

Question One – 1 Hour

Officer Odie observed a homeless man, Harry, riding on the back of an unmarked shopping cart at dusk downhill in the bicycle lane. The cart was filled with Harry's only possessions, including some aluminum cans he was going to recycle for money. Odie pursued the cart in his marked patrol vehicle and activated its flashing lights. Harry slowed the cart with his feet and stopped shortly. Odie snickered and asked Harry for his license and vehicle registration. Confused, Harry told Odie he only had a CA identification card. Odie instructed Harry, "Don't move;" Odie walked back to his car, radioed dispatch, and discovered Harry had an outstanding arrest warrant for unlawfully wearing a Los Angeles Dodgers' hat. Odie did not know that the statue had since been repealed. A Giants' fan himself, Odie wanted to make Harry sweat it out a bit before allowing him to leave. And knowing that Dodgers' fans can get unruly, Odie decided to pat search Harry. In Harry's back pocket, Odie felt a flask. Odie removed it from Harry's pocket, opened the top, and smelled alcohol. Odie issued Harry a citation to appear on the warrant and for having an open container in public. Without saying anything, Odie returned to his car.

Suddenly, Odie heard rustling coming from Harry's direction. Odie looked back and saw Harry digging through cans in his cart. Knowing that homeless often have drug problems, Odie returned to Harry's cart, reached inside the bags of cans and shook each one. The third can rattled and Odie emptied it into his hand. A large bundle of what Odie recognized as heroin fell out. Odie arrested Harry, read him his Miranda warnings, and transported him to the county jail. While in route Odie questioned Harry about drug sales. Harry remained largely silent until Odie said, "The jail is going to want to know if you are detoxifying off heroin" to which Harry replied "Yes; I've been using and dealing it for years."

Harry was arraigned two days later and appointed a Public Defender. When he returned from court he was placed in a cell with jailhouse informant Ivan. Ivan engaged in small talk with Harry but did not question him about his crimes. Harry, believing Ivan was his trusted friend, confessed to Ivan that he had been selling heroin from his shopping cart. Ivan was called to testify to this at Harry's trial.

Harry was subsequently convicted at trial of heroin sales and being under the influence of heroin.

Discuss the legality of Odie's conduct toward Harry under 4th, 5th, or 6th Amendment principles. Assume that all items were properly placed into evidence. Do not discuss any substantive crimes.

Question Two – 1 Hour

An anonymous informant called 911 to report that suspect Sid would be driving a black Honda Civic with a broken, (but still legal) taillight 10 miles between the County Fairgrounds and the local Motel 6 carrying a brown bag of marijuana. Detective Dave intercepted a car matching that description in the Fairgrounds parking lot. Dave followed the car for several miles in the direction of the motel before activating his emergency lights. Sid sped up and threw a paper bag out the window of the car. Losing sight of the road, Sid hit a tree, disabled the car, and was apprehended. The bag was found to contain five pounds of marijuana. Sid provided a false name and address to attempt to hide the fact that he had a prior conviction for marijuana sales. After sorting out Sid's true identity, Dave arrested Sid, transported him to county jail, and impounded the car in the city lot.

The next week Dave presented an Affidavit to Jane, the on call judge, requesting a search warrant be issued for Sid's apartment. A recent addition to the bench, Jane had campaigned on a "Tough on Pot" platform. After reviewing the documents, Jane telephoned Dave to ask if he seized any other indicia of drug sales. He suddenly realized his Statement of Probable Cause failed to reference the Marijuana Grower's Bible he seized from the Civic's glove box. Hearing this, Jane signed the warrant.

That night Dave and three other uniformed officers arrived at Sid's place to execute the warrant. The woman who answered the door identified herself as Gaby, Sid's girlfriend. Unaware that Sid was in custody and hoping Dave was there to deliver some news as to Sid's whereabouts, Gaby let the men into the residence. They immediately placed her in handcuffs and told her to remain seated. As officers seized processed marijuana from the master bedroom, Dave's attention was drawn to an open laptop computer. He hit the enter key to display the screen—a photograph of Sid carrying an assault weapon. Dave turned to Gaby and said, "Why don't you save us all some grief and tell us where the gun is? We're going to find it anyway." Gaby, now sobbing, advised Dave that there were several guns in the hall closet. Dave seized those weapons, concluded the search, and placed Gaby under arrest.

Sid and Gaby were represented by the Public Defender at their trial, and subsequently convicted of charges of possession of marijuana for sale while armed.

Discuss the legality of Dave's conduct toward Sid and Gaby under 4th, 5th, and 6th Amendment principles. Assume all items were properly placed into evidence. Do not discuss any substantive crimes or defenses.