pistol. Both officers then left to take Vincent to the police station. On the way to the police station, Vincent said to Jackson, “I guess I need a really good lawyer now, huh.” “That’s up to you,” Jackson replied. Vincent was silent for a moment, and then said, “Will it help if I give you some dirt on Bardo?” “What do you mean?” asked Jackson. Vincent then told Jackson that he and Bardo had been selling drugs and falsifying Bardo Construction invoices to hide the source of their income. At the police station, Officer Jackson realized that Vincent matched the physical description provided by Sally Short, a victim of an assault reported four weeks ago. Jackson arranged a line-up of four suspects, including Vincent. “I don’t want to do this without a lawyer,” Vincent protested. But Jackson proceeded with the line-up, and Short identified Vincent as her attacker.

During the party, Bardo had noticed the arrest taking place in his living room and decided to disappear. He drove off in his new black Escalade, but about a half-mile from his home, Bardo encountered a roadblock. Sawhorses blocked every lane but one, and police officers were waving some cars onward while directing others to the shoulder. Bardo’s Escalade was directed to the shoulder. After Bardo pulled over, Officer Green approached the Escalade. “License and registration, please,” said Green. “I want a lawyer,” Bardo said in reply. Green explained, “Sir, this is a traffic safety stop. We are checking for impaired drivers and unsafe vehicles. Please show me your license and registration.” “I want a lawyer,” said Bardo again. Green sighed and walked to a nearby patrol car. From the patrol car, Green retrieved her new Rayscan weapon detector. The Rayscan detector is a small device that uses a low intensity electromagnetic pulse to detect small metal objects in its vicinity. The Rayscan will alert the user if—but only if—it detects a nearby object whose size, shape, and density match one of the pre-programmed “signatures” of common firearms. It can take up to 15 minutes for the Rayscan to analyze the data and produce a report. Green returned to Bardo’s car and placed the Rayscan against the side. “Sir, I’m going to ask you one last time: license and registration, please,” she said. Bardo glared at her, but gave her his license and registration. Green read them slowly, glancing at the weapon detector to see if it had finished its scan. It had not, so Green read the documents again. “What’s taking so long? I’ve been here over ten minutes,” Bardo complained. “Hold your horses,” said Green. As she studied the vehicle registration yet again, she finally noticed it had expired seven weeks earlier. In the jurisdiction, driving with an expired registration is a misdemeanor offense (not punishable with jail time, but subject to a maximum fine of \$300) if the expiration is more than 30 days old. “Sir, this registration is expired; I’m

going to have to ask you to step out of the car,” Green said. At that moment, her Rayscan finally returned its report: it indicated that the Escalade contained a Colt 45 revolver. Green placed Bardo under arrest for the expired registration, handcuffed him, read him his *Miranda* rights, then placed him in the patrol car. She returned to the Escalade and searched it. She found the revolver as well as a file folder labeled “Bardo Construction / Accounts Receivable,” and took both items. On the way to the police station, Bardo asked her, “What’s going to happen to my car?” Green explained that it would be impounded and kept safe. “I just don’t want you jerks planting stuff under the floor mats,” said Bardo nervously. “And I don’t want to talk to you, and I want to see my lawyer.” At the impoundment lot, Officer Thompson inventoried the Escalade. Pursuant to department policy, Officer Thompson searched under the floor mats, where he found several counterfeit bills. Later that evening, Officer Thompson visited Bardo at the station. He read Bardo his *Miranda* rights, then asked, “Do you understand your rights? Will you answer some questions?” Bardo hesitated, then said, “I might as well.” Thompson asked, “What do you know about these fake bills?” Bardo said, “Look, my buddy and I printed those up, but it was just a joke. We weren’t going to do anything with them.”

The white powder from Bardo’s study turned out to be cocaine. The revolver in Bardo’s Escalade turned out to be unlicensed, in violation of state law. At Bardo’s subsequent trial on multiple drug, fraud, weapons, and counterfeiting charges, he wants to suppress the cocaine, both file folders and their contents, the marijuana cigarettes, the revolver, the counterfeit bills, Vincent’s statements, and his own incriminating statements. At Vincent’s trial for fraud, assault, and illegal weapons possession, he wants to suppress the pistol, his statements to Officer Jackson, and Sally Short’s identification at the line-up.

**Based on the materials assigned for this course, explain the constitutional arguments that each defendant should make. What will the prosecution argue in response? How is a judge likely to rule?**

**Question II (30 points)** (recommended time: one hour)

Consider the following “due process” argument for an exclusionary rule applicable to the states:

In holding that provisions of the Bill of Rights were “incorporated” into the Fourteenth Amendment Due Process Clause, the Supreme Court told us something about what “due process of law” means. The process that is due to an individual includes fair police procedures. When police procedures violate constitutional provisions, due process rights are violated. And when evidence obtained through illegal police conduct is introduced in court, the due process violation continues. In short, “due process” includes *both* the investigative process and the trial process. We cannot isolate the trial process from the investigative procedures that led up to it. This means that errors in the investigative process—an illegal search, for example—must not be allowed to infect the trial, or else the defendant will be deprived of due process of law. Thus, the exclusion at trial of illegally seized evidence is a constitutional requirement.

**Evaluate this argument for excluding illegally seized evidence, with specific reference to relevant cases that were assigned for this course. Does this “due process” argument withstand the critiques of the exclusionary rule that have appeared in Supreme Court opinions? Why or why not? What, in your view, is the best account of the constitutional status (or lack thereof) of the Fourth Amendment exclusionary rule? Should the admissibility of illegally obtained evidence vary according to which amendment (Fourth, Fifth, or Sixth) the police violated?**

END OF EXAM

WRITE NOTHING AFTER TIME IS CALLED.