

HYPOTHETICAL SEARCH & SEIZURE SITUATION

Border Patrol Agent Smith was patrolling near Arivaca, Arizona, at 10:00 a.m., in an area notorious for smuggling. His report states that he received a report of a sensor hit in a desert area and responded, even though he was about to be spelled by another agent. Smith saw a Ford LTD drive up onto the paved road. He was not sure if this was the car that tripped the sensor, but thought it might be. A Chevy car was parked by the side of the road near where the Ford appeared. The Chevy drove off and the Ford drove off soon afterwards. The agent followed the Ford and saw it travel with the Chevy for about 1 mile. Smith thought they were driving in tandem, which he knew was a technique used by drug and alien smugglers. Smith thought he saw someone raise his head and then lower it quickly in one of the passenger seats of the Ford. The Ford's windows were tinted so it was difficult to see inside. Suspecting smuggling, Smith activated his overhead lights, and the Ford increased its speed from 55 to 65 miles per hour (the speed limit is 65) for about ½ mile. It then stopped. Smith radioed for another officer to stop the Chevy.

Smith walked up to speak to the occupants of the Ford. The driver was later identified as Jack, and the passenger as Jill. Agent Smith asked Jack if they were traveling with the Chevy, and Jack said they were. (Jack also stated that he and Jill were on their way to climb a hill near Arivaca.) Smith asked for consent to search, and Jack said "sure," but Jill said "no." Smith opened the door and saw a marijuana roach in the open ashtray. The report is not clear when Smith saw this roach in relation to when he opened the door. In the trunk, Agent Smith found marijuana in a backpack with a tag saying "Jill."

When Smith radioed, Agent Jones responded. Jones's report states that, when he saw the Chevy, he activated his emergency lights. He saw the driver, later identified as Ralph, toss a small plastic-wrapped package outside the window. [At about this time, Smith had found the marijuana in the backpack in the Ford]. Ralph stopped the Chevy and ran from it, but was tackled by Agent Jones, a former wide-receiver. Jones searched the vehicle moments later, and found 40 pounds of marijuana in the trunk, with a piece of a bill from Jill's house. Agent Jones then went and retrieved the item that Ralph had thrown from the window. It was a cellophane-wrapped bundle of cocaine with a note from Jill stating: "For Ralph, my best buddy (but don't tell Jack or he'll get jealous), signed Jill."

Agent Smith went to obtain a search warrant for Jill's house based on the above information. Agent Jones went to the house, and eagerly entered before the warrant was obtained. He opened a kitchen drawer, and found white powdery substance with a note from Jack (Jack and Jill are a very verbose duo) stating: "Enjoy the coke, sis.... It's the real thing . . . I can get some more from the Ralphster later." Agent Jones immediately called Agent Smith and told him to include this information in the warrant, which Agent Smith did. Smith also mistakenly told the magistrate that Jill's driver's license had been found with the marijuana in Ralph's car, rather than just a piece of a bill from her house. The magistrate issued the search warrant. Agents found 50 pounds of marijuana and other drug paraphernalia in a bedroom.

Ralph, Jack and Jill are charged with conspiracy related to all the drugs discovered above. Assume each of the defendants is challenging the seizure of all drugs listed above. What are the legal issues and how do you organize your pleadings and argument?