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529 Criminal Procedure I  
Semester II, 1997-98

UNM School of Law  
Final Examination  
Three Credits

Professor Elizabeth Rapaport  
Thursday, May 14, 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.

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 only on every other line. Check to make sure your copy of the exam contains all five pages including this page.

GOOD LUCK!

[EXAM BEGINS ON NEXT PAGE]

The Ciudad del Duque police (CDPD) suspect that Jack Horner is dealing drugs, and indeed is a large scale dealer known in the streets as, "Big Daddy." Police have some evidence of drug dealing by Big Daddy, but only a belief, not evidence, that Jack is Big Daddy. Frustrated by their inability to get that evidence, they devise a plan.

Jack has not been paying child support to his former wife; the law now makes failure to pay child support criminal. A warrant has been issued for Jack's arrest for failure to pay support, and the officers decide to execute the warrant at Jack's home, hoping that they can get inside and see something that might be helpful in their drug investigation.

In April CDPD officers set up surveillance near Jack's house. When they saw Jack arrive and enter, they radioed Officer Olivas, who had possession of the warrant, and he came to the scene. Along with four uniformed officers, he approached the door of Jack's house, knocked loudly and called out, "Police." No one came to the door. After about 20 seconds, the officers forced open the door and entered the house. Officers went in different directions, looking for Jack. One officer stayed on the ground floor level, checking each room. Olivas went upstairs and looked through the bedrooms. A third officer went downstairs to the basement, which he went through; he found an office, but he didn't find Jack. Two officers remained at the exits to prevent escape.

After a short time, Olivas found Jack in the upstairs bathroom. The water had been running, Jack had been singing (That catchy old tune, "Working on the Chain Gang"), and he hadn't heard the officers knock at the door. Olivas placed him under arrest. Officer Parker was checking out the downstairs office. He approached the computer and noticed it was on. In fact, on the screen was a recent e-mail transmission. Parker read the e-mail on the screen. It began, "Hey Big Daddy," and continued in somewhat cryptic language that appeared to be about a drug deliver: "It's all here, and its really fine this time. Ready for pick up and delivery. Waiting to hear re: details. Peace, Miss Moffett." Miss Moffett was known to the police as a drug dealer. Parker began to copy down the message when suddenly the screen went blank and then a screen-saver appeared. Parker hit an arrow key, causing the screen saver to disappear and the text to reappear. He then finished copying the message and joined the other officers upstairs.

After Jack had been placed under arrest, he was searched by one of the officers. A pager was found in his pocket. Olivas took the pager to his vehicle, while Parker placed Jack in another vehicle for transport by two other officers. Olivas and Parker departed together for the station with Parker driving. While Olivas had possession of the pager, it went off. Olivas looked at the number that appeared in the window of the pager and copied it down. A few minutes later, it went off again, and Olivas again read the number and copied it down. From his experience, Olivas knew that the pager was likely to have between 4 and 10 number memory capacity. In order to avoid losing those numbers, Olivas pressed the button on the pager to retrieve the stored numbers. He then recorded each of those numbers. In addition, while they were on their way to the station, the pager

went off a few more times, and each time Olivas wrote down the phone number appearing in the window. The pager was turned in with Jack and his belongings when the officers reached the station.

After Jack was booked, Officers Olivas and Parker continued with the investigation. They called each of the numbers they had copied from the pager, saying, "Big Daddy here," when someone answered the phone. After several hang-ups, someone responded to the ploy, saying, "Hey, man, is the stuff in yet?" Olivas responded, "Yeah, it just arrived and its looking good." The respondent then said, "I'll take half a key (kilo). Same arrangements?," to which Olivas simply responded, "Sure, sounds fine." That was the end of the call, which was taped by Olivas.

At the conclusion of the call, Olivas determined the phone number he had called was listed as a cell phone owned by Don Dealer, who showed an address of 7654 Main St. A computer check revealed that Dealer had been indicted recently for drug conspiracy and was awaiting trial. Olivas was worried; if word got out on the street that Jack had been arrested, they might lose the chance to follow up with Dealer. Accordingly, he and Parker immediately drove to 7654 Main St. in search of Dealer.

When they arrived at Dealer's address, they rang the doorbell and a woman answered. They identified themselves, asked for Don Dealer, and were told he was not at home. They asked if they could come in and look around, to which the woman responded, "I don't know if I can..." At this point she hesitated and seemed to nod or gesture. Olivas realized that she was trying to signal someone who had just arrived, parked in the driveway, and was walking towards the door. Upon seeing the gesture, Dealer, who was halfway up the driveway to the house, turned and began to walk quickly back toward his car. Olivas, who assumed the person was in fact Dealer, immediately followed him, yelling, "Not so fast, we want to talk to you." Olivas caught up with Dealer before he reached his car and put his hand on Dealer's shoulder. Dealer said, "I need to get going." Olivas answered: "You were just coming. And we want a few answers before you go anywhere." Dealer stopped and said, "Look, you don't have any right to hold me. I'm out of here." Olivas responded, "Sorry I don't think so. You're not going anywhere. We know you're involved with Big Daddy, and we know you've had other trouble as well." At that point, Dealer appeared to Olivas as if he might run or attack any minute. So Olivas took out his handcuffs and told Parker to pat down Dealer.

During the pat down, Parker felt what appeared to be a cell phone. Without removing it, he asked, "Is this your phone?," to which Dealer replied, "Yes." Parker asked for the cell phone number and Dealer told it to him. (It Was the same number Olivas had called, the call that had led the officers to 7654 Main St.) Parker asked if his name was Don Dealer, to which he replied, "Yes." When Parker asked what relationship Dealer had with Big Daddy, Dealer said, "I don't think I want to talk about this." At this point, Olivas placed Dealer in handcuffs, gave him Miranda warnings, and began to walk him toward their car to transport him to the station. While doing so, he commented, "You've

got yourself a heap of trouble here, trying to buy more drugs while you've got other charges against you. You just can't stay away from the stuff, can you?" Dealer responded, "Hey, that other deal is a bum rap." He then proceeded to ramble on about the previous drug conspiracy offense, trying to convince Parker he was hardly involved. In doing so, however, he made some incriminating statements regarding the conspiracy that would be helpful in that prosecution as well as some incriminating statements regarding his dealings with Big Daddy.

As Dealer was being taken away to the police car for transport to the station, officers from a back-up unit arrived and began to search Dealer's car, which was still parked on the driveway. They found a small quantity of drugs in a jacket pocket on the back seat, which they seized.

Meanwhile, other officers had prepared an application for a search warrant for Jack's house, seeking to search it for drugs and evidence of drug dealing. The application indicated a belief that a computer in the house had information relating to drug trafficking and requested that files from the computer relating to drug dealing be seized. The magistrate issued the warrant and, when Olivas was finished with Dealer, he took it to Jack's house to be executed. The officers found no drugs or evidence of dealing in the house. The computer, they discovered, had turned itself off. When they turned it on they discovered it was set up to destroy internal files if anyone without the password tried to retrieve any files. Although they were unsuccessful in getting the files, it is possible that a computer expert may eventually be able to retrieve some of the data.

Jack had meanwhile been booked on the non-support charge and was being kept in a cell awaiting his arraignment. When Olivas arrived back at the station, he took Jack to one of the interrogation rooms ( which had one-way glass so that other officers could observe), read him his Miranda rights and asked if he was willing to talk. Jack responded, "that depends upon what you want to talk about." After some casual conversation between the two (about sports and metaphysics, nothing incriminating was said), it became clear Olivas wanted to talk about drugs and drug dealing. At that point, Jack said, "It looks like it might be time for me to have a lawyer here."

Olivas responded, "OK, that's fine. If that's the way you want to do it..." Before he could finish, Parker entered the room carrying a stack (approximately 3 inches high ) of computer printouts. Unbeknownst to Jack, Parker had been watching the conversation between Jack and Olivas through the one-way glass, and his entry had been planned to take place in the event the conversation developed as it in fact did. Olivas met Parker in the doorway and the two whispered for a time, then the conversation got slightly louder, but still appeared as if it were meant to be strictly between the two officers. Of course, it was just loud enough for Jack to hear most of it, which he did.

Jack could hear Olivas say, "It looks like he wants a lawyer, so we'll have to stop." Parker responded, "It doesn't matter. We've got it all right here. What more could we need from him? There's nothing more he can give us other than the name of his supplier, and we're not likely to get that, are we?" Olivas responded to Parker, "You're right. These middle management guys, they never roll over on the big guys. I guess they think they're smart, but they always get left holding the bag. Anyway, if he wants a lawyer, fine. Let's go get this processed."

Olivas turned to Jack and said, "They'll be taking you to be arraigned soon. You'll get your lawyer then." He then turned to leave with Parker. Before they got out the door, Jack called out, "What do you have there?" (He wanted to make sure he had heard the conversation between the officers correctly.) Parker responded, "You don't want to know, but I think you do know what it is." Jack got agitated and said, "#\*%!! Phooey!, that thing was supposed to self-destruct. The whole operation was based on this high level security system that turns out to be garbage. I guess we are all in the soup now." He made a few more incriminating remarks, then thought better it and said, "Maybe you better take me to see that lawyer now." No further conversation ensued, and Jack was taken to be arraigned.

Jack Horner (aka Big Daddy) and Don Dealer are both being prosecuted for a variety of drug offenses. Jack is also being prosecuted for criminal non-support. Prosecutors seek to introduce all evidence and statements just recounted at their trials. Discuss all criminal procedure issues raised by these fact.

THE END