

National Defender Training Project  
2017 Public Defender Trial Advocacy Program

Friday, June 2 to Wednesday, June 7, 2017  
University of Dayton School of Law  
Dayton, OH

**PLENARY SESSION**  
**FACT PROBLEM**

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Your client, Juan Mesa, is charged with Sale of a Controlled Substance and Possession of a Controlled Substance. Mr. Mesa is a 26 year old Mexican-American man who lives in Midway, a city of about 200,000 people. He was born in Los Angeles, and moved with his parents to Midway when he was 5. He has a light complexion, is 5'6 and weighs 170 lbs. He has long, black hair. Mr. Mesa is not employed full-time, but works as a part-time laborer wherever he can pick up jobs. He has past training in construction work, and is skilled at plastering, painting, and plumbing.

Juan Mesa is single and lives alone, although he spends several nights a week at his girlfriend Anna's apartment. Anna works as a receptionist in a dentist's office about six miles away in a suburb of Midway. Juan's mother died when he was 20, and his father then moved back to Mexico City.

Mr. Mesa has one prior conviction – In 2010 he was arrested and charged with grand larceny from a construction site (a felony). He accepted a plea bargain to petit larceny (a misdemeanor) and was placed on one year probation, which he successfully completed.

The neighborhood Mr. Mesa lives in is about 40% black, 50% recent immigrants from Mexico and Central America, and 10% white. Most of the stores now have signs in their windows advertising in both English and Spanish. The neighborhood is poor, and has a high unemployment rate and a high crime rate. Drug sales have been a persistent problem in the neighborhood.

Juan Mesa has told you that on the day he was arrested he was working on a house that was being repaired on River Street. He got the job through his cousin Ramon, who works in an auto repair shop. Ramon called him in early May, 2016 and told Juan that a customer of

Ramon's needed someone to do renovation work on a building he had just bought. Juan took the job, and started working on May 7, 2016. He went to the 27 River Street building four or five times a week, until he was arrested. Juan has admitted to you that Ramon told him the owner was a drug dealer, but insists that everyone in the neighborhood knew that. He also denies having anything to do with the drugs or any sale operation.

On May 25, 2016, Juan Mesa arrived at 27 River Street at about eleven in the morning and did not leave the house until the police raided it at about 6:30 in the evening. He spent the entire time on the second floor, where he was doing drywall work, plastering and painting two bedrooms. There were other people in the house while he was there. Some of those people were doing renovations and construction on the first floor. He isn't sure what the others were doing. No one else was working on the second floor.

Mr. Mesa says that he did not see any drugs in the house, and has no idea if anyone came to the door while he was working upstairs.

Officer John Pitt will testify that as the head of the Citizen Response Narcotics Team he had received several complaints about drugs being sold from a house at 27 River Street in Midway. At about 11:30 A.M. on May 25, 2016, he sent a surveillance team to River Street, with five officers, all of whom were stationed at various locations across the street from 27 River St. At about noon, Officer Pitt sent an confidential informant to knock on the door of the building and try to buy drugs. Immediately before this, Pitt had searched the informant and ascertained that he had no drugs on him. Pitt gave the informant \$40 in marked bills to buy drugs.

Pitt saw the informant knock on the door. A man appeared and had a conversation with

the informant that Pitt could not hear. Pitt saw the informant hand something to the man. After about 10 seconds, the man went back into the house. In his incident report, Officer Pitt described the man as Hispanic, about 5'8" tall, 150 pounds, medium build, long black hair, wearing blue jeans and a black sweatshirt.

About 30 seconds after the man went back in the house a woman emerged. She spoke to the informant for a few seconds, then went to a car parked on the street about 50 feet to the left of the doorway. She opened the car door, bent down, and retrieved something from the front seat area. She then went back to the informant, handed him something, and returned to the house.

The informant returned to Officer Pitt, told him he had just bought drugs from the man and the woman, and gave him a package of cocaine he said the woman had handed him.

Officer Pitt then returned to the police station, filled out an application for a search warrant, and got a judge to sign the warrant at 3:30 P.M. He left the members of his team behind to watch the house at 27 River Street. They saw a few people enter the house, and a few leave between 12:30 and 6:30 P.M. when Pitt returned with the warrant. None of the people they saw enter and leave was a woman.

At 6:30, Pitt returned, and with several members of the team, knocked on the door. When a black man they had never seen before opened the door, they entered, and searched the entire place. They found six men present on the first floor. Pitt did not recognize any of them. Three men of the men were dressed in work overalls and t-shirts. They seemed to be doing construction work. According to Pitt, they were installing video surveillance cameras all over the first floor, adding reinforced steel and extra locks to all the doors, and building what appeared to be hiding compartments in the walls. The officers found no drugs anywhere on the

first floor. They did note that there were two back entrances from the first floor – one leading to a back yard, and one leading directly to an alley running by the side of the house.

Juan Mesa was the only one on the second floor. He was wearing blue jeans and a blue t-shirt. His clothes were stained with drying white paint and plaster dust. He had paint rollers, trays, and plastering tools all around him, and the walls were obviously undergoing renovations. The officers found six bags of cocaine hidden in a hole in the ceiling of a back room on the third floor (not one of the rooms under renovation). No marked money was found, and no drugs or money was found on Juan Mesa. The search turned up no black sweatshirt or other clothing.

After his arrest, Mr. Mesa was questioned by the police, and told them that he knew nothing about any drugs, and had nothing to do with any drug sale.

Officer Pitt identified Juan Mesa as the man who came out and spoke to the confidential informant. When he returned to the police station, he met the informant and showed him a photo array. The informant picked out Juan Mesa's picture as the person who spoke with him and took the marked money.

A pre-trial motion to suppress the drugs on Fourth Amendment grounds was denied. A motion to suppress both Officer Pitt's identification and the informant's photo ID on Fifth Amendment suggestiveness grounds has also been denied.

The prosecution has informed you that they will not call the confidential informant to testify at trial. They intend to have Officer Pitt testify both to his own identification of Juan Mesa and to the informant's photo identification. They also have given notice that Officer Pitt will testify as an expert witness that the construction he saw on the first floor was typical of the renovations done to convert a normal house to a house used for major drug sale operations.