

**SUMMER 2008 – CRIMINAL PROC.**  
**FINAL EXAM – EVENING DIVISION**  
**PROFESSOR GOLDSTEIN/ANDERSON**

The following examination consists of 5 pages (exclusive of this cover sheet). This is a closed book exam. There is one question. The time allotted for the exam is two hours. Make sure each blue book contains your exam ID number. Make sure your writing is legible. Do not write on the backside of pages. Good luck.

Three masked gunmen robbed the Speedy Gas n Go gas station in California 4 times in the past 2 months. One of those robberies had occurred on 6/10/08. Clerk Joyce Tran had been working with Clerk Debbie Plot during the robbery on 6/10/08. Debbie was working alone during the other three robberies. On 6/10/08 the suspects put a gun in the face of the clerks, demanded the money from the cash register, and then tied them up behind the counter to prevent them from calling the police. Both Joyce and Debbie described the three men as being in their early 20's, one was Caucasian with a goatee, one was Hispanic, and one was African-American. Detective Smith of the local police agency showed each clerk a series of photo line-ups three days after the robbery of 6/10/08. Neither Joyce nor Debbie was able to pick anyone out of the photo line-ups. A surveillance tape captured footage of the 6/10/08 robbery, but the quality was poor. Only the race and facial hair of each suspect could be determined.

A grand jury was impaneled to investigate the robberies. Detective Smith determined that James Smoot, a 19-year-old Hispanic male, was a suspect in the robberies. Smoot was not aware he was a suspect. Smoot was subpoenaed to testify in front of the grand jury. On the day he was scheduled to testify before the grand jury, Smoot requested that his attorney, Joe Law be present. The prosecutor would not allow Law inside the grand jury room. During his testimony, the prosecutor asked Smoot where he was on the night of 6/10/08. Smoot said he did not wish to answer that question because he thought he might get in trouble. The prosecutor told him he had to answer or he would be jailed immediately. Smoot replied he was with 2 other friends hanging out, and one of the friends is named Rob Hinton, a 21-year-old Caucasian male with a mustache.

Unbeknownst to Smoot and the grand jury, five days after the robbery on 6/10/08 the District Attorney's office filed a complaint for Robbery occurring at the Speedy Gas n Go on 6/10/08 against Rob Hinton. Based upon that complaint, Detective Smith arrested Hinton the next day, for that robbery. One day later, Hinton appeared at his arraignment. The Court entered a plea of not guilty and appointed Angela Thomas from the Public Defender's office to represent him. On the following day, the grand jury indicted Smoot for the same robbery. He retained his attorney, Joe Law, for the case. At the first hearing following Smoot's arraignment, the prosecutor requested that Hinton and Smoot's case be joined for all further proceedings. Law objected while Thomas did not. The judge granted the prosecutor's request. Upon the request of both defense counsels, the judge ordered that both defendants participate in a live line up at the jail within one week. After the hearing, both defendants were led out of the courthouse handcuffed and in jail jumpsuits by Detective Smith to a police car waiting to take them back to the detention facility to await trial. By coincidence, Joyce was at the courthouse to pay a traffic ticket. She observed Detective Smith escorting both Smoot and Hinton to the police car.

Before the line up occurred, several of Smoot's friends called Law's law office. They wanted to give statements that he was with them out of the state on 6/10/08. Law said he would call them back. Law was busy with other cases and never followed up on the calls.

Detective Smith arranged the line up. He called both Law and Thomas and left messages for them informing them of the date, time and place for the line up. On the day of the live line up, Joyce and Debbie were present along with the prosecutor. Smoot and Hinton were brought on a stage with 7 other inmates. 2 large spotlights illuminated the

stage. Smoot stood under one while Hinton stood under the other light. Law was present but Thomas never showed up. Joyce identified both Smoot and Hinton as the robbers. Debbie only identified Hinton as being one of the robbers. Joyce had told the prosecutor after the live line up that she remembered seeing Smoot and Hinton being escorted outside the courthouse previously.

The preliminary hearing occurred in a jurisdiction that required a preliminary hearing for all defendants even those who were indicted by a grand jury. During the preliminary hearing, both Joyce and Debbie testified. Both identified Smoot and Hinton in court as being two of the robbers on 6/10/08. Neither defense counsel objected to the in court identifications. Law cross-examined Debbie about her in court identification of Smoot and Hinton. Thomas asked no questions. Joyce was never asked nor did the prosecutor ever disclose that she had seen Smoot and Hinton leaving the courthouse in handcuffs on the day she was at court to pay her ticket. At the conclusion of the preliminary hearing, the defendants were held to answer for trial.

Prior to trial, both attorneys made written requests for all relevant discovery including any and all exculpatory information. The case proceeded to jury trial.

During jury selection the prosecutor used all his peremptory challenges to exclude all six African – Americans on the jury panel. The prosecutor explained that he struck one of the black jurors because she frequently visits her stepfather in prison and that she had changed jobs several times in the last 3 years. The prosecutor also explained that he struck another black juror because of the juror's body language and lack of eye contact with the prosecutor during voir dire. The prosecutor did not strike several white jurors who explained that they had relatives who had been convicted of crimes. The prosecutor

never inquired of the black juror why her stepfather was in prison. Both Law and Thomas objected to the prosecutor's use of these peremptory challenges. The prosecutor stated that since neither defendant was African-American they had no right to question the use of his peremptory challenges. The court made no further inquiry. After jury selection the prosecutor returned to his office. On his chair was a hotel receipt in the name of James Smoot for a hotel stay in Colorado on 6/10/08 with 4 people occupying the room. The prosecutor threw it in the trash.

During the trial both Joyce and Debbie testified consistently with their preliminary hearing testimony. Law cross-examined Debbie as to why she did not identify Smoot at the live line up. This was the first time Thomas learned there had been a line up. Joyce disclosed under cross-examination by Thomas that she had seen Smoot and Hinton being led to the police car by Detective Smith at the courthouse and had so advised the prosecution. Both attorneys objected to the late discovery, objected to the in court identifications by both Joyce and Debbie and requested a mistrial. The defense attorney's requests were denied.

After the lunch break, the prosecutor intended on calling one more witness. Before resuming, Hinton stated to the court, "I saw Law rubbing Thomas' leg under the counsel table during jury selection and I want to represent myself." The judge denied that request and made no other inquiries. The prosecutor then called Detective Smith. Detective Smith laid the foundation and introduced Smoot's testimony from the grand jury that he was out with friends, including Hinton, on the night of 6/10/08. The trial ended with neither defendant calling any witnesses. Following argument, instruction and deliberation, both defendants were convicted of the robbery. After their sentencing, the

prosecutor, for the first time, told Law and Thomas about the surveillance tape at the Gas  
n Go and the hotel receipt.

Assuming a timely notice of appeal is filed for each defendant, please analyze any  
and all potential constitutional issues in the convictions of James and Rob.