

Final Examination
Criminal Procedure II
Professor Moskovitz
Spring 2008

1. You have three (3) hours to complete this exam.
2. This is a closed book exam.
3. This exam consists of two parts. (Format of exam and point allocation)

Part I consists of twenty-eight (28) true/false, multiple-choice questions. Please mark your responses to the multiple choice questions on the separate “ParSCORE TEST FORM” using pen or pencil and following the instructions on that form. If you change your answer, place a clear **X** through the wrong answer and mark the correct answer. A machine will score the exam and any ambiguities will be counted as a wrong answer.

Part II consists of one (1) essay question. Please write your response in the blue books provided. Please write clearly. Write on every other line and every other page to permit instructor comments.

4. Write your exam number on your exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions, each blue book, and the “ParSCORE TEST FORM.” **Do not** use your name, student ID number or Social Security Number on any exam materials.
5. At the conclusion of the exam, return all test materials, including blue books, ParScore answer sheet, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not have their exams graded.

ESSAY QUESTION I

My client, Dan Dork (D), was charged with violating Penal Code section 456, which provides: “Any person who sells cocaine or assists in the sale of cocaine shall be guilty of a felony.” At trial, police officer Carl Copp (C) testified as follows:

On March 1, I received a tip that a man wearing a red knit cap was selling cocaine at the corner of First and Mission. I went to that location in plain clothes, with a uniformed back-up officer (Officer Bobb) behind me. I saw a man wearing a red knit cap. I asked him if he had any cocaine. He said a bag would cost \$20, and I nodded. He handed me a small bag containing what appeared to be cocaine. I held out the \$20 and he started to take it. Then he caught sight of Bobb. He dropped the \$20 and grabbed the bag out of my hand and started to run. Bobb tried to grab him, but the man pushed Bobb off and ran away. I radioed in a description of him, and another officer arrested Dork at 5th and Mission. He searched Dork, but did not find any cocaine.

Q: Do you see in court the man who showed you the bag of cocaine?

A: I believe it was that man in the grey coat sitting at the defense counsel table, Defendant Dork. He’s dressed differently, so I’m not positive, but I think it was him.

Because Dork has some prior drug offenses, I did not have him testify. Here is a portion of my closing argument to the jury:

Officer Copp failed to positively identify Mr. Dork as the man with the baggie. And the man with the bag did not sell the cocaine, because he took it back before he was paid. So the prosecution has failed to prove its case beyond a reasonable doubt.

Because of my sterling performance, the jury returned a verdict of “Not Guilty.”

Prosecutor Sam just filed *new* charges against Dork, alleging that on March 1, at First and Mission., Dork committed the crimes of possession of cocaine and assaulting a police officer (by shoving Bobb). I filed a motion to dismiss both charges, on the ground of double jeopardy. When Sam received my motion, he offered to drop the charges if I would enter a plea of guilty to one charge of disturbing the peace (a misdemeanor). While this is a pretty good deal, I won’t accept it if I have a good chance of winning the motion to dismiss. Should I enter the plea?

Essay Question II

Propose a change to a feature of the American criminal justice system that we discussed in this course. Draft a statute that would implement your proposed change.

Include the following in your discussion:

1. What policy objections to your statute are likely to be made, and what is your response to them?
2. What arguments can be made that your statute is unconstitutional, as the Constitution is presently written and interpreted by the United States Supreme Court? How will the Court rule on these arguments? If the Court might strike down your statute, how would you amend the Constitution to ensure that your statute is constitutional?

Have a nice summer!