

QUESTION 1
(One hour)

Don was a xenophobic¹ detective on patrol. One evening, he saw Uri, a recent immigrant and Uber driver² driving under the speed limit on Highway 12 carrying Passenger Paul. Don activated his lights and Uri pulled over. When asked, Uri stepped out of the car and provided his license and registration. Don asked where he was going; Uri explained he was taking his “fare” to the airport “to get out of town.” Don had Uri perform a series of Field Sobriety Tests, followed by a breathalyzer, which Uri passed. Don retrieved his new department issued “Textalizer” and asked Uri for his phone. The Textalizer plugged into any cell phone and could determine, without revealing content, if the user had accessed the phone within the last hour. Textalizers had been given to the department to test as part of a federal study on distracted driving. Don knew the technology was slow so he ran Paul for warrants; Paul had a 1999 warrant for assault. Don placed Paul under arrest and searched him and the car.

Don seized a knife from Paul’s jacket pocket and a loaded handgun from under the driver’s seat. Another officer transported Paul to jail while Don turned his attention back to Uri. 10 minutes later, the Textalizer finally alerted Don that Uri was using Skype³ immediately before Don pulled him over. Don pat searched Uri and asked who he was talking to. Uri replied, “Family. Overseas.” Don asked if he “had papers.” Confused by what “papers” meant, Uri said “No,” just as Don retrieved ammunition from Uri’s pants pocket. Don transported Uri to the station, and had the Uber car towed to the impound lot. Two days later the car was fully searched, revealing a cache of weapons in the trunk.

Don placed Uri in a room with a table, chairs, and audio video equipment. For two hours, Don went in and out; Don apologized, telling Uri it was taking longer than usual to contact Immigration. Don left the door open and Uri uncuffed so Uri could use the phone. Don finally sat down and told Uri he was not under arrest. Uri told him that he “wanted to go home”; he “wanted to see his uncle”, who was “better than my freaking Public Defender...can you get him down here or what?” Don answered, “No, but if you talk to Immigration they may take you home. Let me see if they’re here yet.” Don left the room; the camera subsequently recorded Uri calling his uncle overseas and making incriminating statements about the firearms in the trunk and bank accounts used to fund illegal weapons transfers.

Paul testified against Uri at trial. The DA failed to disclose to Uri’s attorney that Paul had a conviction for perjury and was given a reduced sentence in exchange for his testimony.

¹ Xenophobic means a fear of foreigners.

² Uber is a taxi service operated by private citizens.

³ Skype is a video messaging service used on personal electronic devices.

Please discuss Uri's rights and defenses under the Fourth, Fifth, and Sixth Amendments.

Do not discuss any substantive crimes or defense thereto, or issues related to admissibility of evidence based on chain of custody.

QUESTION 2
(One hour)

At 11:00 p.m. Mel, the manager of a 7-11 called 9-1-1 to report 3 men “arguing” in the parking lot. Dispatch alerted patrol officers to a physical altercation in the store, and that the involved persons left in a Camry with a partial plate of S41, including one with a large tattoo on his neck. While enroute to the scene, Officer O’Day spotted a Camry with license plate 4DK5411. O’Day initiated a traffic stop. As he approached the car, he noticed only one man in the car. O’Day asked the driver, later identified as Dex to step out of the car; Dex complied briefly before fleeing on foot, leaving behind his driver’s license in the open center console. O’Day gave chase, but lost Dex in a nearby subdivision. O’Day returned to the Camry and retrieved the license, which confirmed Dex had a large tattoo encircling his neck.

The next morning O’Day returned to 7-11 with the license. He showed it to Mel, and 4 other employees who gathered around. Mel positively identified Dex, as one of the suspects in the argument. Pete, the Pepsi delivery man peered over O’Day’ shoulder and said, “Oh, that guy, I’ve seen him before downtown. I think he’s homeless.” Based upon this information, O’Day secured a warrant for Dex’s arrest. O’Day headed downtown to a tent city which had formed under the freeway over pass. O’Day asked several homeless individuals if they had seen Dex. Hilda, a homeless woman subject to hallucinations, told O’Day that Dex frequently stayed in the large blue tent at the edge of the camp.

O’Day went to the tent and announced his presence. Receiving no response, he unzipped the tent and walked inside, startling the owner/occupants. He found Dex hiding in a sleeping bag and arrested him on the warrant. O’Day seized a knife and baggie of methamphetamine from the tent floor.

O’Day advised Dex he was taking him to the county jail for questioning. After Dex was settled in his cell, O’Day went to visit him. O’Day asked Dex if he “wanted to talk.” Dex replied, “No, not really.” O’Day responded, “That’s fine, I just thought you might want to clear things up.” When Dex answered “I do. I want to” O’Day apologized to Dex—he was “too late because he had already invoked.”

The next morning Dex was arraigned and appointed Public Defender Patty to represent him.

That afternoon, following his Court appearance, O’Day’s Supervisor, Sal, having read O’Day’s report, went to visit Dex. “Young man,” Sal said, “Do you still want to straighten this mess out?” Dex, without hesitation, confessed to assault and possession of contraband. However, he only did so orally. Dex, embarrassed by his illiteracy, refused to sign a written waiver or write out his statement.

Please discuss Dex's rights and defenses under the Fourth, Fifth, and Sixth Amendments.

Do not discuss any substantive crimes or defense thereto, or issues related to admissibility of evidence based on chain of custody.