

CRIMINAL PROCEDURE FINAL EXAMINATION – SPRING 2009

1. You will have **THREE HOURS** to complete the examination.
2. Please write only on one side of the paper, use ink, and write legibly. You may also write the exam using the registrar's exam-writing program.
3. This is a closed book exam.
4. The final exam consists of one general question raising a number of issues. You may use what space you need, in answering the question.
5. Best wishes for the summer, and good luck!

Officer William Flower of the Capital City Police Department received a call in the early morning hours of Tuesday, June 5, 2007, from Billy Barrow. Flower knew Barrow as one who, in the past, had been a reliable informant for the police department. Barrow told Flower that Jeff Robitaille had just told him of "possible illegal drug/narcotic activity involving John Fletcher" at the Regal Hotel. Flower had never heard of Robitaille before. Flower was aware, though, of an ongoing police department investigation of Fletcher, in connection with illegal drug sales. Flower called the detective in charge of that investigation, but was unable to reach him.

Flower went to the Regal Hotel, arriving at 1:00 a.m., and observed three cars in the parking lot. He checked the registrations on the cars and discovered that only one of them was registered to a local resident of Capital City. That car was registered to Lisa Martineau.

Flower went back on patrol and about 45 minutes later, he saw Martineau's car stopped at an intersection, waiting for the traffic light to turn green. The car was properly positioned in its lane, and Flower did not observe anything unusual about the car or its driver. Flower stopped behind the car and waited for the light to change. When the light changed to green, the car turned left, squealing its tires. According to Flower, the squeal was more than a "chirp," lasting about "a second." As the car turned, Flower saw smoke coming from the car's tires. After the car completed its turn, Flower activated his cruiser's blue lights and stopped it. In his report of the incident, Flower cited as the basis for his stop Martineau's violation of the "Racing on Roadways" statute, which reads, in pertinent part:

No person shall drive any vehicle on a highway in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record.

Upon approaching Martineau after stopping her, Flower observed that her eyes were slightly bloodshot and she was nervous. Flower asked her about her activities that day. Martineau answered that she had been working. Flower asked where she worked. Martineau replied that she held a couple of jobs. After further discussion about where she worked, where she lived, and where she was heading at that moment, Flower asked Martineau where she was coming from, and Martineau replied that she had come from the Regal Hotel. Flower asked her who she was with at the hotel, and she answered that she had been visiting Fletcher and a woman by the name of Christine Spring. Flower then asked what she was doing at the hotel with them, and Martineau answered: "nothing, just visiting with them." Flower then told Martineau to step out of the car, and he arrested her for violating the "Racing on the Roadways" statute. After putting Martineau, in cuffs, in the police car, Flower returned and searched the passenger compartment of the car. In the car, Flower found a small baggie containing crack cocaine.

Flower returned to the Regal Hotel at 3:00 a.m., and learned that room 121 was registered to Fletcher. Flower went to room 121. Standing in the hall outside the room, he saw that a light was on in the room but the blinds were closed. Flower could hear no sounds coming from the room, and he remained at the hotel for about thirty minutes, to see if he could observe any

activity associated with room 121. During that time, he observed no activity associated with that room. While watching, Flower called the police headquarters and spoke to a detective familiar with the department's ongoing investigation of Fletcher. That detective told Flower that Fletcher had, on a prior occasion, admitted to the detective that he had sold crack and cocaine in the past. The detective indicated further that the officers involved in the ongoing investigation of Fletcher's drug-related activities were scheduled to meet on Friday to review whether they had information sufficient to get a warrant to search Flower's house and car, and would at that meeting take into account whatever further information Flower discovered. Flower told the detective that he would keep the department advised of what he learned that evening. As all remained quiet at the hotel, Flower left at 3:30 to seek a warrant to search Flower's hotel room.

Flower presented the above described information to a magistrate in support of an application for a search warrant for Flower's hotel room. The magistrate granted the warrant, and Flower returned to the hotel at 4:30 a.m. that morning to execute the search. Before going to the room, he spoke to the hotel's night manager about his intentions. The manager consented to the search, and lent Flower a spare key with which Flower could enter room 121. Flower took the key and opened the door to room 121 with it.

Upon entering the room, Flower discovered Fletcher and Spring asleep in it. He awoke them and ordered them to stay in the bed while the search proceeded. In the room, in a closed suitcase apparently belonging to Fletcher insofar as it contained male clothing, Flower found crack cocaine and money. He then arrested Fletcher and Spring.

In response to Flower's call for assistance, Officer Blue arrived and transported Spring to the police station. Several hours later, after allowing Spring to sleep in a cell, Blue sought to question Spring about the events. After advising Spring of her rights under Miranda and getting her waiver of those rights, Blue elicited from Spring an admission that she had helped Fletcher sell drugs, by directing customers to him, including Martineau.

Meanwhile, after arresting Fletcher, Flower transported him to the police station and there began questioning him. Fletcher initially professed to have no knowledge of the drugs found in the suitcase. At that point, Flower said to him: "if you don't accept responsibility for these drugs, they must be Spring's and we'll charge her with it. Is that what you want?" When Fletcher said that he did not want Spring to be charged, Flower said: "if you don't take responsibility for it, I will charge her. If you do, then I'll know it wasn't hers and I won't charge her." At that point, Fletcher admitted that the drugs were his. Flower then allowed Fletcher to sleep for the rest of the night. The following morning, Flower read Fletcher the Miranda warnings. Fletcher waived his rights and, in response to questioning, again admitted that the drugs were his and not Spring's. Flower then told Fletcher that the police had impounded his car, which had been found parked on a street near the hotel, and that the police were planning to search it pursuant to an inventory policy. In part, Fletcher's statement about the car was false. Although the police had located Fletcher's car, they had not impounded it, and had not yet decided whether to do so. In response to Flower's question whether the police would find anything when they searched the car, Fletcher said that he had more drugs in a hidden

compartment in the driver's door. Flower then asked Fletcher for permission to search the car immediately; in response, Fletcher said, "sure, why not?" Flower subsequently supervised a search of Fletcher's car, and located the drugs in the place described by Fletcher.

You are the clerk for the Judge in the case of *State v. Fletcher, Martineau, and Spring*. Each defendant has raised all plausible arguments to suppress the items of evidence listed below, and the government has responded raising all appropriate arguments. Please draft a memo analyzing the legal arguments for and against suppression, and predicting which items of evidence the prosecution will be able to use at trial. You should describe the defense and the prosecution arguments in enough detail to explain the reasoning behind your predictions. The parties have litigated the admissibility of the following items of evidence:

1. The crack cocaine found in Martineau's car;
2. Martineau's statements to Fletcher after the stop of her car;
3. The drugs found in Fletcher's hotel room;
4. Fletcher's statements at the police station;
5. Spring's statements at the police station; and
6. The drugs found in Fletcher's car.