

EXAM NUMBER _____

UNIVERSITY OF LA VERNE COLLEGE OF LAW

Course Name: Criminal Procedure

Instructor's Name: Professors Anderson and Goldstein

Semester/Year: Spring 2007

Date of Exam: May 12, 2007

NO OF QUESTIONS 1
NO. OF PAGES 4
LENGTH OF EXAM 3 hours

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Be sure your exam number is entered on this sheet and all bluebooks in which you write.
Do not put your name on any materials.

No writing or typing will be permitted after time is called.

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At the end of the exam, please put all materials together inside of one bluebook before you turn it in to the proctor.

SPECIAL INSTRUCTIONS: **None.**

MATERIALS THAT MAY BE USED DURING THE EXAM ARE: **None.**

IMPORTANT:

Writers: Write on only one side of page in your bluebooks.

Typists: Show proctor you have ended exam before exiting the room; upload your exam answers within 12 hours.

On April 9, 2007, Lewisburg Police Officer Greer was on routine patrol in a residential area in Lewisburg. On that date Officer Greer had been a police officer for approximately two years. At briefing before his shift began the watch commander advised all patrol officers of the kidnapping of a ten-year-old girl that had occurred on April 7, 2007, near the residential area where Officer Greer would be patrolling. Officers were advised that on April 8, 2007, an anonymous note had been received by the Lewisburg police stating, "You will see the girl when I get \$50,000 in cash." Officers were advised that an eyewitness had described the kidnap suspect's car as a blue four-door sedan being driven by a young male adult. Finally, the officers learned that a search party consisting of Lewisburg citizen volunteers had begun looking for the ten-year-old girl.

At approximately 2:05 a.m. Officer Greer was on patrol when he observed a dark blue four-door sedan driving down "C" Street. Greer noted that the driver was a male approximately 26 years old. Greer observed the vehicle slightly weave within the lane. He was not sure what the driver was doing given his observations. Greer effectuated a vehicle stop using his overhead lights and siren. The sedan complied by quickly pulling over.

Officer Greer approached the driver's side window. The driver complied with Greer's direction to lower the driver's side window and produce license and registration. The valid driver's license identified the driver as Joe Nevada with a residence in a city approximately two hours to the South of Lewisburg. Greer asked Joe what he was doing in Lewisburg. Joe responded that he was visiting some friends but was unable to identify

a specific address where they lived. Joe stated that he was lost and that this was his first time in Lewisburg.

The officer noticed that Joe's speech was slurred and he had bloodshot eyes. Officer Greer directed Joe to step from the vehicle and stand next to the officer's patrol car. In response to the officer's questions, Joe denied that he had consumed any alcohol or drugs. Officer Greer directed Joe to complete a series of field sobriety tests. Upon completion Officer Greer determined that Joe was probably driving under the influence of drugs or possibly alcohol.

Joe was wearing tennis shoes, a pair of jeans, a t-shirt with a pocket and a lightweight jacket. Officer Greer patted Joe down. He felt an object in Joe's t-shirt pocket. It felt like it might be a weapon. Officer Greer pulled it out. It was a small pink hairbrush with a picture of a Strawberry Princess. Officer Greer asked what this was for and Joe stated he used it to keep his hair nice and neat.

Officer Greer placed handcuffs on Joe and directed him to sit on the curb. A second police officer from Lewisburg arrived one hour later to assist and stood by with Joe while Greer searched Joe's sedan. Greer first searched the passenger compartment where he found personal belongings of Joe but no evidence of drugs or alcohol. While searching the trunk of the sedan, Greer located a pair of young girl's underwear and a scrap of paper with a notation: "\$50K".

Greer placed Joe in the back of his patrol unit and transported him in custody down to the Lewisburg Police Station. Greer decided to "book" Joe on driving under the influence. During the booking process, Officer Greer obtained biographical information

about Joe. Greer asked if he had been in Lewisburg before and Joe responded, "Yes, once before."

Joe was then led to an interview room. While being escorted to the room, Joe saw Steve Jones, an old college friend, who was also a lawyer. Jones was there to report that his car had been stolen.

Once in the interview room Joe was properly advised of his "Miranda Rights." Joe indicated that he understood his rights and wished to speak to Officer Greer on two conditions. The first was that Attorney Jones be present for the interview and the second was that Joe would only answer questions about the allegations of driving under the influence.

Officer Greer invited Attorney Jones to join them. For forty-five minutes Greer interrogated Joe about the driving under the influence allegation. Joe maintained that he had not ingested drugs or alcohol that evening. Attorney Jones did not speak during this interrogation. Officer Greer took a break and left Joe and Attorney Jones in the interview room. Jones told Joe that he did not do criminal law and that he specialized in family law matters.

Greer returned to the interview room and advised Joe that he was going to ask him questions about the underwear found in the trunk during the driving under the influence investigation. Joe responded, "I told you I only wanted to talk about the driving under the influence charge." Greer stated, "I want to talk about the underwear." Officer Greer and the Lewisburg Police believed the kidnapped young girl might still be alive. Joe denied any knowledge of the kidnapping or underwear. Greer was standing two feet away from Joe. Smoothly and quickly Greer produced a Q-tip and gently placed

it in Joe's mouth to swab his cheek. It was over before Joe could even object. Greer then left the interview room again.

When he returned, Greer falsely advised both Attorney Jones and Joe that a presumptive DNA test on the swab matched DNA found on the girl's underwear in Joe's vehicle. Greer then left the interview room again. While he was gone, Jones advised Joe to be honest if he knew anything about the girl's disappearance. Greer returned and to Attorney Jones's surprise Joe confessed to the kidnapping, rape, and murder of the girl. Joe disclosed that he buried the young girl's body in a shallow grave on the campus of Lewisburg Public High School. Officer Greer recovered the body the next day in a shallow grave at the location Joe had specified.

All of the foregoing facts in the hypothetical were placed in a properly prepared and executed search warrant signed by a neutral and detached magistrate to search Joe's residence. That search revealed an extensive collection of child pornography.

The matter proceeded to trial. Prior to trial, Joe's new attorney asked for the exclusion of the underwear, the hairbrush, statements made on the scene during the street contact, statements made at the booking, statements made in the interview room, evidence obtained from the deceased victim, and the child pornography. All requests to exclude the evidence and quash the search warrant were denied after a hearing where all witnesses testified consistent with all the facts contained in this hypothetical. Joe was convicted at trial and sentenced to life without the possibility of parole. Joe appeals.

Assuming a timely notice of appeal, please analyze the constitutional criminal procedure issues that should be raised and the government's response.