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529 Criminal Procedure I
Semester I, 1998-99

UNM School of Law
Final Examination
Three Credits

Professor Elizabeth Rapaport
Saturday, December 12, 1998
Wednesday, December 16, 1998
9:00 a.m. to 12:30 p.m.

INSTRUCTIONS

This is a three and one-half hour exam. The question is designed to be answered in three hours. There is an additional one-half hour for organizing and preparing your answer.

In preparing your answer, you may consult any class materials, including casebook, notes or outlines prepared by you or you working with classmates, and any treatise or hornbook; you may not consult commercial outlines or old outlines prepared by students in years past.

There is **one** question. In answering, restrict yourself as much as possible to the given facts. If additional facts are needed, state what they are and why they are necessary for your analysis, but do not change the facts stated.

Please write legibly, in ink, on one side only of each bluebook page, and please write on every other line only. Check to make sure your copy of the exam contains all five pages including this page.

GOOD LUCK!

[EXAM BEGINS ON NEXT PAGE]

Question

At 8 p.m. on the evening of September 11, 1996, Ciudad del Duque police officer Richard Parker was approached by an anonymous informant, whom he had never seen before, who told Parker that he/she had walked past a first floor apartment window in the Arms of Morpheus Garden Apartment Complex, Apartment 103, 3456 Arroyo Seco Drive, and observed two men and two women seated around a table "bagging" a white powder. All four were young, the informant told Parker, both women were blond, one of the men was Hispanic.

Officer Parker went to the apartment complex immediately and approached the ground floor windows of Apartment 103. From the common sidewalk that led to the apartment complex's entrance, he could see two windows belonging to one of the rooms of Apartment 103. On one window the blinds were drawn closed; on the other the blinds were open. Through the unobstructed window he could see a young woman with dark hair, seated, and nothing else of any interest. Parker left the sidewalk, and walked across the grassy common area, and walked behind some bushes until he was next to the window with the blinds drawn, being careful not to be seen through the unobstructed window. When he stood at a distance of about one foot from the window, he could see through gaps in the closed blinds. He was thus able to observe, although it took some squinting and craning of his neck, that there were three people seated around a dining room table, the dark-haired woman, whom he had already observed through the unobstructed window, and two blond men, one young and one who looked to be about 40 years of age. The three were engaged in bagging a white powder in clear plastic baggies. Officer Parker telephoned Officer Blas Fernandez, of the Metro Drug Task Force and related to him his conversation with the anonymous informant and his own observations. Officer Fernandez instructed Parker to keep the apartment under surveillance, and said that he would prepare an affidavit and meet him in front of the apartment complex as soon as he could obtain a search warrant. Officer Parker returned to his patrol car, joined his partner, Officer Tab Hunter, and commenced watching and waiting for Fernandez and the search warrant.

In about half an hour, three people emerged from the apartment entrance; the younger man Parker had seen through the window and two red-headed women. They got into a Jeep Cherokee and drove off. Parker and Hunter looked at each other in consternation! Parker got on the radio and told the dispatcher that they were following the Jeep and that officers should be dispatched to maintain surveillance at 3456 Arroyo Seco immediately. The Jeep turned the corner onto Lincoln Blvd and the patrol car followed. Once on Lincoln the Jeep sped up to about 40 miles an hour. The posted speed limit was 35 miles/p/h; Parker ordered the Jeep to pull over to the curb. He and Hunter got out of their car and approached the Jeep.

Parker was certain that the driver was the young male he had seen through the gaps in the blinds in Apartment 103, but he did not recognize either of the women passengers. One of the women was seated beside the driver of the Jeep; the second was

seated behind them in the back of the passenger compartment. Parker asked the driver for his license and registration, which was supplied, and then issued a citation for excessive speed. Having done this he then elected to search incident to the issuance of a traffic citation, an election which has been consistently upheld by the Enchantment Supreme Court (Ciudad del Duque is of course in the State of Enchantment). The Enchantment Supreme Court has held that Enchantment Code section 805.1(4) provides authority to search when a traffic violation has occurred that would constitute grounds for arrest, regardless of whether an arrest was actually made or in fact a citation was issued instead. Parker ordered the driver and passengers out of the car. At this point Parker told Hunter to pat down the driver, George Stephanopoulos, and the two women, "to see if there were any weapons or anything." No weapons or contraband were found. But underneath the driver's seat the officers found a zippered dufflebag which contained a handgun, baggies of white powder later determined to be cocaine, a scale, three pagers, and credit cards. While searching the rear seat the officers found a lady's cloth purse, which they opened. Inside they found identification belonging to Gennifer Flowers, who had been the rear seat passenger, and a smaller closed zippered bag which they opened and in which they discovered drug paraphernalia and a vial of liquid later established to be methamphetamine. George Stephanopoulos and Gennifer Flowers were arrested. The second woman, Paula Jones, was released.

Parker alerted Fernandez to these developments, and Fernandez, Parker and Hunter proceeded with other officers to Apartment 103 at the Arms of Morpheus apartment complex at approximately 10:30 p.m. They knocked, announced themselves, were admitted and arrested both occupants. These were the leaseholder, Kathleen Willey, and James Carville. Carville, who lived in Taos, had driven to Ciudad del Duque with Stephanopoulos. Carville and Stephanopoulos were in Willey's apartment for no more than 3 hours at the time of their arrest. Stephanopoulos and Carville had driven down together from Taos with the cocaine and gone to Willey's apartment to prepare the drugs for distribution. Willey allowed this because Carville was her boyfriend. While Stephanopoulos had never met Willey before or been at her apartment, Carville was a frequent visitor, often living there for a days at a time.

Fernandez gave Carville and Willey Miranda warnings; Willey and Carville both stated that they wanted lawyers. Willey also wanted to call her sister to take her seven year old son, who was sleeping in another room. While Parker and Hunter left with Carville, Fernandez remained with Willey to determine what to do about the child. "Lady," said Fernandez, "I can't be responsible for leaving a child with your sister, who is probably another dope peddler; we had better take the boy down to Juvi and arrange for foster care." Willey responded, "No, no, believe me, my sister is not involved with drugs at all; It's just George, James and me."

While driving to the stationhouse Hunter said to Parker, "I really feel sorry for both Willey and her son; that child will be lucky if his mom is out in time for his high school graduation." "A terrible situation," agreed Parker, and turning to Carville, who was riding in the back of the patrol car, Parker said, "I guess you are really proud of yourself, Carville, for getting your lady in all this trouble. What kind of a man are you,

anyway?" At this point, Carville said he wanted to make a statement. He was taken to an interrogation room at the stationhouse in short order. He signed a waiver, and then gave the police a detailed account of the drug trafficking, implicating himself and Stephanopoulos; throughout his statement he stressed that Willey was not involved in any significant way, that she had not known about his dealing, didn't want anything to do with drugs, was to receive no profit, made him promise never to bring drugs to her home again, and threatened to leave him if he ever dealt again.

At approximately 3 a.m. on September 12th, police executed a search warrant on Apartment 103, obtained on the basis of Fernandez' affidavit relying on Parker's conversation with the anonymous informant and his subsequent observations through the windows of 103. The police found cocaine residue on the dining room table and plastic baggies of the same size and brand as those found in the Jeep driven by George Stephanopoulos. Officer Parker subsequently identified James Carville as the older male he had observed through the gaps in the blinds seated at the table bagging white powder, and Kathleen Willey as the dark-haired woman he had observed, first through the unobstructed window while standing on the sidewalk, and then through the gaps in the blinds.

In the morning Carville, Stephanopoulos and Willey were arraigned on charges of possession of cocaine with intent to sell. They were represented by counsel, and each remained in custody while they attempted to arrange bail.

Several hours later, Parker and Hunter came to Carville's cell. Carville said, "My lawyer told me not to talk to you guys anymore." We don't want to talk to you about drugs, we want to talk to you about the phoney credit cards we found in Stephanopoulos' car. But, if you don't know anything about the cards, I guess your girlfriend could tell us. By the way, do you know that you are about to become a father? The jail infirmary just confirmed Kathleen is pregnant," Parker lied. Carville felt faint. Parker and Hunter turned and began to walk away. "Don't go. Wait," said Carville, "Kathleen had absolutely nothing to do with those forgeries. Those cards are mine."

Carville and Stephanopoulos were charged, additionally, with credit card fraud. Gennifer Flowers was charged with possession of a controlled substance.

Carville and Willey made motions to suppress all statements they made to the police and Carville, Stephanopoulos and Willey made motions to suppress all evidence seized from both the apartment and from Stephanopoulos' Jeep. Gennifer Flowers moved to suppress the contents of her purse. All motions were denied, and all defendants were convicted on all charges.

Eventually these cases make their way to the U. S. Supreme Court.

You are a law clerk on the U.S. Supreme Court. Justice Smallwit, your boss, asks you to write a memorandum on all the 4th, 5th, and 6th amendment issues that may be raised on these facts by the motions of all four defendants. He also asks you to advise

him on whether the law as it now stands supports the prosecution or defense case on each issue, and additionally, whether constitutional values would be better served by changes in current law. "You know," the justice says, with that infectious grin his friends knew well and which had long ago helped earn him his nickname ("Bubbles"), "I have a hunch that I can leave my mark on legal history in the area of constitutional criminal procedure with these cases. So don't hesitate to write a brilliant legal memo. I am going to the family compound in Maine for the holidays, but I am taking my portable fax. So just dig in and fax me the memo as soon as you're done. Merry Christmas!" "Merry Christmas," you reply gamely, trying, almost successfully, to suppress a groan.