

Student # _____

General Instructions:

1. Do not write your name anywhere on this exam or on the Electronic Bluebook. Write only the number provided to you by the Registrar's Office.
2. You have 3 hours to complete this exam.
3. This is a closed book exam. While taking this exam, you are not allowed to access any other materials.
4. The exam consists of 10 multiple choice questions and 4 essay questions.
5. There is no penalty for wrong answers on the multiple choice portion, so you should not leave any of them blank. You should circle your selected response on the exam itself, or enter your response on your Electronic Bluebook. Do not write anything other than the letter matching your selected response.
6. On the essay portion, you should use Electronic Bluebook. On this portion, there is no space restriction or word limit on how much you are permitted to write in response to each question, but the exam has not been designed to provide sufficient time for writing very lengthy responses. Also, the conciseness and clarity of your responses will be considered in grading your responses. It is very important to include in your responses the legal propositions on which you have relied. It is much less important to include the name of any particular case.
7. This exam constitutes 40% of your grade and will be graded out of 40 points. Each multiple choice question is worth one point. On the essay portion, the number of points out of which each question will be graded is specified next to the question.

Part I – Multiple Choice Questions

1. Which of the following is the most accurate statement concerning the definition of custody for *Miranda* purposes under current Supreme Court law?
 - A. A person is in custody when he has been formally arrested or otherwise deprived of his freedom of movement in any significant way.
 - B. A person is in custody when he has been formally arrested or otherwise deprived of his freedom of movement to a degree associated with formal arrest.
 - C. A person is in custody when he has been formally arrested or when a reasonable person in his circumstances would feel he is not at liberty to terminate the interrogation and leave.
 - D. Both B and C are equally accurate.

2. Which of the following is the most accurate statement of the current status of the rights announced in *Miranda v. Arizona*?
 - A. *Miranda* has been overruled by subsequent decisions of the Supreme Court.
 - B. The Supreme Court has upheld a federal statute under which voluntary statements may be admissible even if such statements were obtained in violation of the rules announced in *Miranda*.
 - C. *Miranda* rights are in some respects treated by the Supreme Court the same way as rights under the Fourth and Sixth Amendments, but in other respects *Miranda* rights are treated as less fundamental.
 - D. *Miranda* rights are treated by the Supreme Court as required by the Fifth Amendment's Privilege Against Self-Incrimination Clause and, therefore, as on the same footing as Fourth and Sixth Amendment rights in all respects.

3. Which of the following is the most accurate statement about the Supreme Court's view in recent decades of the proper purpose(s) of the Exclusionary Rule?
 - A. The exclusionary rule serves the purpose of deterring violations of constitutional rights by the police.
 - B. The exclusionary rule serves the purpose of providing a remedy for violations of constitutional rights.
 - C. The exclusionary rule serves the purpose of preventing the introduction of evidence obtained in violation of the Constitution in proceedings before courts created pursuant to the Constitution.
 - D. The exclusionary rule serves all the purposes set out in A, B, and C.

4. Dorothy lives in a rental unit pursuant to a lease granting her exclusive possession of the unit. Police learned that Daniel was spending a few hours in Dorothy's apartment helping her bag some drugs for sale. Police have a warrant to arrest Daniel on a misdemeanor charge of shoplifting. Which of the following is a correct statement?
- A. If the police knock on the door and Dorothy opens the door and invites them to come in, the police may not enter if Daniel says, "We are not allowing you in here without a warrant."
 - B. If the police obtain a key to the apartment from the landlord, enter it, and arrest Daniel, they have not violated Daniel's Fourth Amendment rights.
 - C. If the police obtain a proper search warrant, they may enter the room to arrest Daniel, but any physical evidence they find in the room will be suppressed if the police fail to comply with the knock-and-announce rule.
 - D. If the police, without obtaining any warrant, break down the door and enter the room and, upon entry, ask Dorothy what she is doing, and Dorothy says in response, "This is the first time in my life that I am bagging and selling drugs," then this statement will be admissible against Dorothy at her trial for possessing drugs with intent to distribute.
5. A police officer observes a driver change lanes without putting on her turn signal on Main Street in Concord, as required by New Hampshire law. He pulls her over, ultimately searches the car, and finds drugs. As a result, the driver is charged in federal court in Concord with Possession of Drugs with the Intent to Distribute. Which of the following is correct?
- A. If, when the officer went up to the car after pulling it over, he observed a firearm in the car, he could lawfully reach in and seize the firearm if he reasonably believed the driver posed a danger to the officer, even if the possession and display of the firearm did not violate any New Hampshire or federal law.
 - B. If the officer decided to pull over the driver because the driver was African-American and the officer believed African-American drivers are likely to have illegal items in their car, the driver's Fourth Amendment rights have been violated.
 - C. The drugs are inadmissible because the Fourth Amendment is violated when, in a prosecution in federal court, evidence is introduced that was obtained as a result of a state law violation.
 - D. If the officer arrests the driver for the turn signal violation and takes her to the police station for processing, the Fourth Amendment has been violated if the turn signal violation is not punishable by any jail time.
6. Police transport Sam, a suspect in a homicide, to the police station against his will and question him without advising him of his Miranda rights. He makes an incriminating statement and tells the police where they can find the knife he says he used to commit the homicide. Police find the knife and match DNA found on the handle of the knife to Sue. Eventually, Sue is charged as an accomplice to homicide. Which of the following is correct with respect to Sue's trial on this charge? Consider only constitutional rights, not the rules of evidence.

- A. The incriminating statement is inadmissible, but the knife is admissible.
 - B. The incriminating statement is admissible, but the knife is inadmissible.
 - C. Both the statement and the knife are admissible.
 - D. Neither the statement nor the knife is admissible.
7. Police recruit Ian to wear a recording device, enter David's house, and attempt to purchase drugs from him. Ian agrees because he is hoping to get favorable treatment on his own drug case. When Ian arrives at the house on a summer night, however, David does not appear to be home. Ian notices that a bedroom window is open. The police help Ian climb up and get into the house through the open window. Inside, Ian finds some drugs. As he is about to leave, he is confronted by David, who tells him, "Leave those drugs and get out. I am planning to sell them tomorrow for a big profit." Ian jumps out the window, turns the drugs over to the police, and tells them about David's statement. Which of the following is correct as a matter of constitutional law at David's trial for possessing drugs with the intent to distribute?
- A. The drugs are admissible, but David's statement is inadmissible.
 - B. The drugs and David's statement are both admissible.
 - C. The drugs are inadmissible, and David's statement is also inadmissible because his Miranda rights were violated.
 - D. The drugs are inadmissible, and whether the statement is admissible depends on whether the court considers the statement to be the fruit of the illegality through which the drugs were obtained.
8. A police drone is moving over an empty lot located next to Dianna's home. Dianna does not own the empty lot. The drone is equipped with an infrared detector that can measure heat output from various nearby locations. The drone relays information to the police about hot spots in and around Dianna's home. The police use information obtained using this technology in an affidavit for a warrant to search Dianna's home for evidence of a marijuana grow operation. The affidavit contains other information suggesting marijuana is grown in Dianna's home, but excluding the drone-infrared detector information, the affidavit clearly fails to establish probable cause. Including the drone -infrared detector information, the affidavit establishes probable cause. Which of the following is correct?
- A. If a warrant is issued, there would be no violation of the Fourth Amendment from its execution if the police in good faith, i.e., sincerely, believed the affidavit contained sufficient facts for a reasonable person to believe that marijuana was being grown in Dianna's home.
 - B. If the warrant is issued, there would no violation of the Fourth Amendment from its execution if the police reasonably believed that the affidavit contained sufficient facts for a reasonable person to believe that marijuana was being grown in Dianna's home.

- C. If a warrant is issued, there would be no violation of the Fourth Amendment from its execution because the drone was flying over property not owned by Dianna.
 - D. If a warrant is issued, there might not be a violation of the Fourth Amendment from its execution if the surveillance of Dianna's home took place at a time in the future when the use of infrared camera-equipped drones was in general public use.
9. Dirce has called for an Uber to take her to the airport and is waiting outside her apartment with her suitcase next to her. Assuming probable cause exists to believe drugs are present in the suitcase, but no warrant to search the suitcase has been issued, which of the following is correct?
- A. The police cannot seize the suitcase and search it before it is placed in the Uber; nor can they do so after the suitcase has been placed in the Uber.
 - B. The police can seize the suitcase and search it before it is placed in the Uber, but they cannot stop the Uber after the suitcase has been placed inside, seize the suitcase, and then search it.
 - C. The police can't seize the suitcase and search it before it is placed in the Uber; but they can stop the Uber after the suitcase has been placed inside, seize the suitcase, and then search it.
 - D. The police can search the suitcase before it is placed in the Uber, and, alternatively, they can stop the Uber after the suitcase has been placed inside, seize the suitcase, and then search it.
10. In which of these circumstances does the Constitution not permit a search based on less than probable cause?
- A. Drug testing of public school athletes.
 - B. Search for evidence of criminal activity of a suspect who has been temporarily detained and is reasonably believed to be armed and dangerous.
 - C. Search of the car of an arrested person for evidence of the crime of arrest.
 - D. Where a warrant has authorized search of one room in a house to arrest an individual, search of other rooms for individuals who may pose a threat to the officers.

Part II – Essay Questions

1. (9 points) At 7:20 PM, Officer Pho, a Concord police officer, stopped Daniel's car because Daniel's headlights were not on. A NH statute requires headlights to be on from half an hour after sunset until half an hour before sunrise. Sunset on that day was at 7:00 P.M. After the stop, Pho obtained Daniel's name and provided it to the Concord Police Department dispatcher. The dispatcher told Pho that there was a warrant for Daniel's arrest because he had failed to pay a traffic violation fine out of Manchester District Court. Pho arrested Daniel and transported him to the station. On the way to the station, Daniel spoke up and said, "It is so weird that you just arrested me. This must be a sign from God that I should confess and clear my soul. A few hours ago, I killed my wife and two young children." Later that night, police searched David's home without a warrant and found the bodies of his wife and two children, with a note lying on the wife's body, in which Daniel had confessed to the murders. Minutes after the police discovered the bodies, they heard a key turning in the front door. They took cover. A man entered who appeared to be carrying a small handgun. The police yelled, "Freeze! Police!" The man raised the object and the police fired. It turned out the man was Daniel's adult son, arriving home for the holidays. He had been shot dead by the police. The object he had been holding was his cellphone. It later emerges that there was actually no active warrant for Daniel's arrest out of the Manchester District Court. He had paid the fine a long time ago, but the court's records had for years not been updated in the data base used by New Hampshire police departments to check on outstanding warrants.

Analyze the admissibility in Daniel's prosecution for triple homicide of (a) his statement in the cruiser to Officer Pho, and (b) the note found by the police inside the home.

2. (8 points) Dante's estranged wife Wanda disappeared on a Friday. The police arrested Dante on Sunday and charged him with kidnapping based on reports from witnesses who had seen him roughly pull her into his car and drive away. After his arrest, police tried to question Dante about Wanda's whereabouts. They read him his *Miranda* rights, and asked if he would answer their questions, but he said he wanted a lawyer. The next Monday, Dante appeared in court, was arraigned on a complaint charging him with kidnapping, appointed a public defender, and ordered detained without bail pending trial. On Tuesday, police received an anonymous call in which the caller, who did not identify herself, said that Wanda was locked up in the basement of Dante's home. According to the caller, Wanda was chained to the floor. When asked to identify herself, the caller hung up. Concerned that Wanda may die at any moment because she had not had anything to drink for days, and might have been injured during or after her kidnapping and needed medical help, police broke into Dante's house. They did not find Wanda, but on the dining table saw a folded hand-drawn map, labeled "Wanda" in large letters. When they picked up and unfolded the map, they saw an arrow pointing to a "burial" location on Dante's cornfield. Using the map, they found the location in question and, after some digging, found Wanda's body. They then went to the jail where Dante was held and arranged to meet with him in a

room usually used for group therapy and counseling. They showed him photographs of the cornfield and the body. Dante broke down and confessed to killing Wanda.

At Dante's trial for first degree murder, analyze the admissibility of testimony by the police about Wanda's body and Dante's confession.

3. (7 points) Concerned about the repeated incidents of drunk driving in his small town on weekend nights, the police chief of the small town of Pleasant Valley, NH issues an order to his department's police officers: From 9 PM Friday until 3 AM Saturday, and from 9 PM Saturday until 3 AM Sunday, the officers must follow and pull over any car driving on any road in town and ask the driver if he has consumed any alcohol that evening. The stop must not take more than 30 seconds, unless during that time period, the officer develops reasonable suspicion to believe the driver is operating under the influence of alcohol or controlled drugs. Pursuant to this new departmental policy, Officer Patel pulls over a car driven by Davood. When Patel approaches Davood's car, Davood fires a gun, striking Patel in the arm, and then drives away. Patel radios for assistance and other officers pursue Davood's car, even though Davood has not committed any traffic offense. Eventually, Davood pulls over at a point where police cruisers have blocked the roadway, gets out of his car, and runs into the woods. Davood's car is towed to the Pleasant Valley police department and searched, resulting in the discovery of a firearm. Ballistic testing matches the firearm to the bullet that struck Patel. A week later police learn that Davood has been staying at his grandfather's house for several days. They go to the house, knock on the door, and are invited inside by Davood's grandmother. But as soon as they say they are looking for Davood, she asks them to leave. They ignore her, search the house, and find Davood. Davood is arrested and charged with Assault with a Deadly Weapon. Davood moves to dismiss the charge because his arrest violated his Fourth Amendment rights.

Discuss whether Patel violated the Fourth Amendment by stopping Davood's car. Next, discuss whether the seized firearm is admissible at Davood's trial. Finally, discuss whether the motion to dismiss should be granted.

4. (6 points) Police have prepared applications for a warrant to arrest David Daniels and to search 215 Spring Street in Concord for a rifle. Both applications are dated December 1, 2018, and include an affidavit that states the following after identifying the affiant and describing her qualifications and experience: "On November 15, 2018, the Concord Police Department received a phone call, in which the caller identified himself as Walter Wiggins and stated that David Daniels, who lives at 215 Spring Street in Concord, is a convicted felon. The caller also stated that the caller and Daniels were at the house of Wally Williams, a mutual friend of the caller and Daniels, a few days earlier. Williams showed Daniels and the caller a rifle Williams owns. At that point, Daniels said, 'I own a rifle just like this one. I keep it at my brother's house. Just because I have an old forgery conviction doesn't mean I shouldn't have the right to go hunting.' As a result of this call, I contacted Wally Williams. He admitted that David Daniels And Walter Wiggins were at his house recently. He also admitted possessing a firearm and showing it to Wiggins, but he denied showing it to David Daniels. I have checked court records and confirmed that David Daniels (dob 4/16/82) was convicted of forgery, a felony, in Merrimack County Superior Court on August 1, 2015. I have checked property records and confirmed that Daniels

owns the property at 215 Spring Street. I have surveilled the property and confirmed that Daniels lives there by matching the appearance of the person I have observed entering the house to a photograph of him in the Concord Police Department's 2015 forgery case file. A New Hampshire statute provides that a person is guilty of a felony if, having been previously convicted of a felony, he thereafter possesses a firearm." The affidavit is signed by the police officer under oath. For the purposes of this question, assume the affidavit has accurately recited a New Hampshire statute. A judge issues both warrants, the police go to 215 Spring Street, enter the house by forcing open the door, and find Daniels sitting on a couch with a handgun on the table next to him. The police arrest him and seize the handgun.

Discuss the admissibility of the handgun at David's trial for being a felon in possession of a firearm.