Answer 1 to Question PT-B

1)

MEMORANDUM OF POINTS AND AUTHORITIES

The following memorandum seeks to prove two arguments.

The first is that Section 311 of Columbia Civil Forfeiture Act does not violate the Eighth Amendment as applied to Paul Grinnell, because the forfeiture satisfies both the proportionality and instrumentality tests that are used to gauge the constitutionality of such forfeitures.

The second is that Sarah Grinnell’s interest in the car should also be forfeited, despite Section 311-2 of the Columbia Forfeiture Statute, because her ignorance of the crime was willful, and she was therefore not an unknowing or innocent owner under the terms of Section 311-2.

Statement of Facts

One night three months ago, Paul Grinnell stayed late at his job at Kroll-Mart to complete a task with a co-worker. They celebrated by becoming intoxicated. At the time he commenced drinking, Mr. Grinnell knew that he was “extremely tired,” and moreover that he was drinking on an empty stomach because he had not eaten lunch. Nonetheless, he imbibed what he describes as “a couple of beers.” Intoxicated, he got into his car to go home. En route, at about 11:20 that evening, a patrol car pulled him over for weaving across the road. His blood alcohol level was measured at 0.08, which is above the legal limit for a charge of driving under the influence of alcohol (“DUI”). He was thus charged with DUI and pleaded guilty. DUI carries a potential fine of $1,000.

Pursuant to this charge, the car that the defendant drove to commit his crime, a 2003 Honda Civic, was seized and impounded. The vehicle is registered in Columbia, and title is in the name of Paul Grinnell and Sarah Grinnell, his wife.

Although Ms. Grinnell was not in the car at the time of the crime, she was aware of the circumstances that led to its perpetration. She received a phone call from Paul at 4:30 that afternoon. Paul told her that he and his co-worker would finish their task at 10:00 that night. He also told her that they planned to celebrate by stopping at the Roadhouse Bar and Grill. In addition, Paul informed Sarah that he had not eaten any lunch. Sarah knew that he was extremely tired, because he had been working so hard. She was thus aware of all of the elements that led to Paul’s inebriation. She knew, moreover, that he planned to drive home afterwards. Nonetheless, despite the high apparent risk of intoxication before driving, Sarah did nothing to prevent Paul from becoming intoxicated and then committing DUI.
Argument

(A) THE FORFEITURE OF PAUL GRINNELL’S INTEREST IN HIS AUTOMOBILE DOES NOT VIOLATE THE EIGHTH AMENDMENT, BECAUSE IT IS NOT DISPROPORTIONATE TO THE CRIME COMMITTED UNDER THE TRADITIONAL PROPORTIONALITY TEST, AND THE PROPERTY IS SUFFICIENTLY RELATED TO THE OFFENSE TO SATISFY THE INSTRUMENTALITY TEST[.]

The seizure of Paul Grinnell’s interest in the automobile under the Columbia Forfeiture Act does not violate the Eighth Amendment under either a proportionality or instrumentality test.

The Eighth Amendment provides that excessive fines shall not be imposed for criminal activity. In Altman v. US, the Supreme Court held that this provision applies to in rem civil forfeitures, because such forfeitures constitute punishment. Section 311 obviously allows for such forfeitures, and thus comes under the purview of the Eighth Amendment’s “excessive fines” clause. Section 311 of the statute states, in relevant part, that a civil action may be commenced by the Property Clerk against a criminal defendant (such as Paul Grinnell) to seize any property that constitutes the “instrumentality of the crime.” Section 311, therefore, is clearly a forfeiture statute, and is thus “punitive” under Altman. The Altman Court declined, however, to delineate the factors that should inform a determination of whether such a given civil forfeiture is constitutionally excessive under the Eighth Amendment.

In the absence of the Supreme Court’s deciding the appropriate standard, two alternative standards have emerged among the circuit courts to gauge constitutionality.

The first is a traditional proportionality test, adopted by the Fourth Circuit Court of Appeals in US v. Crandall. Under this test, the court conducts an inquiry into the proportionality between the value of the property sought to be forfeited, and the amount needed to effectuate the legitimate punitive and remedial purposes of the forfeiture.

The second test is the instrumentality test, adopted by the Second Circuit Court of Appeals in US v. Metzger. Unlike the proportionality principle, the instrumentality test examines the degree of relatedness between the property seized and the crime committed.

No matter which of these principles the Columbia courts apply, the seizure of Paul Grinnell’s automobile should be held constitutional as to his interest, because the forfeiture satisfies both tests. Each test will be discussed in turn.
(1) THE VALUE OF THE FORFEITED AUTOMOBILE IS NOT DISPROPORTIONATE TO THE AMOUNT NEEDED TO PUNISH AND DETER THE DEADLY CRIME OF DRIVING UNDER THE INFLUENCE[.]

The first possible test is under the traditional proportionality principle. Again, as articulated by the Fourth Circuit in Crandall, the proportionality principle compares the property seized to the amount needed to effectuate the legitimate punitive and remedial purposes of the forfeiture. In Crandall, for example, the government seized $500,000 of real property to punish the property’s use in illicit drug sales. Despite the high value of the property, the court found the seizure nonetheless appropriate, considering not only the degree of potential fines, but the harms that the government sought to prevent with this punitive measure. The court relied in large part on its prior decision in Sailors Cove. In that case an equity interest of $75,000 was seized in connection with a drug sale valued at $250. Despite this disparity, the court found the seizure proportional, in part based on the seriousness of the offense of selling drugs.

Similarly, in the case at hand, the proportionality of the punishment and offense must not only be gauged by the amount of the proper fine, but by the seriousness of the offense committed. The crime of DUI carries a potential fine of $1,000. Despite this, however, it is a consistent killer of innocent victims, including many children. It results in thousands of dollars of property damage per year and thousands of lives lost. Despite its relatively small fee and misdemeanor status, therefore, DUI is an extremely serious offense, that carries a high risk of innocent death. When balanced against this high risk of death, and the city’s legitimate interest in preventing and punishing such dire results, the seizure of a $15,000 automobile hardly ranks as “grossly disproportionate” to violate Mr. Grinnell’s rights under the Eighth Amendment.

(2) THE FORFEITED AUTOMOBILE SATISFIES THE INSTRUMENTALITY PRINCIPLE, BECAUSE IT PLAYED A CRUCIAL ROLE IN THE OFFENSE, ITS OWNER WAS HIGHLY CULPABLE, AND THE PROPERTY CANNOT BE EASILY DIVIDED[.]

The second test that the court may use to gauge the constitutionality of the forfeiture is the instrumentality principle. As articulated by the Second Circuit in Metzger, the instrumentality principle judges the connection between the property seized and the offense committed. The question under the instrumentality principle, therefore, is not how much the confiscated property is worth, but whether the confiscated property had a close enough relationship to the offense to justify its seizure. The operative measure, in the words of the Second Circuit Court of Appeals, is not the measure of the property value or even the offense, but rather the “extent of the taint.”

Using the instrumentality test, the court will use a three-part test to gauge the “taint” of the property seized. This test considers (a) the nexus between the offense and the property and the extent of the property’s role of the offense, (b) the role and culpability of the owner, and (c) the possibility of separating offending property that can readily be separated from the remainder.
(a) THE AUTOMOBILE BEARS A SUBSTANTIAL NEXUS TO THE CRIME[.]

The first prong of the test is the nexus, or connection, between the property and the offense. There is no doubt in the case at hand that there is a very close nexus to the crime of DUI and the car that was used to perpetrate that crime. More specifically, the Fourth Circuit enumerated several factors that will help prove the item’s instrumentality. The first is whether the use of the property in the offense was deliberate and planned, as opposed to merely incidental and fortuitous. There is little doubt in Paul’s case that the use of the car was deliberate and planned. His celebration by getting drunk on an empty stomach was also deliberate and planned. Although he did not intend to be pulled over for DUI, all of the actions that led up to his capture, and constituted his offense, were deliberate choices that he made. A second consideration is whether the property was important to the success of the illegal activity. Undoubtedly, the seized car in which Paul committed the crime was essential to the commission of a crime which requires driving. Third, the court will examine the time during which the property was illegally used and the spatial extend [sic] of its use. In Paul Grinnell’s case, although the car of course had other uses, it was used in its entirety on this occasion to commit the crime of DUI. The court will fourth examine whether this illegal use was an isolated event or had been repeated. This test admittedly favors the defendant, as this is his first DUI offense. Nonetheless, the seriousness of his act, and the punitive interests of the state, still justify the finding, on balance, of a substantial nexus between the property and the crime. Fifth and finally, the court will examine whether the purpose of acquiring the property was to carry out this offense. Again, this factor favors Paul. However, the first three factors of the Fourth Circuit’s test do not. The car was highly connected to the infraction, and the activity leading up to it was deliberate and planned. On balance, therefore, a substantial nexus must be found.

(b) PAUL GRINNELL WAS HIGHLY CULPABLE BECAUSE HE KNOWINGLY AND WILLINGLY INTOXICATED HIMSELF BEFORE DRIVING[.]

The second prong of the instrumentality principle is the role and culpability of the owner of the property forfeited. In the case at hand, there is no doubt that Paul is highly culpable. He pleaded guilty to drunk driving, and knowingly became intoxicated while highly tired and hungry before operating his car. Paul’s culpability is therefore undisputed.

(c) THERE IS NO POSSIBILITY OF SEPARATING THE “OFFENSIVE” PART OF PAUL GRINNELL’S FROM THE “INNOCENT” PART[.]

The third factor that the instrumentality principle examines is whether a complete forfeiture can be avoided by dividing the property, and effecting only the forfeiture of the implicated part. As discussed above, Paul undoubtedly used the entirety of the car when he drove it under the influence of alcohol. The entire car thus bears the crucial “taint” of his offense. As a result, it should be forfeited in its entirety.
CONCLUSION: PAUL GRINNELL’S EIGHTH AMENDMENT RIGHTS HAVE NOT BEEN VIOLATED BY THE FORFEITURE, UNDER EITHER A PROPORTIONALITY OR INSTRUMENTALITY TEST.[] The inevitable conclusion of the above analysis is that no matter which test the court decides to employ, Paul Grinnell’s Eighth Amendment Rights under the Federal Constitution have not been violated, because the forfeiture was not grossly disproportionate to the state’s punitive interest, and the car undoubtedly was a crucial and indivisible instrument of the crime.

(B) SARAH GRINNELL’S INTEREST SHOULD ALSO BE FORFEITED DESPITE SECTION 311-2 OF THE FORFEITURE STATUTE, BECAUSE HER ACTIONS CONSTITUTED WILLFUL IGNORANCE OF THE HIGH RISK OF THE OFFENSE OCCURRING.[]

The next major issue is whether Sarah Grinnell, as a self-claiming “innocent owner,” should have her interest forfeited under the forfeiture statute. The conclusion is inevitably that she should, because ultimately she was not an innocent owner under a reasonable interpretation of the statute as guided by Metzger.

(1) SARAH GRINNELL HAS NO CONSTITUTIONAL CLAIM UNDER A LONG LINE OF SUPREME COURT JURISPRUDENCE.[]

Before addressing the specifics of Section 311-2, it is useful to realize that Sarah Grinnell, unlike her husband, does not even have a potential constitutional claim against the forfeiture. In Bennis v. Michigan, the Supreme Court refused to protect a wife against the abatement of her interest in a car, because she was not aware of the fact that her husband had used it to sleep with a prostitute. Despite her claims of ignorance and innocence, Ms. Bennis’ interest in the car was abated. The Supreme Court justified its decision by pointing out that the innocence of the owner of property subject to forfeiture has almost uniformly been rejected as a defense. It further pointed to Calero-Toledo, in which an innocent owner of a yacht had his property interest abated on account of a crime in which the company was in no way involved.

The lesson of these holdings from the High Court is clear. Even if Ms. Grinnell were an innocent owner, she would have no Constitutional right to demand the restitution of her interest. She must therefore rely entirely on the defense mechanism of Section 311-2 of the Columbia Forfeiture Statute.

(2) SARAH GRINNELL IS NOT AN INNOCENT OWNER UNDER THE FORFEITURE STATUTE, BECAUSE HER IGNORANCE OF THE CRIME AMOUNTED TO WILLFUL IGNORANCE[.]
Again, in the absence of any possibility of a legitimate constitutional claim, Sarah Grinnell must rely on the statutory defense of Section 311-2 of the Forfeiture Statute. That section reads, in relevant part, that property shall not be forfeited to the extent that it is owned by an owner who did not know of or consent to the crime (emphasis added). Sarah thus argues that because she was not in the car at the time of the offense, and because she did not consent to Paul’s driving under the influence of alcohol, she is an innocent owner under the statute whose interest should be preserved.

This conception of innocence, however, is too narrow to be upheld. While it is clear under Altman that the trial judge has discretion to consider “alternatives to abating the entire interest in the vehicle” (see Bennis), it is also clear under that same decision that the presence of a defense such as Section 311-2 is a strong indication that this is a punitive statute. As such, the strong punitive interest of the city must be taken into account. Indeed, the city has a strong punitive interest in punishing not only the perpetrators of DUI, but also those who know that a DUI offense is about to occur, and who fail to act. The city thus has a strong interest in punishing the “willfully ignorant” such as Sarah Grinnell.

This was the approach taken by the Second Circuit in US v. Metzger. In that opinion, Marcia Metzger’s land was seized for the drug violations of her son. She claimed innocence, alleging that she had no knowledge of his illegal use of the land. The court rejected her arguments, because it agreed with the district court that her ignorance was willful. Metzger made frequent visits to the property, where her son had planted multiple marijuana plants in close proximity to the house. She forayed into cabinets where he kept his drug paraphernalia. And she knew of her son’s previous arrests for drug possession, and even admitted on prior occasion that she knew he had a marijuana problem. The Metzger majority thus held that blinding oneself to the clear truth, or high probability of an infraction, does not count as “innocence” or “lack of knowledge.”

The same can be said of Sarah Grinnell. Before her husband committed the crime of DUI, he called her from work. He told her that he would be using the car that evening to get home, after an alcoholic celebration with his co-worker. He further revealed that he would be drinking on an empty stomach, and Ms. Grinnell knew that her husband had been extremely tired from working so hard. Nonetheless, she did not encourage him to take a taxi, or not to drink, or offer to have a friend pick him up. Mrs. Grinnell may not have been in the car during the accident, but her silent response to a clear likelihood of DUI rendered her complicit to its perpetration. Thus, she cannot be said to have suffered a forfeiture as an owner who “did not know of” or “consent to” the crime. In some ways, under the standard articulated by Metzger, Ms. Grinnell was as culpable as her husband.

Sarah Grinnell will counter by drawing the distinction that Mrs. Metzger knew of her son’s systematic drug problem, whereas Mr. Grinnell had no such problem with alcohol or DUI. This distinction is unimportant. The sole basis of Mrs. Metzger’s culpability was her willful ignorance. Such willful ignorance is the same act if executed once (as in the case of Ms. Grinnell) or multiple times (as in the case of Ms. Metzger). This distinction, therefore, will
not establish her innocence or non-consent.

Sarah Grinnell will also counter by pointing to the dicta of the Metzger decision, stating that forfeiture of an entire asset may be “excessive” when one owner’s involvement is merely incidental, as opposed to extensive. This includes situations where that owner is simply aware of the offense, but not a perpetrator or conspirator. Ms. Grinnell will thus rely on this dicta to claim that the forfeiture of the entire car is “excessive” under the standard articulated in Metzger’s dicta.

Yet this argument ignores the equally important qualifying dicta later in that same opinion. The court went on to say that this concern about excessiveness may be tempered by the pragmatic possibility of separating offensive property from non-implicated property. As discussed above, the Grinnells’ car, in its entirety, was used in committing the crime, and unlike a piece of land, it cannot be broken up, separated, or sold in pieces. Therefore, the means to temper such theoretical “excessiveness” is impossible, and the entire automobile should be seized.

CONCLUSION: SARAH GRINNELL IS NOT ENTITLED TO A DEFENSE UNDER SECTION 311-2 BECAUSE HER IGNORANCE WAS WILLFUL[.]

The city’s penal interest in punishing drunk driving extends not only to the perpetrators of that crime, but those who learn of its immediate perpetration yet do nothing to stop it. Because Sarah Grinnell was effectively advised by her husband that there was a high likelihood that he would drive under the influence of alcohol, she does not qualify as a “non-consenting,” “unknowing” or “innocent” party under the language of Section 311 of the Columbia Forfeiture Statute.
Answer 2 to Question PT-B

1)

Memorandum of Points and Authorities

Statement of Facts

The Property Clerk of the City of Madison instituted an action under Section 311 of the Columbia Civil Forfeiture Act for the purpose of causing the automobile belonging to Paul and Sarah Grinnell to be forfeited as the instrumentality of a crime in response to Paul Grinnell’s plea of guilty to Driving Under the Influence of Alcohol (DUI).

The stipulated and uncontested facts show that on April 29, 2005, Mr. Grinnell went to the Roadhouse Bar and Grill at about 10:00 p.m. Mr. Grinnell admits that he was tired after a long day of work, had not eaten lunch or dinner, and had a couple of beers on an empty stomach. He proceeded to drive home in his 2003 Honda Civic and was stopped by the Madison Police Department for weaving on the road. The police officer performed a breathalyzer test. Mr. Grinnell had a blood alcohol level of 0.08 percent, which is above the legal limit, and was arrested for DUI. On July 18, 2005, Mr. Grinnell pleaded guilty to the misdemeanor offense of DUI and was fined $500 (the maximum fine is $1000), had a 90-day restriction placed on his driver’s license, and was ordered to attend DUI school.

The Property Clerk began this civil forfeiture proceeding against the 2003 Honda Civic automobile that Mr. Grinnell was driving on the night he was arrested for DUI. The automobile is jointly owned by Mr. Grinnell and his wife, Sarah. It has a fair market value of $15,000. The car is the only one owned by the Grinnells. Additionally, the Grinnells have a two-year-old baby daughter, Cammie. Mr. Grinnell works as an assistant manager at Kroll-Mart and makes about $24,000 annually. Ms. Grinnell works 15 miles away in Greenfield as a receptionist and makes about $18,000 per year.

Typically, Ms. Grinnell drives the Honda Civic and drops off Mr. Grinnell at Kroll-Mart on her way to work. On the evening of his arrest, Mr. Grinnell drove the Civic because he had to work late. At the hearing, Ms. Grinnell admitted that on the night Mr. Grinnell was arrested for DUI, she was aware that he was tired, had not eaten all day, and was planning to go out for drinks late in the evening. Ms. Grinnell admitted that she knew Mr. Grinnell planned to drive home in the Honda Civic after drinking at the Roadhouse Bar and Grill. Ms. Grinnell admitted that she is aware that Mr. Grinnell drinks about once per month.
I. The Forfeiture of Paul Grinnell’s Honda Civic Automobile under the Columbia Civil Forfeiture Act (“CFA”) is Not an Excessive Fine Prohibited by the Eighth Amendment.

Mr. Grinnell asserts that the forfeiture of his 2003 Honda Civic automobile used while he was arrested for DUI constitutes an “excessive fine” prohibited by the Eighth Amendment to the United States Constitution. On the contrary, courts have held since 1827 that forfeiture of property used in the commission of crimes is valid and constitutional. Bennis v. Michigan. We show below that the forfeiture of Mr. Grinnell’s car is fully consistent with the United States Constitution and appropriate case law.

A. The CFA permits the Property Clerk to seize and initiate a forfeiture action against the Honda Civic automobile used by Mr. Grinnell in the commission of the crime of DUI.

The Columbia Civil Forfeiture Act (“CFA”) permits the Property Clerk to institute a civil action against a criminal or non-criminal defendant to seize and forfeit property that is, inter alia, the “instrumentality” of a crime. CFA Section 311-1. The forfeiture is civil in nature and is not a penalty of a criminal forfeiture. CFA S. 311-1. The action may be instituted against a criminal defendant, defined as one who has been convicted of a crime. CFA S. 310-8(a). Mr. Grinnell’s plea of guilty to misde[m]eanor DUI constitutes such a conviction of a crime. CFA S. 310-6.

Mr. Grinnell’s 2003 Honda Civic is subject to forfeiture because the CFA applies to “instrumentalities of a crime,” meaning vehicles whose use contributes directly and materially to the commission of the crime. CFA S. 310-4. Since the crime of DUI requires driving an automobile, it is without question that the car Mr. Grinnell was driving on the evening of his arrest (the 2003 Honda Civic at issue) is an instrumentally of a crime and is subject to forfeiture.

B. The Eighth Amendment prohibition against Excessive Fines applies to the CFA only if the forfeiture of Mr. Grinnell’s automobile is “punishment” for the crime of DUI.

The United States Supreme Court in Bennis v. Michigan reaffirmed that forfeiture actions are “too firmly fixed” in the jurisprudence of this country to be displaced. For over 175 years, courts have approved forfeiture of property as deterrent action to prevent further illicit use of the property. Bennis.

In Altman v. U.S., the Supreme Court stated that to the extent that a civil forfeiture serves as punishment for the owner, the Eighth Amendment prohibition against “excessive fines” may play a role, but the Court did not adopt a test to establish when forfeiture becomes a punishment.
(i) By its terms, CFA 311 does not impose a penalty on Mr. Grinnell and the Eighth Amendment does not apply to the CFA.

CFA Section 311-1 states that the forfeiture will not be deemed a “penalty” for any purpose. It is a civil, remedial action against the property used in the crime. Therefore, a court looking to the plain language of the statute should find that the CFA is intended not to punish offenders but simply to remedy the problems caused by their crimes. The forfeiture of Mr. Grinnell’s car is simply a method to ensure the safety of other drivers on the road. To the extent that the car’s forfeiture is not a penalty, the Eighth Amendment does not apply to this action. Accordingly, the plain language of CFA S. 311 suggests that the court reject Mr. Grinnell’s assertion that the forfeiture violates the Eighth Amendment.

(ii) Even if the Eighth Amendment applies to the CFA, the forfeiture of Mr. Grinnell’s car is not an “excessive fine.”

The Supreme Court has stated that the Eighth Amendment may apply to some forfeiture statutes. Bennis; see also Altman v. U.S. One piece of evidence that the statute is penal is whether it allows an “innocent owner” defense. Altman. Indeed, CFA Section 311-2 is such a defense to a civil forfeiture action. Although Altman does not hold that such a defense is dispositive on the issue, it may indicate a punitive component to the CFA. However, even if the Eighth Amendment excessive fines clause applies to the CFA, the forfeiture of Mr. Grinnell’s car is not an excessive fine under any of the two tests adopted by other courts. See U.S. v. Crandall and U.S. v. Metzger.

(a) The forfeiture of Mr. Grinnell’s car is “proportional” to his crime and therefore is not “excessive.”

In U.S. v. Crandall, the 4th Circuit articulated a “proportionality test” to establish whether a civil forfeiture is excessive under the Eighth Amendment. See also U.S. v. 38 Sailors Cove Drive. In Crandall, the court affirmed the forfeiture of a 33 acre farm worth $500,000 since the property was traceable to the proceeds of criminal drug dealing. The court held that there was a “nexus” between the property and the crime. A “nexus” can be established if the property was given in exchange for the criminal proceeds (drugs), or the property was “traceable” to the crime, or it was used in committing the crime or was intended for such use. Crandall.

Once a “nexus” is established, the court adopted a test such that the forfeiture was constitutional if it was “proportional” to the gravity of the crime as measured by the potential punishment under state and federal law. Crandall. In this case, the forfeiture of the $500,000 property was proportional because the defendant’s punishment could be up to $75,000 under the state law or $1,000,000 under federal law. Crandall. Courts can also look into the seriousness of the offense. Crandall.
The forfeiture of Mr. Grinnell’s car satisfies the “proportionality” test. First, there is a “nexus” between Mr. Grinnell’s crime – DUI – and the property subject to forfeiture – the 2003 Honda Civic he was driving while intoxicated, since he was using the car while committing the crime. Second, the amount of the forfeiture is “proportional” to the gravity of the crime. Mr. Grinnell’s car is worth about $15,000. The maximum fine for DUI is $1000, less then the value of his car. Although this factor weighs against proportionality, the gravity of the crime compensates. Driving while intoxicated is a very serious crime that can lead to tragic consequences such as the death of innocent persons. The City Attorney has implemented a “Zero Tolerance on Drinking and Driving” initiative to combat the seriousness of the offense. Removing Mr. Grinnell’s car from the road substantially furthers this policy as Mr. Grinnell will not be able to commit the offense of DUI without his only car.

For these reasons, the forfeiture of Mr. Grinnell’s car is not grossly disproportionate to the gravity of possible death caused by DUI, and the forfeiture satisfies the Crandall court’s proportionality test.

(b) The forfeiture of Mr. Grinnell’s car is valid since it was the “instrumentality” of his crime.

The Second Circuit in U.S. v. Metzger characterized forfeiture as an “in rem” action against the property itself as the “offender” rather than as punishment for the owner. The action is against the property itself, so the Metzger court held that the value of the property is irrelevant as to whether the forfeiture is an excessive fine. To determine whether the forfeiture is an excessive fine under the Eighth Amendment, the court adopted the three-part “instrumentality” test. A court considers (1) the nexus between the offense and the property and the extent of the property’s role in the offense, (2) the role and culpability of the owner, and (3) the possibility of separating the offending property from the remainder. Metzger.

In Metzger, the Second circuit affirmed the forfeiture of an 85[-]acre farm owned by the mother of a son convicted of growing marijuana. The court found that the marijuana was grown on the mother’s property and was a substantial and meaningful instrumentality in the commission of the son’s crime.

Forfeiture of Mr. Grinnell’s car satisfies the “instrumentality” test.

First, there must be a “nexus” between the property and the crime. The Metzger court listed five nondispositive factors to be used in deciding the strength of the nexus. Applying these factors, it is clear there was a nexus between Mr. Grinnell’s car and the crime. (1) Mr. Grinnell’s use of the car was deliberate and planned since he intentionally drove the car after drinking at the bar. (2) The car was important to the success of the crime – in fact, Mr. Grinnell could not be convicted of DUI without having used the car. (3) The car was being driven and used while Mr. Grinnell was intoxicated. It is irrelevant that in the morning when he drove to work that he was sober since he was over the legal limit on the drive
home. The first three factors strongly favor the government. (4) Mr. Grinnell is being charged only with using the car once for DUI. There is no evidence of a pattern of DUI with the car. The factor favors Mr. Grinnell. (5) The car was not acquired to carry out the DUI. This, too, favors Mr. Grinnell.

On the whole, it seems that the factors favoring a nexus between the car’s use in the DUI outweigh the factors that its use was merely incidental. The nexus factor is established.

Second, Mr. Grinnell was the sole driver of the car on the night in question and there is no question as to his culpability. In fact, Mr. Grinnell pleaded guilty to the DUI charge on July 18.

Third, the property is inseparable. The court cannot “partition” the car and the entire car must be forfeited.

Therefore, under the Metzger test, Mr. Grinnell’s car was the “instrumentality” of a crime and is subject to forfeiture without being an excessive fine under the Eighth Amendment.

(c) Under either the proportionality test or the instrumentality test, the forfeiture of Mr. Grinnell’s Honda Civic is not an excessive fine under the Eighth Amendment.

In conclusion, regardless of which test this court adopts, the forfeiture of Mr. Grinnell’s automobile is a remedial action to prevent further instances of drunk driving. See Crandall and Metzger. The action is not a further punishment for Mr. Grinnell but is to serve as a deterrent. See Bennis. It is not an excessive fine under the Eighth Amendment (Altman) and the car’s forfeiture is constitutional.

II. Mr. Grinnell’s Interest in the 2003 Honda Civic Automobile Is Subject to Forfeiture Under the CFA.

Ms. Sarah Grinnell argues that CFA Section 311-2 establishes an “innocent owner” defense that precludes the forfeiture of her one-half interest in the 2003 Honda Civic. For over 75 years, courts have authorized forfeiture actions against even “innocent” owners. See Bennis v. Michigan. Ms. Grinnell’s argument must fail.

A. For over 75 years, courts have rejected the “innocent owner” defense.

Forfeiture actions serve a deterrent purpose distinct from punitive purposes. The United States Supreme Court has on at least two occasions affirmed that the innocence of the owner of the property subject to forfeiture has “uniformly been rejected as a defense.” Calero-Toledo v. Pearson Yacht Leasing Co. The fact that the owner did not know her car was being used in illegal activity and was subject to forfeiture does not give her a protectable interest under the Fourteenth Amendment Due Process clause. Bennis.

Even if Ms. Grinnell is entirely innocent in Mr. Grinnell’s DUI actions, courts have rarely
accepted her “innocent owner” defense.

B. CFA 311-1 allows the Property Clerk to seek forfeiture of Ms. Grinnell’s interest in the Honda Civic[.]

CFA 311-1 allows the forfeiture proceeding against a “non-criminal defendant” who is a person who possesses an interest in the instrumentality of the crime. CFA 310-9. Ms. Grinnell is the joint owner of the 2003 Honda Civic and the Clerk may seek the forfeiture of the car from her. She was properly joined in the action.

B[sic]. Even if an innocent owner defense applies under CFA 311-2, Ms. Grinnell’s actions on the evening of Mr. Grinnell’s arrest for DUI show that she knew of his driving under the influence of alcohol.

CFA 311-2 is the “innocent owner” defense. A person who “did not know of, or consent to” the acts constituting the crime is not subject to the civil forfeiture provisions. Ms. Grinnell states that she should be subject to Section 311-2 because she did not know that Mr. Grinnell ever used the car while intoxicated. Her assertion is contradicted by the stipulated and uncontested facts.

First, Mr. Grinnell should be charged with “knowledge” of her husband’s DUI. On cross-examination during the hearing today, Ms. Grinnell admitted that she knows that her husband sometimes drinks[.] She also admitted knowing that on the day her husband committed the DUI that he was going to use the car. Mr. Grinnell called her at 4:30 to tell her to find another ride home. She knew he was going to work late and then go to the Roadhouse Bar and Grill to celebrate. Ms. Grinnell knew that her husband was tired, and had not eaten lunch or dinner. Therefore, the evidence shows that Mr. Grinnell “knew” of the facts relating to Mr. Grinnell’s drinking the evening of his arrest.

Second, she should be charged with “consent.” Ms. Grinnell did not caution Mr. Grinnell not to drink and drive and did not suggest that he simply come directly home from work if he was so tired. Therefore, Ms. Grinnell effectively consented to Mr. Grinnell’s actions that night.

Since Ms. Grinnell “knew” and “consented” to Mr. Grinnell’s actions that evening, she is not an “innocent” owner and the CFA S. 311-2 anti-forfeiture provisions do not apply to her.

Ms. Grinnell is similar to the mother in the Metzger case. In that case, the mother purchased a farm for her son even though she knew he had grown marijuana in the past. The court rejected the mother’s innocent owner defense. Metzger. Likewise, Ms. Grinnell knew at 4:30 pm, before the DUI occurred, that her husband was going out drinking that night on an empty stomach and in a tired mental condition. Therefore, she should not be allowed to invoke the innocent owner defense.
C. The Honda Civic should be forfeited even though the forfeiture will be harsh on Ms. Grinnell.

Ms. Grinnell is a sympathetic victim in this case. However, the gravity of the drunk driving problem requires that harsh measures sometimes be taken. The Crandall court, in *dicta*, suggested that the harshness of forfeiture on third parties should be considered. However, as discussed above, Ms. Grinnell bears some culpability for her husband's actions that night. Should an innocent person have been killed or maimed by Mr. Grinnell’s drunk driving, the court would not shirk from forfeiting the car. Simply because the police did their job first, Ms. Grinnell should not benefit.

Conclusion

The harshness of the forfeiture is fully justified in this case. Ms. Grinnell is not an “innocent owner” and her interest in the car is fully subject to forfeiture under CFA 311-2.