

CRIMINAL PROCEDURE FINAL EXAMINATION – FALL 2006

1. You will have THREE HOURS to complete the examination.
2. Please write only on one side of the paper, use ink, and write legibly.
3. This is a closed book exam.
4. The final exam consists of one short answer question and one general question.
5. You should use NO MORE THAN FOUR PAGES in answering the short answer question. You may use what space you need, in answering the question posed in the general fact pattern.
6. The short answer question is worth 25% of the final exam score, and the general question is worth 75%. Thus, I suggest that you spend 45 minutes on the short answer question, and two hours and fifteen minutes on the general question.

## General Question

At 1:00 p.m. on the afternoon of Thursday, November 30, 2006, an unidentified person telephoned the Concord police, saying only: "you need to go to King's Gardens, Building #3, ground floor Apartment 2. A man got stabbed." Three officers went immediately to the King's Gardens apartment complex. The building's front door was locked, but as the police paused, considering their options, a tenant arrived, unlocked the door, and allowed the police to enter behind her. Building #3 was a three-floor apartment building with two apartments on each floor. Upon entering the building, the police first noticed a stairway leading up to the upper-floor apartments. The woman behind whom they had entered went up those stairs. On the ground floor, beyond the stairway, was a short hallway leading to the front doors of the two-ground floor apartments. The front doors of those apartments faced each other at the end of that hallway. As the police walked down the hall, they saw still-damp blood on both walls in the hall outside the two apartments. After listening for a moment at the door of Apartment #2 and hearing no sounds, the police forced open the apartment's door.

Inside the apartment, the police saw more blood on the interior walls. Seated in the living room of the apartment were three very startled young adults: Sam, Cathy, and Lewis. On a table in the living room, the police saw a bloody knife and bloody towels. They also saw straws that had been cut in a manner suggesting that somebody had used the straws to take drugs. The police immediately could tell that Sam was injured, bleeding from a head wound. They could also tell that Lewis and Cathy seemed concerned about Sam's injury. In order quickly to understand the situation, each officer took aside one of the three persons to try to find out what had happened.

Sam wore only a bath towel when the police arrived, and looked wet, as if he had just been trying to clean his wound. The officer who spoke to Sam saw that the wound was not at all life-threatening, although it was still bleeding and would probably require stitches to close. Sam declined to speak to the police about his injuries, and refused their offers of medical assistance. When asked if he lived in the apartment, Sam said that he did not. Sam refused to say anything else to the police.

The officer who spoke to Lewis learned that Lewis lived in one of the apartment's two bedrooms. Lewis refused, however, to say who lived in the other bedroom. Lewis told the police that the leaseholder, Justin, had moved out of the apartment some time before, but had agreed to let Lewis stay in the apartment

until the end of the month, when the lease expired. Lewis initially claimed to have no information about Sam's injury, or about the straws. However, when the officer said, "So then it was Cathy who used those straws to snort cocaine?" Lewis looked down at the floor and admitted that the straws were actually Lewis's, and that he had used them to take drugs. The officer then asked to search Lewis's bedroom. "Do I have a choice?" asked Lewis in response. "I'll just get a warrant if you refuse," replied the officer. Lewis then said, "ok, go ahead." The officer searched Lewis's bedroom and found cocaine.

When questioned by the third officer, Cathy denied living in the apartment, and claimed not to own anything in it. As soon as the drugs were found in Lewis's room, though, the officer arrested Cathy, along with Lewis and Sam. They handcuffed Cathy and put her in the police car, while Sam and Lewis, although under arrest, remained for the time being in the apartment. In the car, under further questioning, Cathy said that Lewis had stabbed Sam during an argument, and that the knife used by Lewis was hidden behind the refrigerator in the apartment's kitchen. The officer returned to the apartment, went into the kitchen, and found the knife. Persuaded of Cathy's innocence by her cooperation, the prosecutor later dropped all charges against Cathy in exchange for her testimony at Lewis's trial.

Desiring also to search the apartment's second bedroom, and having received no information about who used the second bedroom or owned the property in it, the police contacted Justin, and waited thirty minutes for him to come to the apartment from the town in which he now lived. Justin told the police that although he still had a key to the apartment, he no longer lived in it, having "got out of there some time ago." Justin indicated that he moved out at least in part because he disliked Lewis's parties and his use of the apartment as a "crash pad" in which various people would stay for short periods. Justin also told the police that nothing in the apartment belonged to him other than a couch and a chair in the living room. Justin confirmed that Lewis, and only Lewis, had Justin's permission to stay in the apartment until the expiration of the lease, an event due to occur at the end of that day. The police then requested and received Justin's consent to search the whole apartment.

Sam sat in the living room, still dressed in a towel, saying nothing as the police spoke with Justin. Having already searched the kitchen and Lewis's bedroom, the police entered and searched the second bedroom and a bathroom. The second bedroom contained a bed, a dresser, and a closet. In that bedroom, the police found several changes of clothing, photographs, personal identification,

food, a cell phone, court papers, and a wallet, all of which appeared to belong to Sam. In a dresser drawer, amongst Sam's socks and underwear, the police found a glass pipe containing marijuana residue. In the pocket of a shirt hanging in the bedroom's closet, the police found a bag containing marijuana. Based on those discoveries, the police charged Sam with possession of marijuana. Before taking Sam to the police station, the officers allowed him to dress, and he got clothes out of the second bedroom for that purpose.

You are the clerk for the judge who will be hearing the cases of United States v. Sam (possession of marijuana) and United States v. Lewis (possession of cocaine; aggravated assault on Sam). Both defendants and the Government have raised all plausible arguments. Lewis has filed a motion to suppress: (1) his statements to the police at the scene; (2) the cocaine found in his bedroom; (3) Cathy's trial testimony about seeing him stab Sam; and (4) the knife. Sam has filed a motion to suppress (5) the drugs found in the second bedroom. Please draft a memo describing and analyzing the legal arguments for and against suppression of each item, and explaining how the Court should rule.

### Short answer Question

After mid-night one December night, a woman called the Manchester police department to report that she had seen two men “prowling around the street walking up to houses.” She described them as white, in their early twenties, and wearing dark clothing. Responding to the call, an officer drove up and down streets near the woman’s house. After ten minutes driving around the neighborhood, the officer turned onto a residential street and saw a young white man sitting in the passenger seat of a parked car. The car was parked several blocks away from the woman’s house, but was in what was known to be a high crime neighborhood. As the officer watched from a distance, a second white man approached the car from the side yard of the house further up the street. That man got into the car and the car drove off. The officer called dispatch, and learned that nobody had reported any break-ins that night in the neighborhood.

The officer pursued and stopped the car a few blocks away. The officer ordered the driver out of the car, and handcuffed him when he complied. The officer then ordered the passenger out also, and, while speaking with the passenger, shone a flashlight into the interior of the car. The officer noticed a shiny object, partially hidden beneath a sweater on the back seat. In response to the officer’s questions about what the men were doing, the passenger replied that they were “just out, cruising around.” The officer then directed the passenger to step away from the car. When the passenger did so, the officer reached into the back seat, and discovered an illegal sawed-off shotgun. The officer then formally arrested the driver and the passenger. Twenty minutes later, just after backup officers had arrived and taken the two men to jail, the officer searched the passenger compartment of the car and discovered a bag under the driver’s seat that contained cocaine.

The defendants, two brothers, have moved to suppress the gun and the cocaine. What result and why?