

Essay – Three Hours

On August 1, 2007, Officer Grey, a City of Upland Police Officer, with experience in narcotics, was assigned to a task force at the Ontario International Airport dealing with narcotics, immigration and terrorism. David Smith arrived at the international terminal of the Ontario International Airport from Mexico with a stopover first at the San Diego Airport. Officer Grey noticed Smith because of his attire and the computer case over Smith's shoulder. Grey approached Smith just before Smith reached Customs check in at the airport and said, "I need to talk to you; and can you step over here." Smith followed Grey about 12 feet to one side of the international terminal where there was a table. Grey asked Smith where he had been, what his business was, and how he had paid for his ticket. Grey also told Smith to set his computer case on the table. Smith replied that he was coming back from Mexico on a business trip for software and paid for his ticket using the company credit card. Grey checked and verified that the ticket had been paid in cash. Grey also noticed that Smith was sweating and shaking.

Grey pulled out Smith's computer from the case. Grey opened the screen and continually hit the "on button" and "enter key" until Smith's computer turned on. Grey noticed a file on the Desktop marked "Private". Grey clicked on the file. It revealed numerous names corresponding to money and the word "Kilo". Based upon all of Officer Grey's observations and the computer file Smith was placed under arrest. Smith was taken to a small room in the airport used for booking arrestees. While obtaining Smith's biographical information, Grey asked where Smith's car was located. Smith told him the vehicle was in long term airport parking in a lot 10 miles away from the airport. Grey drove to the parking facility and found Smith's vehicle. Surprisingly, a small carry

on bag was next to the vehicle. The long-term airport parking facility had a requirement posted that all abandoned baggage left outside of vehicles would be collected, opened and inventoried.

Using Smith's keys, Officer Grey unlocked the car and searched the interior. Officer Grey found no contraband. Officer Grey then searched the trunk of the car. He located a one-gallon zip lock bag containing what was later determined to be methamphetamine. Officer Grey took the small carry on bag back to the international airport booking room where Smith was being held. Grey asked Smith for consent to open the bag, but Smith refused. Officer Grey opened the bag anyway and discovered numerous photos of obvious child pornography in which the children's faces had been digitally scrambled so as to not be identified.

Officer Grey then properly advised Smith of his Miranda rights. Smith said he wanted to talk to a lawyer. Officer Grey escorted Smith outside of the international airport building to Grey's unmarked car in order to transport him to the West Valley Detention Center. Accompanying Grey and Smith was Officer Jones from the same task force that Officer Grey was assigned. They were partners. During the ride to the jail, Smith said, "What is this going to do to my career?" in a tone loud enough for Officer Grey to hear. Officer Grey said nothing. About two minutes later just as they were pulling into the jail parking lot, Grey (who had taken classes in human psychology) said to Officer Jones, "It's a shame we cannot identify those kids in the photos. I would want to check on their well-being. Their parents would want counseling for them."

Officer Grey stopped the car. Prior to taking Smith into West Valley Detention Center, Grey asked Smith about the methamphetamine and the vehicle. Smith denied any

knowledge about either one. Grey responded, "But you told me about the location of the vehicle when I booked you at the airport." Smith then confessed to knowing about the methamphetamine and for taking the photos of the children found in the carry on bag. He further identified a locker in the airport where he stored additional child pornography. Smith indicated that locker #34 belonged to his brother, Dan Smith, and that David Smith knew the combination and stored the pornography in there without his brother's knowledge. David Smith gave consent to Officer Grey to search the locker. Grey used the combination that David Smith provided to open and search the locker. Inside the locker, Grey found additional child pornography and several forged identifications in the name of Dan Smith

The matter proceeded to trial. Prior to trial, the attorney for both David Smith and Dan Smith (they properly and constitutionally waived any conflicts) asked for the exclusion of the methamphetamine, the computer, the child pornography photos found in the carry on bag, any and all statements made at the airport, any and all statements made at the booking, any and all statements made in the police car outside of the West Valley Detention Center, and objected to the search of locker #34 and the introduction of the additional pornography images and forged identifications. All requests to exclude the evidence were denied. David and Dan Smith were convicted at trial. They both appealed.

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