

EXAM # _____ PLEASE RETURN UPON COMPLETION OF EXAM!

Professor DeWolf
Fall 2006

Criminal Law
December 14, 2006

EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL YOU ARE TOLD TO BEGIN.

THIS EXAM WILL LAST 3 HOURS. Part I is a CLOSED BOOK EXAM, and must be completed using bluebooks (not Examsoft). It will last **90 minutes**. After 90 minutes the proctor(s) will collect your answer to Essay Question 1 and your multiple choice answer sheet. If you finish ahead of time you may read Part II (Questions 2 and 2½) and make notes, but you may not begin writing your answer to it.

Part II is a modified OPEN BOOK exam. It will last **90 minutes**. You may use any notes you have made yourself, your textbook, and any materials that I have distributed to you, either on paper or by posting it on my website. YOU MAY NOT use any commercially printed outlines, hornbooks, treatises, articles, etc., except that you may use up to 50 pages photocopied from such materials.

Bluebook users: Be sure to write your EXAM NUMBER on at least three bluebooks and on the MULTIPLE CHOICE ANSWER SHEET. Start a NEW BLUEBOOK for each question.

Examsoft: Follow the proctor's instructions.

POINTS are assigned based upon the rough number of minutes it should take to complete each section. The division is as follows:

| | |
|----------------------|------------------------------|
| Part I (CLOSED BOOK) | MULTIPLE CHOICE: 65 points |
| | <u>Question 1: 15 points</u> |
| Part II (OPEN BOOK) | Question 2: 65 points |
| | Question 2½: 15 points |
| | ===== |
| | TOTAL 160 points |

The MODEL PENAL CODE applies to all multiple choice questions and Question 2.

(1) MULTIPLE CHOICE. Please select the *best* answer. Some answers may give a wrong reason for an otherwise correct result. Make sure that you read *all* the answers thoroughly and select the one that comes closest to a correct statement of the law.

(2) ESSAYS. You will have three essay questions. Question 1 asks for your reflection on a question involving some policy aspect of criminal law. Question 2 will ask you to assess criminal liability under the Model Penal Code given a hypothetical set of facts. Question 2½ asks you to describe how your analysis of criminal liability would change if the jurisdiction in which the hypothetical arose had rejected one or more features of the Model Penal Code.

GOOD LUCK! MERRY CHRISTMAS!

MULTIPLE CHOICE

(Total: 65 points)

1. Donna goes to a party and asks her friend to bring her a non-alcoholic beer. Unbeknownst to Donna, the friend returns with a pitcher of ordinary alcoholic beer. After consuming several glasses, Donna gets into a car and, because of her intoxication, she loses control and causes injury to Victim. Under the Model Penal Code, which of the following is true?

- (A) Intoxication would be a defense to any crime that requires proof of knowledge or purpose;
- (B) Intoxication is not a defense so long as it is voluntary;
- (C) Donna's actions were involuntary and therefore could not be the basis for criminal liability;
- (D) Intoxication would not be a defense unless Donna used reasonable care in determining whether the beer contained alcohol.

2. Leonard killed James; at the time Leonard believed that James was about to attack him with a butcher knife. Under the Model Penal Code,

- (A) Leonard would be entitled to defend himself unless there was an opportunity to retreat;
- (B) Leonard would be entitled to defend himself but only if his belief was both honest and reasonable;
- (C) Leonard could be convicted of negligent homicide if he was negligent in forming the belief that James was about to attack him;
- (D) None of the above.

3. Adam is mad at his girlfriend Jill and wants to punish her. Adam tells his friend Carl that Jill wants to have sex with Carl but will pretend to be asleep. Adam then drugs Jill and tells Carl that Jill is ready for him. Carl enters Jill's bedroom and has sexual intercourse with her. Under the Model Penal Code,

- (A) Carl could be convicted of rape if he negligently failed to discover that Jill was unconscious;
- (B) Adam could not be convicted of rape;
- (C) Adam could be convicted of rape even if Carl didn't commit rape;
- (D) All of the above are true;
- (E) None of the above is true.

FACTS FOR QUESTIONS 4 to 7

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

A statute reads as follows: "A person is guilty of child molestation in the first degree (a second-degree felony) when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old."

4. Could Tom could be found guilty of attempted 1st degree child molestation?

- (A) Yes, if Tom actually believed "Heather" was ten years old and hoped to engage in sexual contact with her;
- (B) Yes, but only if Tom came "dangerously close" to committing child molestation;
- (C) No, because Tom did nothing that was "strongly corroborative" of an intent to commit child molestation;
- (D) No, if "Heather" was actually a police officer.

5. Could Sarah be convicted of attempted child molestation?

- (A) Yes, if Sarah was at least reckless in facilitating Tom's contact with "Heather";
- (B) Yes, if Sarah actually knew that Tom would use the Internet to contact children;
- (C) No, because Sarah never took a substantial step toward completing the offense;
- (D) No, unless Sarah had the purpose of facilitating Tom's efforts to have sexual contact with children.

6. An additional statute provides that "A person is guilty of aggravated child molestation (a first-degree felony) when the person has, or knowingly causes a minor to have, sexual contact with another who is less than twelve years old, and such person has previously been convicted of an offense involving sexual contact with a minor." Can Tom be convicted of violating this statute?

- (A) Yes, even if Tom reasonably believed that his previous conviction was invalid;
- (B) Yes, even if Tom reasonably believed that "Heather" was above the age of 12;
- (C) No, because Tom never had sexual contact with "Heather";
- (D) No, because sexual contact with "Heather" would constitute a "legal impossibility."

7. Suppose Sarah knew that Tom was seeking to have sexual contact with "Heather" but didn't know she was 10 years old. If she loaned Tom a car in order to facilitate Tom's rendezvous, could she be convicted of conspiring to commit aggravated child molestation?

- (A) No, because she didn't have the requisite mens rea for one of the material elements of the crime;
- (B) No, so long as her ignorance of "Heather's" age was not reckless;
- (C) Yes, if she agreed with Tom that he would have sexual contact with "Heather";
- (D) The Model Penal Code is ambiguous on this point

8. Michael drove a school bus carrying 28 children. As he came around a corner, a tire exploded; unless he drove into the other lane, the bus would slide off the cliff and fall 1000 feet, killing everyone aboard. However, a car was in the other lane. Michael knew that if he hit the car it would go over the cliff. Despite this, Michael steered his bus into the other lane, the other car went over the cliff, and the driver of the car and his passenger were both killed. In a prosecution of Michael for murder, Michael's best argument would be:

- (A) He chose the lesser of two evils;
- (B) He was operating under duress;
- (C) Michael was not negligent in the rupture of the tire;
- (D) Michael was entitled to use force, even deadly force, if he reasonably believed his life was in danger.

9. Mona has been asked by her boss to take a barrel of liquid from the plant where she works and dispose of it in her backyard, which is in a rural area. She does so. Mona is later charged with violating a statute that states: "A person commits a third degree felony when he knowingly disposes of toxic waste." Which of the following is true?

- (A) Mona could not be convicted if she didn't actually know the contents of the barrel;
- (B) Mona could not be convicted if she knew the contents of the barrel but reasonably believed that disposal would not harm the environment;
- (C) Mona could be convicted, but only if her boss was held vicariously liable;
- (D) Mona could be convicted if she was aware of a "high probability" that the contents of the barrel were toxic.

10. York kidnapped Lisa, and after robbing her, strangled her and left her for dead on a deserted road. Unbeknownst to York, Lisa was still alive, and recovered enough to begin walking back to town. However, she was subsequently discovered by Woods, an escaped prison inmate, who stabbed her fatally with a knife. If York were prosecuted for murder, which of the following is true:

- (A) York could not be convicted because Woods, not York, actually killed her;
- (B) York could not be convicted if his actions did not proximately cause Lisa's death;
- (C) York could be convicted of murder so long as Woods was also convicted of murder;
- (D) York could be convicted if the jury finds that his actions were "an antecedent but for which the death would not have occurred."

11. Mike and Jim conspire to steal a sports car. Mike locates an expensive sports car that is parked on the street and tells Jim about it, who then acquires tools to hot-wire the ignition. Mike subsequently gets cold feet about the theft, and tells Jim that he will not have anything further to do with it. Jim then steals the car, but is quickly captured. Jim then tells police about Mike. Which of the following is true?

- (A) Mike can avoid conviction of theft if he manifested a "complete and voluntary renunciation of his criminal purpose";
- (B) Mike can avoid conviction of theft by showing that he didn't actually steal the car;
- (C) Mike can be convicted of theft;
- (D) Mike can be convicted of conspiring to commit theft, but not of theft itself.

12. Joan has been a long-time user of heroin. She locks her four-year-old son Larry in a closet to punish him and, after injecting herself with heroin, falls asleep. There is so little oxygen in the closet that Larry suffers permanent brain damage. In a prosecution of Joan for aggravated assault ("causing serious bodily injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life"), which of the following is true?

- (A) Joan could defend by showing that falling asleep was not a voluntary act;
- (B) Joan could defend by showing that she was intoxicated at the time;
- (C) Joan could defend by showing that long-time use of heroin had resulted in a permanent mental disorder that caused her to lack substantial capacity to appreciate the wrongfulness of her conduct;
- (D) None of the above.

ESSAY QUESTION

QUESTION 1 (15 points)

The following is the beginning of a law review article:

"When life-sustaining hydration and nutrition is withheld from an incompetent and immobile patient like Terri Schiavo, death comes to the patient by dehydration within about two weeks. Americans should be permitted to arrange for euthanasia at that point, as opposed to merely dehydrating to death, and should be able to incorporate their desire for euthanasia into an advance directive. A state constitutional right of privacy could provide the legal avenue permitting effectuation of such a choice."

Please comment, including a description of the policy debate on this issue.

END OF THE CLOSED BOOK PORTION OF THE EXAM

OPEN BOOK PORTION OF THE EXAM

QUESTION 2 (65 points)

You have been assigned to represent Derrick Shareef, a.k.a. Talib Abu Salam Ibn Shareef, who has been charged with violation of the following statute found in the Evergreen Penal Code:

Criminal Use of Explosives

"A person is guilty of criminal use of explosives when he maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property.

"Criminal use of explosives is a second degree felony, except when, personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, in which case it is a first degree felony; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, it is a first degree felony punishable by death."

Please read the affidavit submitted by the Special Agent in the Evergreen Bureau of Investigation that is attached to this exam. Assume that Evergreen has adopted all of the Model Penal Code provisions, but do not address any of the crimes listed in MPC §§ 210 through 251. Based on the information contained in the affidavit, please analyze the liability that Shareef faces with respect to the above statute, and any defenses he might raise.

QUESTION 2½ (15 points)

How would the analysis of Question 2 have been different if the relevant Model Penal Code provisions were not followed in your jurisdiction?

STATE OF EVERGREEN)

) ss

COUNTY OF BAKER)

AFFIDAVIT

I, Jared Ruddy, Evergreen Bureau of Investigation, being duly sworn, state as follows:

1. I am a Special Agent in the Evergreen Bureau of Investigation (“EBI”) and have been so employed for more than two years. I am currently assigned to an EBI Counterterrorism squad. My duties include the investigation of individuals who criminally violate the criminal laws of the State of Evergreen. The information contained in this affidavit is based on personal knowledge, information supplied to me by other law enforcement officers, conversations with a confidential source that participated in this investigation, and review of certain documents and records related to this investigation.

Background of the Investigation

2. Beginning in September 2006, DERRICK SHAREEF, a.k.a. Talib Abu Salam Ibn Shareef (“SHAREEF”) became acquainted with an individual in Stoneford, Evergreen. During the course of their acquaintance, SHAREEF advised this individual that he (SHAREEF) wanted to commit acts of violent jihad against targets in the United States as well as commit other crimes in order to obtain funds to further his (SHAREEF’S) goals of violent jihad. Unbeknownst to SHAREEF, his acquaintance (“CS”) was cooperating with the EBI.¹ During their acquaintance, SHAREEF advised the CS that he (SHAREEF) wanted to obtain weapons to commit violent

¹ The CS has provided credible and reliable information to EBI in the past which has been corroborated through various means including surveillance and the review of taped conversations.

jihad. The CS advised SHAREEF that he (the CS) had a friend who was able to obtain weapons and that he (the CS) would introduce SHAREEF to the friend. In fact, the CS's purported friend was an undercover law enforcement agent ("UCA")

SHAREEF and the CS Discuss Potential Targets and Visit CherryVale Shopping Center

3. On or about Wednesday, November 29, 2006, in a recorded conversation, SHAREEF and the CS discussed SHAREEF's goals regarding an attack.² The CS said to SHAREEF: "When you were talking to me earlier, you seemed really upset." SHAREEF responded: "I was already upset from previous things." The CS then asked: "So, what you wanna do? I was thinking about it upstairs." SHAREEF responded: "A target? ...I want some type of city hall-type stuff right now, court houses." The CS then asked: "I didn't know how serious you are, 'cause I gotta know..." SHAREEF interrupted: "No, hell no, I don't talk calm when it comes to this. I'm talking about stuff that's like...'cause man the courthouse in Linden where I be going every month them n***s [N-word omitted] do weak as hell. You go in there and you clock the first three n***s at the door that they got, and you up in there, you know what I'm saying? And everything else is gonna have to be tactical. But see when you dealing with stuff like that, the courthouse, there's always a PD [police department] right down the block. Know what I'm saying? I just want to smoke a judge." After some additional discussion, the CS asked SHAREEF: "When you wanna plan on doing this? Because we have to make specific plans and dates, time." SHAREEF responded: "Well, I wanna case one first, we can case one when you get the car back." The CS then asked: "What about time frame? ...'Cause you got to

² Throughout this affidavit, I will provide my interpretation of the contents of various recorded conversations. My interpretation of these conversations is based upon my training and experience as an agent, my knowledge of the investigation to date, my conversations with the CS, the context of the recorded conversations, and my conversations with other law enforcement agents experienced in criminal investigations. Further, any transcriptions of conversations are in draft form and have not been finalized.

prepare for everything.” SHAREEF responded: “What do you think? I like the Holiday season.” A few moments later, SHAREEF stated: “You gotta do stuff, hell we ain’t gotta hit nobody, just blow the place up. You gotta do stuff under severe weather conditions. That helps too. Doing stuff in the snow, rain because you see less pigs out there. That’s tactical.” Later in the conversation, SHAREEF stated: “I’m thinking stuff like courthouses, city hall, government places, government facilities.” The CS then asked: “So, you serious,” and SHAREEF responded: “I’m serious...”

4. The following day, on or about Thursday, November 30, 2006, at approximately 6:00 p.m., the CS advised SHAREEF that he (CS) had received a call from the UCA.³ The CS stated that the UCA had asked during the call whether SHAREEF planned to purchase any weapons from the UCA. The CS and SHAREEF then engaged in a discussion about places where they could conduct an attack against civilians. Specifically, the CS then asked if SHAREEF believed it was a better idea to “hit the mall,” and SHAREEF responded that the mall was “just one potential place.” The CS then stated: “I mean, alright, we gotta look at it this way, we want to disrupt Christmas.” SHAREEF responded: “Oh hell yeah, the mall is where it’s at.” The CS then asked SHAREEF if he believed that they needed grenades for the attack, and SHAREEF responded that they did. The CS stated: “You go in there and toss a grenade, and no one’s gonna know who did it.” SHAREEF responded: “No one’s gonna be expecting no s*** like that.” SHAREEF then stated: “The last thing anybody gonna be thinking about at the mall is a damn grenade.” Later in the conversation, the CS asked SHAREEF: “What targets you wanna hit, the mall’s good?” SHAREEF responded: “Any place that’s crowded, like a mall is

³ During this investigation, the EBI provided the CS with an audiotaping device that the CS has used to record many of the conversations he has had with SHAREEF. Several of the conversations described in this affidavit between SHAREEF and the CS were captured by this audiotaping device.

good, anything, any government facility is good.” SHAREEF told the CS: “I swear by Allah man, I’m down for it too, I’m down for the cause, I’m down to live for the cause and die for the cause, man.” In the same conversation, SHAREEF stated: “Here, we’re gonna check out some places, see where you could possibly lob one, do you toss it, do you, could you just sit it down and tip off, speed walk away.”

5. At approximately 6:15 p.m., on November 30, 2006, EBI surveillance personnel who were following SHAREEF observed SHAREEF and the CS arrive at the CherryVale Shopping Center in Stoneford, Evergreen. As they arrived at the mall, SHAREEF and the CS continued their conversation which was still being recorded. Specifically, SHAREEF stated: “I think, ah, if we do, do something like this, we gotta do, we gotta do it simultaneously, like you would have to hit one spot and I’ll do another one.” The CS responded: “That’s fine.” SHAREEF then stated: “Just meet back up, so it would create more pandemonium, and nobody will really be looking at, you know, nobody will be looking for anyone suspicious ‘cause it’ll be 80 million people running.” SHAREEF and the CS then continued walking around the mall property and discussing the layout of the mall. While they were in the mall, the CS asked SHAREEF: “But if you ever wanna back out, ‘cause you gotta let me know before I make the phone call, ‘cause I’m checking your heart now...‘Cause I have to call my boy, man.” SHAREEF responded: “I’m down.” The CS then stated: “We ain’t gonna get caught, don’t worry.” SHAREEF responded: “I’m not worried about getting caught, not alive.” The CS then stated: “If we die, then we die.” SHAREEF responded: “I’m gonna fast for like three days before.” During this conversation at the mall, EBI surveillance personnel were following SHAREEF.

SHAREEF and the CS Visit the CherryVale Shopping Center a Second Time

6. The following day, on or about Friday, December 1, 2006, the CS advised SHAREEF: "He said he had an order for 11...11 pineapples." SHAREEF responded: "S***, did he do that so he could give 'em to us wholesale?" The CS stated: "No, he said that he'd sell them to us for \$50 a pop." The CS then stated: "You can change the time up to 15 seconds." SHAREEF asked: "How do you do that?", and the CS responded: "You gotta listen." SHAREEF then responded: "And then explode." The CS then stated: "He said the longer you take, the harder the pin, the harder the hammer." SHAREEF responded: "So that s*** gonna be like Boom!" Based on my training and experience as well as the context of the call, I believe that the CS and SHAREEF were discussing purchasing hand grenades from the UCA. Specifically, I believe that the CS and SHAREEF were discussing the timing mechanism on the grenades which SHAREEF and the CS intended to purchase from the UCA. Approximately fifteen minutes after the preceding part of the discussion occurred, the CS and SHAREEF got into the CS's vehicle. The two men then engaged in a discussion about shaving their body hair and meditating to prepare. Based on my training and experience as well as the context of the call, I believe that the CS and SHAREEF were discussing the preparations they would undertake prior to committing an attack.

7. A few minutes after SHAREEF and the CS discussed shaving their body hair and meditating, SHAREEF stated: "I'm ready man, these Kafirs [a term translated as "infidel"] don't give a damn about us, n***s don't care what happens to the Umma [an Arabic word meaning community or nation that is commonly used to mean the collective nation of Islamic states], about sisters getting raped, about brothers losing their (unintelligible). They don't care, man. All they care about is (unintelligible)...I probably would have eventually ended up just stabbing the

s*** outta some Jews or something. Just stabbing them n***s with a steak knife. Dude, I ain't gonna lie. Because during that war with Hezbollah, man, I had already started to look at synagogues out here and in the Linden area and everything. I was looking at synagogues, I was doing Mapquest...One of them was down the block from the masjid [mosque]. I knew that they do their thing on Saturdays, right. I was like, I'm gonna lay low out here. I'm gonna camp out overnight, be out there on Friday night after Jumma" [Friday prayer] or Saturday morning about 12:00 or 1:00 o'clock, I be there. An as soon as I see them fools going in the building, I had planned on trying to grab one, depending on how it was. N***s trying to run in the building all at once and open up shop, I was just going to go over there and shank one or two of them." A few minutes later, SHAREEF stated: "They definitely gonna know that this s*** ain't over, and they not as safe as they thought."

8. Several minutes later, SHAREEF and the CS arrived again at the CherryVale Shopping Center. When they arrived at the mall, the CS stated: "This place gonna be tore up in about two weeks." SHAREEF responded: "Damn, dude, n***s gonna be gloomy as hell out here. I don't know how the nationwide effect gonna be, but..." The CS then asked: "You don't think it's gonna be gloomy nationwide?", and SHAREEF responded: "I don't think it's gonna be gloomy nationwide like 9-11..." The CS then asked: "You don't think so?" SHAREEF answered: "No, not this. This ain't big enough. It's big enough here locally." At about the time this conversation was taking place, FBI surveillance personnel observed SHAREEF and the CS enter the mall. After they entered the mall, SHAREEF and the CS walked around the mall measuring the amount of time it would take to walk from one point in the mall to other points. The two men also discussed placing grenades in the garbage cans at the mall. At one point in the conversation, SHAREEF stated: "It would be hard trying to do three, though, 'cause that's three pins you gotta pull." The CS then stated: "I'm glad you came up with the idea, though, the

garbage can. That's sweet," and SHAREEF responded: "That's pandemonium. The garbage going to be shrapnel." A few minutes later, the CS stated: "Don't forget, man, we should get the grenades some time next week," and SHAREEF responded: "Yeah." The CS then stated: "So you should try to get as much flous [an Arabic term for money] as you can get 'cause we need it", and SHAREEF responded: "I got a little change in the bank." The CS then stated: "All you need is like \$100, that's two grenades", and SHAREEF answered: "I'm pretty sure I can get more than that from my sister." Several minutes later, SHAREEF stated: "If Allah wills a lot of people around that garbage can, that place is crowded." The CS responded: "It's gonna be crowded and that can is going to blow that whole area out. Upstairs and everything. You know that. And your favorite term is sprinkler system coming on." SHAREEF laughed, and stated: "Sprinklers coming on."

SHAREEF Makes a Videotaped Statement

9. The following day, on or about Saturday, December 2, 2006, EBI surveillance personnel observed the CS and SHAREEF driving around Stoneford in the CS's vehicle. During this period that SHAREEF and the CS were driving in the CS's vehicle, the CS and SHAREEF discussed providing a set of stereo speakers that SHAREEF owned to the UCA in exchange for four hand grenades and two handguns. Again, the two men discussed their plans to detonate the grenades in the garbage cans in the mall. Specifically, the CS stated: "I told him just to get us four grenades. You think that'll be enough?" SHAREEF responded: "Yeah, and the sidearms, right." SHAREEF then asked the CS: "How much do we need for 'Cap' [the UCA]?" The CS answered: "He didn't say, I think what he gonna do is just take the speakers and say 'even,' you know what I am saying, for the grenades and the two pistols." During this conversation, the CS asked SHAREEF if he (the CS) died before the attack, would SHAREEF carry the attack out on his own. SHAREEF responded: "Uh huh. I'll still do this." After this part of the conversation

occurred, SHAREEF and the CS arrived at a residence where SHAREEF kept the speakers. At the residence, SHAREEF and the CS obtained a set of speakers.

10. Later that day, on or about Saturday, December 2, 2006, the CS and SHAREEF each videotaped each other making statements. Agents assigned to this investigation obtained a copy of the video from the CS and have viewed it and transcribed it. In the video, SHAREEF states: "This may be my last will and testament, the last words that I have spoken to those who know me, to those who do not know me. My name is Talib Abu Salam Ibn Shareef. I am 22 years of age. I am from America, and this tape is to let you guys know, who disbelieve in Allah, to let the enemies of Islam know, and to let the Muslims alike know that the time for jihad is now....Be strong, oh Mujahideen. Be strong oh brothers who want to fight for jihad....This is a warning to those who disbelieve, that we are here for you, and I am ready to give my life....May Allah protect me on this mission we conduct...So do not cry, do not mourn for me. Do not believe what the kafir [infidel] will say about me when you read in the newspapers and when you see the television articles about me. Do not believe this. Understand that your son is a strong man...who believes and fears his Lord to the degree that he will give his life." Based on my training and experience, it is common for individuals planning attacks on civilians as part of violent jihad to make videotaped statements.

11. On or about Monday, December 4, 2006, the UCA contacted the CS by telephone. This call was recorded and an initial transcription of the call has been prepared. In the call, the UCA asked the CS if he could speak with SHAREEF. The UCA then asked SHAREEF: "So, you're finally ready to do something, huh?" and SHAREEF responded: "Yeah, we ready to put it down." The two men then agreed to exchange the stereo speakers for the weapons. The UCA then stated: "What I got lined up for you, is a, I got four of them pineapples, and then I got that 9..." SHAREEF responded: "Alright." The UCA then stated: "So I'm gonna try and get you

that. But, it's gonna work out nice, so we should be all set." SHAREEF responded: "That's good news, man. This is good news." The UCA then advised SHAREEF: "I'm gonna roll through on Wednesday – I'm gonna roll through there." Based on my training and experience as well as the context of the call and my discussions with the UCA, I believe that the UCA and SHAREEF were discussing the delivery of four hand grenades and a hand gun to SHAREEF on Wednesday, December 6, 2006.

12. On or about Wednesday, December 6, 2006, at approximately 11:50 a.m., the UCA contacted the CS by telephone and asked the CS if he (the CS) and SHAREEF were ready to meet to exchange the stereo speakers for the weapons. The CS responded that he (the CS) and SHAREEF were ready. The CS and the UCA then agreed to meet at a store parking lot located on Walton Road in Stoneford, Evergreen a short time later. At approximately 12:25 p.m., agents assigned to the investigation observed the CS and SHAREEF arrive at the parking lot where the UCA was already waiting. After the CS and SHAREEF arrived, the UCA, SHAREEF, and the CS greeted each other near the CS's car. (This meeting was recorded in video and audio format.) SHAREEF then opened the trunk to the CS's vehicle and showed the UCA a set of speakers. After a brief discussion about the speakers, SHAREEF picked up the speakers and carried them to the open trunk of the UCA's vehicle. The CS did not walk with SHAREEF and the UCA to the UCA's car. At the trunk of the UCA's vehicle, the UCA advised SHAREEF that he had locked the weapons in a lock box, and he kept them in a lock box in the event police ever stopped him. The UCA then opened a lock box in the trunk of his vehicle and showed SHAREEF four non-functioning grenades, a 9 millimeter hand gun, and several rounds of non-functioning ammunition. SHAREEF and the UCA then discussed the operation of the grenades. Specifically, SHAREEF asked the UCA how long between the time the grenade pin was pulled and the time that the grenade went off. The UCA explained that the time was approximately

three to five seconds. The UCA then closed the lock box, SHAREEF took key to the lock box, and SHAREEF picked up the lock box. SHAREEF then placed the lock box containing the purported weapons inside the trunk of the CS's car. At the time that SHAREEF placed the lock box in the trunk, the UCA gave a pre-determined signal to agents who were surveilling the transaction, and the agents arrested SHAREEF without incident.

FURTHER THE AFFIANT SAYETH NOT

Jared Ruddy

Special Agent, EBI

Sworn to me before and subscribed in my presence on this ____ day of December 2006.

United States Magistrate Judge

EXAM NUMBER _____

MULTIPLE CHOICE ANSWER SHEET

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TEAR THIS OFF AND PUT IT IN YOUR BLUEBOOK!