

San Luis Obispo College of Law

Midterm Examination

Criminal Law & Procedure

Spring 2024

Professor S. Wagner

Instructions

1. This examination consists of three essays of equal value. There is a three (3) hour time limit to complete the exam.
2. Make sure that you read each essay question carefully before answering. Attempt to organize your answer before you start writing. The essay questions test your ability to apply the law to the facts. After stating the issue, provide a succinct statement of the relevant legal principles, followed by a detailed analysis of how these legal principles apply to the facts and a conclusion.

CRIMINAL LAW & PROCEDURE  
FINAL EXAMINATION  
SPRING 2024  
PROF. STEPHEN F. WAGNER

QUESTION #1

Abe, an employee of Acme Co., heard that a new company office would be opened the next week, before a burglar alarm system could be installed at the location. Abe contacted Blake, and they agreed to burglarize the new office immediately after it was opened. Blake procured various tools to be used in the burglary and then provided the tools to Abe. Abe then stored the tools in a locked toolshed in the side yard of his home. Shortly thereafter, Abe learned that he and Blake had relied on a false rumor, because in fact Acme Co. was not opening a new office. Abe promptly met with Blake, who agreed with Abe that their planned venture should be abandoned.

The morning after his last meeting with Abe, Blake was indicted for a previous alleged crime. Accompanied by his attorney, Blake voluntarily submitted to arrest and was placed in local jail pending arraignment. His cellmate was a police undercover agent posing as another inmate. The agent engaged Blake in a conversation about several local unsolved robberies, during which Blake described his abandoned venture with Abe and the location of the burglary tools in Abe's toolshed. The agent reported the conversation to the police later that day and a police officer was immediately sent to Abe's home to arrest him. The officer, who had not obtained a warrant, found no one present at Abe's home. However, he noticed that the lock on the door to the toolshed in Abe's side yard was partially open. The officer entered the toolshed, found the burglary tools lying on a shelf, and seized them as evidence.

1. Have Abe and Blake committed the crime of conspiracy to commit a burglary? Discuss.
2. If Abe and Blake are indicted for the crime of conspiracy to commit a burglary, may the seized tools be admitted in evidence against them, consistent with the United States Constitution? Discuss.

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QUESTION #2

Police detective Sly set up an officially authorized “fencing” operation, which purported to buy and sell stolen goods under the cover of an import-export business. He quickly filled the warehouse with stolen property which he purchased from thieves.

Duke, who had prior convictions for various theft offenses, posed as a customer and looked over the operation intending to burglarize the warehouse. Sly recognized Duke and hoped to arrest him for receiving stolen property. Sly told Duke that he was working for Tate, and that the “merchandise” was stolen property. He said that the two of them could make some money if Duke were to enter the warehouse, making it appear that a burglary had occurred, take the merchandise, sell it elsewhere, and divide the receipts between them. Duke agreed.

Late that night Duke entered the warehouse through a skylight which Sly had left unlocked. Brad, a uniformed police officer, unaware of Sly’s plan, saw Duke and entered the warehouse to make an arrest. Duke attempted to flee. Brad fired at Duke but missed; Duke fired back, killing Brad. Duke dropped his gun and fled, but was quickly captured and immediately brought back to the warehouse where investigating officers truthfully told him the gun had been identified as his. Duke then blurted out, “I shot the guy in self-defense.” Duke was given his “Miranda Rights,” and confessed again.

Duke has been charged with murder, burglary, and attempted receipt of stolen property.

1. What objections based on the United States Constitution should Duke make to the admission of Duke’s confessions at trial? Discuss.
2. Should Duke prevail on an entrapment defense to the charge of attempted receipt of stolen property? Discuss.
3. If Duke’s confessions are excluded, but the remaining facts described above are proved by competent evidence, is that evidence sufficient to sustain a conviction for:
  - a. Burglary? Discuss.
  - b. First or second degree murder, or manslaughter, and if so, on what theories? Discuss.

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CRIMINAL LAW & PROCEDURE  
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QUESTION #3

On a bright and sunny Wednesday afternoon, Deb was drinking at Sids Saloon. Deb was temporarily suspended from her job at LabCo earlier in the day and she was quite clearly despondent and drinking heavily. The bartender, Rex, cut her off and took her car keys and told her he would call her a cab. Deb then stormed out of the saloon without paying her tab and went directly to her car. She unlocked the car door with a spare key that she retrieved from her purse. As Deb was driving on a city street she started searching for her mobile phone that had fallen to the floorboard. As Deb was trying to retrieve her mobile phone, she failed to see Paul in the middle of a marked crosswalk. The light cycle was "green" for Deb. Upon seeing Paul, Deb jerked the steering wheel sharply to the right causing her car to run up onto the sidewalk directly into the path of pedestrian, Vince. Vince was violently struck by Deb's car and he was pronounced dead at the scene. When Officer Dunn rushed to the aid of Deb, he asked Deb, "Are you all right?" Deb responded, "I had no choice but to veer off the road. I didn't want to hit that guy." Deb was arrested for DUI and her blood alcohol level registered twice the legal limit.

Incident reports were submitted by the local police agency along with captured video surveillance footage that depicts Deb's car running up onto the sidewalk and striking Vince.

1. Discuss all crimes that would logically arise from these facts with special emphasis on both factual and criminal proximate causation as related to the death of Vince.
2. Assume that criminal charges have been filed and that Deb's counsel has filed a motion to suppress Deb's statement to Officer Dunn and the captured video surveillance. Discuss the likely outcome.

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CRIMINAL LAW & PROCEDURE  
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QUESTION #1

ISSUE OUTLINE / COMMENTS

ROG#1: ABE AND BLAKE ARE MEMBERS OF A COMMON LAW CONSPIRACY AT THE POINT OF AGREEMENT AS THIS IS WHEN CONSPIRACY CULPABILITY ATTACHES PER COMMON LAW. WHEN BLAKE AGREED TO ABE'S INVITATION (REALLY A SOLICITATION) A CONSPIRACY WAS FORMED UNDER COMMON LAW RULE.

OVERT ACT? MODERN APPLICATION OF CONSPIRACY REQUIRES PROOF OF AN OVERT ACT IN FURTHERANCE OF THE CONSPIRATORIAL OBJECTIVE. THE PROCURMENT OF THE TOOLS AND THE STORING OF THE TOOLS ARE THE FACTS AND EVENTS THAT STUDENTS SHOULD CITE TO FOR SUPPORT OF OVERT ACTS. THE COUNTER-ARGUMENT WOULD BE THAT THIS IS MERE PREPARATION.

WHAT IS THE SIGNIFICANCE OF THE ALLEGED "ABANDONMENT OF THE VENTURE?" IT WOULD SEEM AS THOUGH THIS ABANDONMENT CAME AFTER CULPABILITY HAD ATTACHED. THE TRUE VALUE AND SIGNIFICANCE OF ABANDONMENT IS THAT IT MAY SERVE AS A DEFENSE TO COMPLETED CRIMES AND "PINKERTON" EXPOSURE. HERE, THE TARGET CRIME OF BURGLARY WAS NOT COMPLETED.

ROG#2 IS TESTING EXTRAJUDICIAL STATEMENTS AND MOST SIGNIFICANTLY, SIXTH AMENDMENT RTC. AND "MIRANDA."

THE AGENT ENGAGED BLAKE IN DISCUSSIONS THAT DID NOT RELATE TO THE ON-GOING CRIME (I.E., CONSPIRACY AND/OR BURGLARY). THEREFORE, THERE IS LIKELY NO 6TH AM VIOLATION.

THE "MIRANDA" DISCUSSION SHOULD CENTER ON THE "EDWARDS" RULE - BLAKE SPOKE TO THE AGENT AT HIS OWN PERIL.

STUDENTS SHOULD ALSO NOTE THAT BLAKE'S ADMISSIONS WOULD LIKELY BE ADMISSIBLE AGAINST ABE AS "ADMISSIONS BY A CO-CONSPIRATOR." ABE DOES NOT HAVE STANDING TO PREVENT INTRODUCTION,...

THE TOOLSHED/SEARCH: THIS SEARCH WAS CONDUCTED WITHOUT A WARRANT, SO IN ORDER FOR THE ITEMS TO BE DEEMED ADMISSIBLE THEY MUST COME-IN UNDER A RECOGNIZED SW EXCEPTION. SO,...LET'S FOLLOW THE COP:

THE FACTS INDICATE THAT THE OFFICER WENT TO ABE'S HOME FOR THE PURPOSE OF ARRESTING HIM. WAS THERE PROBABLE CAUSE? LIKELY YES BECAUSE LEA MAY ARREST FOR FELONIES THAT WERE NOT CONDUCTED IN THEIR PRESENCE. SO, THIS LIKELY MEANS THAT THE OFFICER IS LAWFULLY POSITIONED WHEN HE SEES THE TOOLSHED. NOW THE ACTION CENTERS ON THE LOCATION OF THE TOOLSHED AND THE POSITION/LOCATION OF THE OFFICER. NOTE THAT THE OFFICER DID NOT SECURE AN ARREST WARRANT, SO HE NEEDS TO TREAD CAREFULLY.

PLAIN VIEW DOCTRINE / CURTILAGE / SEIZURE OF THE ITEMS

THE FACTS MAY BE INTENTIONALLY VAGUE AS TO THE EXACT LOCATION OF THE TOOLSHED (AKA "OUTBUILDING"). STUDENTS SHOULD KNOW TO EMBRACE AMBIGUITY AND SEESAW HERE AS TO EXPECTATION OF PRIVACY. IF THE OFFICER WAS LAWFULLY POSITIONED, THEN THE

PLAINVIEW DOCTRINE MAY APPLY. BUT THERE IS A PROBLEM HERE CENTERING ON WHETHER THE ITEMS WERE "READILY APPARENT" AS FRUITS OF A CRIME. ARGUE AND RACK POINTS HERE!!

THIS IS WHERE "FOLLOW THE COP" PAYS DIVIDENDS - NOTE HERE THAT THE OFFICER FIRST ENTERED THE TOOLSHED AND THEN NOTICED THE TOOLS.

CHEERS!

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Q2 ISSUE OUTLINE / COMMENTS:

ROG #1: DUKE'S EXTRAJUDICIAL STATEMENTS WOULD BE CHALLENGED UNDER BOTH 5TH AMENDMENT/"MIRANDA" AND DP VOLUNTARINESS (COERCION ARGUMENT)

THE FACTS REVEAL THAT DUKE WAS BEING PURSUED AS HE WAS FLEEING THE CRIME SCENE. WHAT EXACTLY IS THIS POLICE/CITIZEN ENCOUNTER? DOES "CAPTURED AND IMMEDIATELY BROUGHT BACK" SUGGEST DETENTION OR ARREST AND WHY DOES IT MATTER?

STUDENTS ARE EXPECTED TO FOCUS ON THE THRESHOLD REQUIREMENTS (CUSTODY AND INTERROGATION) THAT MUST EXIST TO TRIGGER THE OBLIGATION TO ISSUE A "MIRANDA" ADVISEMENT. BOTH "CUSTODY" AND "INTERROGATION" ARE VYING FOR ATTENTION AS POINTS OF CONTENTION.

"CAPTURED AND BROUGHT BACK TO THE WAREHOUSE" SUGGESTS THAT DUKE HAS BEEN DENIED HIS FREEDOM TO LEAVE. SO, THIS WOULD LIKELY BE A CUSTODIAL SETTING MEANING THAT PRONG #1 IS MET - WHAT ABOUT "INTERROGATION?" DO THESE FACTS SUPPORT EITHER "DIRECT QUESTIONING" OR "FUNCTIONAL EQUIVALENT OF QUESTIONING?"

ONCE THE CAT IS OUT OF THE BAG,...WHAT IS THE SIGNIFICANCE OF THE POST-ADMISSION MIRANDA ADVISEMENT?

ROG #2 IS TESTING ON "ENTRAPMENT" AND IT INVITES DISCUSSION ON THE THE SURROUNDING FACTORS THAT COURTS OFTEN CONSIDER (PRESSURE, ENTICEMENT BY THE LEA? WHAT ABOUT DUKE'S PREDISPOSITION? IS ENTRAPMENT AN AFFIRMATIVE DEFENSE? DOES THE BURDEN PERMISSIBLY SHIFT TO DUKE?

ROG 3A. INVITES DISCUSSION RE COMMERCIAL BURGLARY AND THIS CRIME SERVING AS AN ENUMERATED FELONY (FOR POTENTIAL FMR DISCUSSION).

ROG 3B. INVITES A MURDER/MALICE AND A DOWNWARD DEPARTURE TO THE CRIME OF VOLUNTARY MANSLAUGHTER (POSSIBLE ROUTE WOULD BE IMPERFECT S-D)

[ Attempt —————> Commission —————> *Flight* —————> ]

"Culpability Continuum" for FMR

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### Q3 ISSUE OUTLINE / COMMENTS

ROG#1

IT IS ANTICIPATED THAT STUDENTS WILL DISCUSS HOMICIDE/MURDER FOR THE DEATH OF VINCE. THE ONLY CRIME THAT DEB COMMITTED AT THE SALOON WAS A **PETTY THEFT** (OR **DEFRAUDING A MERCHANT OR INNKEEPER**) BY RUNNING ON HER TAB.

CULPABILITY FOR THE DEATH OF VINCE REQUIRES A CAREFUL ASSESSMENT OF ALL OF DEB'S ACTS AND OMISSIONS. STUDENTS HAVE BEEN TRAINED TO WORK METHODICALLY AS FOLLOWS:

DEATH AT THE HANDS OF ANOTHER? YES, WE HAVE A **HOMICIDE** (THE KILLING OF ONE HUMAN BEING BY ANOTHER).

NEXUS? YES. BUT-FOR DEB'S STATE OF IMPAIRMENT AND DISTRACTED DRIVING SHE WOULD NOT HAVE NEEDED TO VEER OFF ONTO THE SIDEWALK.

DO THE FACTS SUPPORT THE FINDING OF **MALICE** (THE REQUISITE MENTAL STATE FOR MURDER)?

ONLY "IMPLIED MALICE" THEORIES COULD APPLY HERE, AS DEB DID NOT HAVE THE EXPRESS INTENT TO KILL VINCE. VINCE'S DEATH MAY WELL HAVE BEEN FORESEEABLE, BUT IT WAS UNINTENDED.

SO, THE MALICE ACTION CENTERS ON "TOTAL DISREGARD FOR HUMAN LIFE" "WANTON WILLFUL DISREGARD" "EXTREME RECKLESS DISREGARD,..." THIS WOULD BE THE ROUTE TO 2D DEGREE IMPLIED MALICE MURDER.

**ACTS/OMISSIONS/NOTICE AND AWARENESS OF RISK** FACTORS ARE THE HALLMARK FEATURES COMMONLY RELIED UPON BY THE PROSECUTION AND HERE, THERE IS A LOT TO WORK WITH AS FOLLOWS: DEB WAS CUT-OFF BY THE BARTENDER; DEB'S KEYS WERE TAKEN AWAY; THE BARTENDER OFFERED TO CALL DEB A CAB. THESE FACTORS ALL IMPUTE KNOWLEDGE AND AWARENESS OF RISK.

**CAUSATION:** GREAT POINT VALUE IS ATTACHED/ASSIGNED TO THE "CAUSATION" ANALYSIS. CAUSE IF FACT ("BUT-FOR") HAS BEEN ADDRESSED. PROXIMATE CAUSE WOULD POSE THE BIGGEST HURDLE FOR THE PROSECUTION AND PROVIDE ROOM FOR THE DEFENSE TO MITIGATE MALICE (HOPING FOR AN INVOL MANSLAUGHTER). UPSHOT: PAUL'S PRESENCE IN THE CROSSWALK DOES NOT BREAK THE CHAIN OF CAUSATION - JAY WALKERS AND REDLIGHT WALKERS ARE FORESEEABLE.

IS IT FAIR TO HOLD DEB CULPABLE FOR THE DEATH OF VINCE. WAS VINCE'S DEATH FORESEEABLE?

ACT/OMISSION [—————>] HARM/RESULT

*Fault Continuum*

DOES PAUL'S WAKLING ON A RED LIGHT RELIEVE DEB OF CULPABILITY?

DID DEB FACE A **SUDDEN EMERGENCY** THAT WOULD RELEVE HER OF CULPABILITY? THE LAW RE "SUDDEN EMERGENCY" IN MOST JURISDICTIONS REQUIRES THAT THE ALLEGED BAD ACTOR BE FREE FROM FAULT. WELL?

INVOLUTARY MANSLAUGHTER: DEB WILL LIKELY ASSERT THAT HER CONDUCT IS MORE AKIN TO **CRIMINAL NEGLIGENCE**.

ROG#2

DEB MADE AN EXTRAJUDICIAL STATEMENT (OUT-OF-COURT) TO OFF DUNN. ISSUE: IS THE "MIRADA RULE" IMPLICATED? IS THIS A SETTING WHERE A "MIRANDA" ADVISEMENT WOULD BE REQUIRED? IS THIS A CUSTODIAL INTERROGATION SETTING?

ROADSIDE QUESTIONING AND TRAFFIC STOPS ARE CONSIDERED DETENTIONS. OF COURSE, THIS SETTING IS QUITE DIFFERENT THAN A TYPICAL TRAFFIC STOP. HOWEVER, IT IS UNLIKELY THAT DEB WOULD BE CONSIDERED "IN CUSTODY."

*DID OFFICER DUNN ENGAGE IN "DIRECT QUESTIONING" OR THE "FUNCTIONAL EQUIVALENT?"*

*A SUBTLE, YET IMPORTANT POINT IS WHETHER DEB'S STATEMENT IS INCULPATORY IN NATURE.*

*THE VIDEO SURVEILLANCE FOOTAGE WOULD BE ADMISSIBLE SO LONG AS FOUNDATION IS ESTABLISHED - BOTTOM LINE RE 4TH AM = NO REP!*

1)

## QUESTION 1

ROG 1: Whether Abe and Blake committed the crime of conspiracy to commit burglary

### Group Criminality

#### *Solicitation*

Solicitation occurs when one person encourages another to commit a crime with the intent that that person commit the crime. The crime of solicitation is complete upon utterance, but can merge with a completed crime (i.e., conspiracy).

Here, it is likely (but not certain) that Abe solicited Blake to commit burglary. The facts note that Abe "contacted Blake," thus suggesting that Abe introduced the idea of burglary to Blake. It is possible, therefore, that Abe committed solicitation in telling Blake about the burglary opportunity. The facts, however, are silent as to specifics, so it is uncertain whether this was the case. Notably, solicitation does not necessarily precede a conspiracy; conspiracy may be formed when conspirators act in concert towards a common purpose, for example.

Therefore, it is possible that Abe committed solicitation, but given the facts, not certain.

#### *Conspiracy*

A conspiracy is an agreement between two or more parties with the dual intent to enter into the conspiracy and to commit the target objective. Under Common Law, conspiracy was complete at the point of agreement; modernly, however, a majority of jurisdictions require an overt act to occur before a conspiracy is formed (e.g., California). An overt act



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is an act or conduct that tends to support commitment to the objective. For example, actively preparing for the target crime could constitute an overt act.

Here, Abe and Blake likely formed a conspiracy. The facts note that Abe and Blake "agreed to burglarize the new office immediately after it was opened." Under Common Law, their conspiracy would have formed here. Notably, the facts are silent as to the jurisdiction where the events take place. However, if Abe and Blake reside in an overt act jurisdiction, the result is still the same because the pair committed an overt act. Blake committed an overt act when he "procured various tools to be used in the burglary." Once Blake purchased the tools, thus committing an overt act, the conspiracy was formed. Additionally, Abe and Blake specified the target objective: burglary.

Therefore, Abe and Blake will likely be culpable for conspiracy to commit a burglary.

### *Accomplice Liability*

When a conspiracy is formed, all members of the conspiracy become subject to accomplice liability for acts in furtherance of the conspiracy, provided the acts are foreseeable outgrowths of the conspiracy. At Common Law, party members were labeled regarding their role: P1s were present at the the scene and committed the acts; P2s were present at the scene but did not commit the acts; accomplices before the fact were not present at the scene but assisted beforehand; and accomplices after the fact were not present but assisted afterwards. Modernly, however, the labels have coalesced into accomplices. Accomplices in a conspiracy fall under the purview of Pinkerton, which, as noted above, makes all conspiracy members culpable for the crimes in furtherance of the conspiracy so long as the crimes are foreseeable outgrowths. Accomplice liability does exist, however, outside of a conspiracy, such as with aiders and abettors. This latter category is not under Pinkerton's power.

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Here, Abe and Blake are culpable for each other's crimes in furtherance of their conspiracy to commit burglary. The only possible crime in furtherance of the conspiracy is how Blake "procured various tools to be used in the burglary." The facts are silent as to what "procured" entails, but there are two ways it could go: Blake legally purchased the tools, or Blake stole the tools. Because the facts are vague, however, nothing can be noted here for certain regarding this particular event.

Therefore, while Abe and Blake are culpable for each other's crimes in furtherance of the conspiracy, though the facts do not suggest that the pair committed any such crimes.

### *Attempt*

Attempt occurs when a person acts with specific intent to commit a crime but falls just short of completion. In determining whether attempt occurs, the Proximity Test and the Substantial Step tests have been used. The key is to determine where in the zone of perpetration the bad actor landed; that is, whether the bad actor's acts were merely preparation rather than perpetration. Abandonment is not a viable defense when the bad actors withdraw due to outside frustrating factors (e.g., the crime is too difficult to commit, the store to be burgled is closed); rather, abandonment is only viable if the bad actors decide to abandon the crime of their own volition (e.g., have a change of heart).

Here, Abe and Blake "abandoned" their "planned venture" because they had relied on a "false rumor" that "a new office" would be opening; in fact, "Acme Co. was not opening a new office." The pair could argue that they abandoned their crime by their own volition because they decided to leave their criminal ways behind them or had a change of heart (though notably the facts do not relay any such thing). Furthermore, the pair could argue that their acts were merely in preparation for the burglary, and that they never reached the zone of perpetration. This is as far as the facts relay Abe and Blake's activities. Indeed, the

correct -  
absence  
of MR.  
and  
A.P.

good

did  
of  
S.I.  
to  
Attempt

duo may argue that no attempt occurred because the pair did nothing more than procure the necessary tools.

However, the prosecution will likely argue that the pair abandoned their plan to commit burglary because of a mistake in fact that a new building would be opened. Mistake of fact is not a viable defense for attempt. Indeed, the prosecution will likely argue that the pair abandoned their plot because it was impossible to commit the burglary as they planned, not because they had some change of heart. Furthermore, the prosecution will likely argue that the duo's acts moved them into the zone of perpetration, going beyond mere preparation. Indeed, not only did Blake obtain the tools to be used in the burglary, but Abe also stored the tools in his tool shed in anticipation of the upcoming burglary.

Therefore, Abe and Blake might be on the hook for attempt if the prosecution can prove that the pair moved from preparation to perpetration.

### *Neither Abe nor Blake Withdrew from the Conspiracy*

Although conspirators cannot avoid culpability for conspiracy once a conspiracy is formed, a conspirator may avoid culpability for crimes in furtherance of the conspiracy if she withdraws. There is a jurisdictional split regarding what constitutes a valid withdrawal: in some jurisdictions, notifying the co-conspirators is sufficient; in others, the withdrawing party must also attempt to thwart the objective (e.g., notify police).

✓ Timeliness is key in determining whether a valid withdrawal occurred, thus allowing the conspirator to escape culpability under Pinkerton.

Here, the facts are silent as to withdrawal. Indeed, Abe and Blake "abandoned" their conspiracy because there was no new building to burglarize, not because they were attempting to avoid culpability for subsequent crimes.



Therefore, Abe and Blake, even though their conspiracy was frustrated, did not withdraw from their conspiracy. Importantly, it is also relevant to the following discussion that extrajudicial statements by one conspirator can be used against other co-conspirators. Yes!

## Conclusion

Abe and Blake likely committed the crime of conspiracy to commit a burglary.

## ROG 2: Re Admittance of Seized Tools

### Blake's Extrajudicial Statement

✓ The evidence in question -- the tools in Abe's tool shed -- were seemingly discovered as a result of Blake's extrajudicial statement while in custody for a different crime. Therefore, it is necessary to discuss whether the evidence can be admitted or suppressed under the Exclusionary Rule as evidence stemming from an original taint under the Fruit of the Poisonous Tree Doctrine. When attempting to suppress an extrajudicial statement, suspects have three options available to them: (1) Due Process Voluntariness; (2) 5th Amendment/Miranda; and (3) 6th Amendment.

### *Due Process Voluntariness*

Due Process will protect a suspect from making self-incriminating statements in the face of coercion even when the setting does not give rise to 5th or 6th Amendment protections. The totality of the circumstances will determine whether the suspect's statement was made voluntarily or was the product of coercion.

*Whether Blake's Statement Occurred in a Setting that Required Miranda Warnings (5th Amendment)*

Miranda warnings are required when there is a custodial interrogation, having been designed to protect suspects against the inherently coercive nature of police stations. For Miranda to apply, the suspect must be in custody and be interrogated either directly or the functional equivalent of direct questioning. Once Miranda warnings are provided, the suspect can either waive or invoke the rights. When plants are used to gather information, whether there were coercive elements hinges on how active the plant was in obtaining information: if the plant was merely a listening post, then no coercion can be said to occur; if, however, the plant actively engages with the suspect to elicit information, the plant is no longer a listening post and is interrogating the suspect. (4)

✓ Here, Blake was indeed in custody, and was "placed in a local jail pending arraignment." Indeed, under the objective freedom of movement test, Blake likely did not feel he was free to leave and neither would a reasonable person in his shoes. Therefore, the custody element is satisfied. The key issue is whether Blake was interrogated. Notably, Blake was questioned by a "police undercover agent posing as another inmate." Because Blake was unaware he was speaking to a government actor, the coercive element is not initially satisfied. Thus, Blake will likely argue that the plant interrogated Blake by engaging Blake "in a conversation about several local unsolved robberies." In that case, it was a setting where Miranda was required, and Blake's statement was unlawfully gained. Blake's statement regarding his and Abe's failed burglary, Blake will argue, should be suppressed.

The prosecution, however, will likely argue that the agent did not interrogate Blake, thus meaning Miranda was not triggered. The agent may argue that the conversation naturally turned toward why they were in the local jail, not the functional equivalent of interrogation or direct questioning. The facts do not relay beyond that the agent "engaged Blake in conversation."

Therefore, it is likely that this was a setting where Miranda warnings were required, and thus Blake's extrajudicial statement was unlawfully obtained.



### *6th Amendment: Blake was Cloaked*

6th Amendment rights trigger when a suspect undergoes adversarial proceedings (e.g., complaint, indictment, information). The 6th Amendment right to counsel is offense-specific, unlike the 5th Amendment right to counsel, which is all-encompassing. Once the suspect is cloaked in protections under the 6th, counsel must be present for all critical stages under the Massiah doctrine.

Here, Blake was "indicted"; in other words, adversarial proceedings had commenced against Blake. Thus, Blake was cloaked in 6th Amendment protections. Notably, though, the plant questioned Blake about "several local unsolved robberies," not the crime for which Blake was placed in jail.

Therefore, it is unlikely that Blake's 6th Amendment rights were violated.

### *Exclusionary Rule and Fruit of the Poisonous Tree: Whether the Seized Tools were Unlawfully Gained*

The exclusionary rule (ER) is a judicially made rule that suppresses unlawfully obtained evidence with the purpose of (ostensibly) detering government actors from engaging in bad behavior. There are three exceptions to ER which allow evidence to be admitted: (1) attenuation; (2) independent source; and (3) inevitable discovery. The fruit of the poisonous tree doctrine is designed to prevent evidence that resulted from bad cop behavior from being admitted.

Here, Blake may argue that the tools gained from Abe's tool shed were fruit of an original taint: the extrajudicial statement (discussed above) where Blake revealed his and Abe's failed burglary prompted the police to search Abe's shed when they otherwise had no reason to involve Abe at all. Blake will argue that the evidence was not too attenuated from the original taint (the statement), in that the police "later that day" went to Abe's

tool shed. Furthermore, because Abe was not on the police's radar, an independent source would not likely lead the police to Abe. Finally, the evidence was not likely going to be an inevitable discovery because the police only became suspicious of Abe after Blake's statement. Thus, the tools were unlawfully gained as fruit of the original taint, and must be excluded, Blake will likely argue.

Therefore, the tools will likely be unsuccessfully admitted into evidence on this front.

### *The Warrantless Search and Abe's 4th Amendment Rights*

✓  
(2) The 4th Amendment protections are triggered when a government actor intrudes into an area where a person has a reasonable expectation of privacy (REP). Under the Katz test, there are two prongs that must be satisfied for REP, a subjective prong and an objective prong: (1) whether the person manifested an expectation of privacy; and (2) whether the expectation was one that would be considered reasonable objectively. There are areas where REP is diminished, such as open fields.

Here, there is a government actor: the police officer who visited Abe's home. ✓  
Furthermore, Abe will argue that he had REP for his tool shed because it was curtilage. ✓  
Thus, Abe will argue that he had REP, and that the police officer violated his 4th rights by entering and searching the tool shed.

The prosecution, however, will likely argue that there was no REP for the tool shed because it was not curtilage, and was instead an out-building "in the side of the yard of his home." The facts are silent as to where exactly the shed is located in proximity to the house. *good*

Therefore, it is likely that Abe's 4th rights were violated, thus meaning that the evidence obtained by the police officer cannot be admitted.

*Non-curtilage  
path leads  
to door. as exception  
S.W.*

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## Conclusion

It is unlikely that the seized tools will be admitted into evidence against Abe and Blake. Although constitutional rights are personal, and thus cannot be asserted vicariously, both Abe and Blake had standing based on the different constitutional violations.

END OF EXAM

BRAVO!

2)

## MOTION TO SUPPRESS DUKE'S EXTRAJUDICIAL STATEMENTS

Extrajudicial statements, including admissions and confessions, may be excluded as evidence at trial if they were obtained in violation of the defendant's constitutional rights. Unlawfully obtained statements are generally in violation of the defendant's rights under the Due Process voluntariness standard of the 14th Amendment, 5th Amendment right against self-incrimination/Miranda, and/or the 6th Amendment right to counsel. (3)

### DUE PROCESS VOLUNTARINESS STANDARD

A statement will be inadmissible under this standard if it was the product of coercion. In assessing whether the statement was voluntarily made or the product of coercion, an assessment of the totality of the circumstances is warranted with particularly scrutiny placed on both the officer and the suspect.

✓ **Duke:** In scrutinizing Duke, factors to be considered include his age, education, beliefs, mental/physical condition and health, etc.

✓ **Officer:** In placing scrutiny on the officer, factors to be considered include coercive tactics, force, threats, deprivation of the subject's basic needs, the setting of the conversation, and importantly, notice/awareness/exploitation of any of the subject's vulnerabilities.

good  
Here, investigating officers told Duke that the gun [had been identified as his and Duke] blurted out "I shot the guy in self-defense." Given the nature of the officers' statement and Duke's response, there is no indication of coercion or any sort of tactics giving rise to a power imbalance between Duke and the officers. Rather, the conversation appears to be a voluntary statement by Duke in a moment of panic and adrenaline. = Q'ing



Thus, Duke's statement was not the product of coercion and this standard is inapplicable.

## MIRANDA/5TH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION

### - Point of Contention

(X) Solid!  
A statement may be inadmissible if it was obtained in a *Miranda* setting but the *Miranda* advisement was not given to the suspect. Specifically, a *Miranda* setting is a custodial interrogation, and the *Miranda* advisement must be given prior to the commencement of questioning. Thus, there must be both (1) custody and (2) interrogation or its functional equivalent. The policy reasons for *Miranda* are to eliminate the compulsion elements that are present in custodial interrogations and the natural imbalance that occurs among government actors and suspects when the suspects do not know their rights.

### Custody

✓  
Custody refers to either a formal arrest or the subjective feeling of not being free to leave rule in which an objective person in the subject's shoes would also not feel free to leave. *measured objectively in shoes*

Here, Duke was captured quickly after fleeing from an eventful and fatal encounter with police and brought back to the warehouse where he spoke with investigating officers. Given the circumstances, there is no doubt that Duke knew he was not free to leave. *likely*

Thus, custody is established

### Interrogation/Functional Equivalent

✓  
Interrogation refers to direct questioning or statements made to the suspect or in his presence that are deliberately designed to elicit an incriminating response from him.



Here, after the events that transpired, which were witnessed by the investigating officers who eventually captured D upon fleeing, the first statement that the officers made to him was that the gun had been identified as his.

(+) Duke would assert that this statement was designed to elicit an incriminating response from Duke and constitutes the functional equivalent of direct interrogation. Duke would assert that the statement was not innocent on its face; rather it was a statement that implicated Duke in the crime and was stated directly to Duke, which constitutes interrogation for purposes of *Miranda*. Duke would urge that the officers' conduct here is similar to the officers' conduct in *Siebert*, in which the officer employed a tactic to question first, get a confession, then read the suspect their *Miranda* rights and get them to repeat the confession. Duke would urge that given that the officers immediately read Duke his *Miranda* rights after he made an incriminating statement, the officers knew that the setting was a custodial interrogation in which the *Miranda* advisement was required. Duke would argue that the officers' *Miranda* advisement immediately after his incriminating statement is an unlawful tactic that was deemed improper under *Siebert*.

great job creating for  
On the other hand, the state would make a compelling argument that *Miranda* does not protect voluntary statements that are blurted out, as is what occurred here. In support of that position, they would point to the fact that there is not a nexus between the officers' statement and Duke's statement; thus, the officers' statement could not have been deliberately designed to elicit an incriminating response. Further, the state would push back on the notion of the functional equivalent of questioning in light of the circumstances here. From the facts, it appears that the officers had not had much, if any, other discussions with Duke at all prior to the exchange in the facts. If this exchange if the first conversation between the officers and Duke, the state may prevail in showing that the officers did not intend for that brief exchange to be questioning or its functional equivalent. Without speculating, it must be noted that if the officers had any other

conversation with Duke when they captured him and took him back to the warehouse, there may be missing context as to whether there was any groundwork laid by the officers prior to the conversation that happened at the warehouse.

Overall, it is a close call, but the state may prevail in their assertion that *Miranda* does not protect statements that were voluntarily blurted out that were not in response to a question or statement from an officer.

### 6TH AMENDMENT RIGHT TO COUNSEL

A defendant is cloaked with the 6th Amendment right to counsel only once adversarial judicial proceedings have commenced against them and a government actor engages in questioning or conduct that deliberately elicits an incriminating statement from the defendant.

Here, Duke was not <sup>✓</sup>cloaked with the 6th Amendment right to counsel because formal charges had not yet been filed against him.

### STATE V DUKE - UNDER THE ASSUMPTION THAT THE CONFESSIONS ARE EXCLUDED

#### **BURGLARY**

At common law, burglary is the <sup>✓</sup>breaking and entering into the <sup>✓</sup>dwelling house of another with intent <sup>✓</sup>to commit larceny or <sup>✓</sup>any other felony therein at nighttime. The rule has been modified significantly to allow for many exceptions to the traditional rule, including voiding the nighttime requirement, physical breaking requirement, and dwellings are no longer limited to homes. Commercial burglary is the burglary of a business while residential burglary is the burglary of a house. Importantly with burglary, the requisite mens rea (intent to commit larceny or any other felony therein) must be concurrent with

✓ the actus reus (entering the dwelling), meaning that Duke must have possessed criminal intent upon his entry into the warehouse. (4)

Here, Duke initial visit to the warehouse in which he posed as a customer does not satisfy burglary, but sets the groundwork for his intent to commit a subsequent burglary. Put another way, he had intent to commit burglary/larceny, *but that was going to be done later*, and not when he entered and spoke with Sly. Therefore, concurrence is not established for the first visit to the warehouse.

After the first visit, Duke formed a plan with Sly, and Tate by association, to commit burglary and split the proceeds. Therefore, a true plan to commit burglary was hatched.

At the second visit to the warehouse, concurrence is met. Duke entered through the skylight with intent to take the stolen property and sell the merchandise.

Thus, Duke committed burglary.

## MURDER OF BRAD

### Homicide

✓ Homicide is the killing of one human being by an act or omission of another. Here, Brad died by an act of Duke when Duke shot him. If Duke was the actual and proximate cause of Brad's death, Duke may be culpable for murder.

### Causation

Duke was the actual and proximate cause of Brad's death because but for Duke shooting Brad, Brad would not have died, and Duke was a substantial factor in Brad's death. Further, Duke is the proximate cause because it is foreseeable and a natural consequence



of committing burglary that the heist could be interrupted and the use of firearms in the commission of the crime could result in the death of someone.

## Murder/Malice

(1x) Murder is the killing of one human by an act or omission of another with malice aforethought. Malice is the requisite mens rea for murder. The four malice theories are express malice intent to kill, implied malice intent to cause GBI, implied malice depraved heart murder, and the felony murder rule. 1st degree murder is the premeditated and deliberate intentional killing of another. Felony murder is also charged in the first degree. Second degree murder is all murders that are not murders in the first degree. All murders generally start at the second degree and are either moved up to 1st if there are aggravating factors or down to manslaughter if there are mitigating factors.

## Felony Murder Rule

✓ FMR refers to the unintentional deaths resulting from the attempt, commission, or flight from an inherently dangerous felony, including burglary, arson, rape, robbery, and kidnapping.

Here, Brad died during the commission of a burglary. Duke was armed during the commission of the crime, thus it was foreseeable that a death would occur.

However, FMR applies to unintentional deaths. most commonly

Thus, Duke can be charged with felony murder.

## Depraved Heart Murder

This malice theory refers to unintentional deaths resulting from extreme recklessness.

should  
fail

This malice theory may attach.

### Intent to Kill

Express malice intent to kill is probably not applicable.

### Voluntary Manslaughter

Voluntary manslaughter holds defendants liable for the intentional deaths of others that were the result of imperfect self-defense and/or legally adequate provocation.

Here, Duke would urge that he was justified in using self-defense because Brad fired at him first, and Duke's fire in response was merely in his own defense. Further, he would urge that Brad was not justified in his use of deadly force because it was in defense of property at the warehouse, and Brad was not faced with any deadly force, or confrontation at all, when he chose to fire his firearm.

Yes!  
Good point

On the other hand, the state would urge that Brad was justified in his use of the firearm and Duke's self-defense was not reasonable

### Involuntary Manslaughter

Involuntary manslaughter is the unintentional death of another resulting from criminal negligence.

This is not applicable because the death of Brad was seemingly intentional and the conduct here rises above criminal negligence.

**CONCLUSION:** Duke can probably be charged with burglary, first degree murder under the felony murder rule malice theory, second degree murder under the depraved heart murder malice theory, or voluntary manslaughter.

per 1-5-D



## ENTRAPMENT DEFENSE TO CHARGE OF ATTEMPTED RECEIPT OF STOLEN PROPERTY? POINT OF CONTENTION

✓ Entrapment is a defense to a crime where the defendant would not have committed the crime but for the pressure or direction from a government actor. It is important to understand what charge the defense is being applied to know whether the defense would attach.

61.  
The charge is attempted receipt of stolen property. Attempt is the act of attempting to commit a crime but failing or falling short of completion. The target crime here is receipt of stolen property. Attempt is measured by the substantial step test or proximity test to determine whether the defendant's conduct constituted mere preparation or perpetration and whether the defendant was in the zone of proximity in attempting to commit the crime.

Here, Duke would assert that he would not have participated in the burglary that ultimately led to the death of Brad but for pressure from Sly. Duke could argue that Sly knew of Duke's prior convictions for various theft offenses and targeted him based on his criminal history and essentially lured him into committing a crime. Duke would urge that Sly came up with the entire plan and enticed him with monetary proceeds, and all Duke did was agree.

On the other hand, assuming that the state was privy to this information, the state would call attention to the fact that Duke was at the warehouse posing as a customer when he was truly casing the warehouse that he intended to later burglarize. In other words, Duke *already had* the plan to burglarize the warehouse, Sly's proposal just seemed better because it took all of the planning out of Duke's hands all he had to do was comply. Further, the state would urge that Sly did not entice Duke with monetary proceeds; rather,

was  
proposed

it would be suspicious to *not* mention a benefit of some sort, given that Duke would not be expected to commit a burglary for free.

It is a close call, but the entrapment defense ultimately probably will not attach in defense of the charge of attempted receipt of stolen property.

END OF EXAM

There is an  
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arg. —  
Bonus  
issue!

WOW!  
OUTSTANDING  
paper

3)

## 1. Crimes of Deb

### Larceny

Larceny is the taking and carrying away the personal property of another with the intent to permanently deprive

Here, Deb was drinking at the Bar and did not pay for her drinks. She had drinks which she put inside her body and carried out of the store. She permanently deprived the bar of those drinks in which deb should have paid for. Therefore, she stole the drinks since she didnt pay for them. Thus, deb may be found guilty for larceny. *= tangible good*  
*petty theft*

### Driving under the influence

A person who is behind the wheel driving will be found guilty for a DUI if the blood level at the time of driving is over the legal limit of .08. Here, Deb was clearly intoxicated. rex cut her off and the bar and implied that she should not be driving by taking her keys. If Deb is found to have a blood alcohol content of .08 she will be found guilty of driving under the influence.

### Homicide

### Murder

### Homicide

Homicide is the killing of one human being done by another. Here, Deb drove up on the sidewalk and killed vince.



*Actual cause*  
*u but for u*  
There must be a nexus between the and actors conduct and the killing. Had Debbie not drove onto the sidewalk, <sup>✓</sup>vince wouldnt have died. This shows a nexus between Debs acts and vinces harm (death). In order for deb to be found guilty of murder, malice must be established (see below)

## Murder

(A) Murder is the unlawful killing of one person by another. Murder has the requisite mens rea of malice aforethought. Malice aforethought can be met by 4 theories. Intent to kill (express malice) or the three other implied malice theories. Intent to cause great bodily injury, Wanton wilfull disregard for human life, and felony murder rule.

## Express Malice - Intent to Kill

✓ Intent to kill involves the specific intent to kill. The bad actor must have engaged in conduct that shows that they intended for the person to die. Intent to kill can be ruled out on these set of facts because Deb had not intentions of killing anyone. This murder was not an intended murder.

## Implied Malice

- Intent to cause Great Bodily Injury (GBI)

*is not ab when...*  
✓ GBI is when the bad actor doesn't intend to kill the suspect but intends to only injure them. here, Deb did not want to hit or injure anyone even though she did. She killed vince. She unintentionally caused great bodily harm to vince if she can be found to have been the actual and proximate cause of vinces death. Even though she did not intent to cause harm but she did. This might be a viable theory although it probably wont hold deb culpable for vinces death.

### • Wanton Wilful disregard for human life (WWD)

WWD is a theory that is extreme conduct where the bad actor acts with flagrant disregard. They see the consequences of their actions but continues to do them anyways. WWD can be a fall back theory if felony murder rule fails. Here, Deb reached for her phone while she was driving. This activity most likely won't rise to the level of flagrant disregard for human life. Although, her driving intoxicated may be a factor that shows extreme indifference to human life unless it is found that her intoxication is a defense to malice. If a person is driving intoxicated it puts everyone else's lives in danger cause an extreme indifference to human life. especially when she was warned of the risk by Rex taking her keys away.

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Many  
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factors  
were

Notice  
of  
danger  
plus  
notice  
she  
was  
J.I.

### • Felony Murder Rule (FMR)

Felony Murder is an unintended killing done in the attempt, commission, or flight of an enumerated felony. An enumerated felony is Burglary, Arson, Robbery, Rape, and Kidnapping. here, there was no felony or inherently dangerous acts being committed. Therefore, this malice theory won't apply here.

### Causation

Causation can be discussed by actual and proximate cause

is estab.

application  
of the...

Actual cause can be found by the But For test. But for Deb driving under the influence, Vince would not have died. But for Deb being a distracted driver, Deb wouldn't have drove onto the sidewalk and hit Vince.

Proximate cause can be measured by direct acts that are foreseeable in causing the harm to another but any acts that happen in between the act or omission in the harm may be superseding and cut off culpability to the bad actor. Here, the death of Vince is not too

[ —————> ]

FC

must include account for Paul's actions

④  
①  
far attenuated from Debs distracted driving. It is foreseeable that when you are distracted driving (looking at your phone) you will serve off the road and hit someone. Intoxication may be a supervening event that cuts off liability to Deb but here it is a factor in aggravation and not mitigation. It is also foreseeable that when you see your car going towards a pedestrian you will serve and potentially hit something else. Lastly, It is foreseeable that you will not be in control of your car if you're driving intoxicated. Deb here was intoxicated and shouldn't have been driving. It is foreseeable that she could lose control of her car and hit someone. Thus, Deb is the proximate cause of Vince's death.

Does P's presence in the cross-walk relieve D?

## Mitigation

### Voluntary Manslaughter

Voluntary manslaughter mitigates malice for intentional killings. Here, there is not an intentional killing and therefore this theory will not apply.

- (1) legally adequate provocation
- (2) Imperfect self defense

### Involuntary Manslaughter

Involuntary manslaughter can be found to mitigate the theory of Wanton wilful disregard to human life. Instead of having an extreme indifference to human life, it will be found that the bad actor just acted with criminal negligence. This is a lesser standard. Here, Deb was looking down at her phone and she crossed over the sidewalk, because she saw a pedestrian and hit Vince. She was driving intoxicated while she lost control of her car which would be a factor that shows more than just criminal negligence. Based on the totality of the circumstances the defense probably would not be successful in mitigating Deb's second degree murder to involuntary manslaughter.

matter of degree

Where does Paul factor in?



## Defenses

### Voluntary Intoxication

Intoxication will be a defense to specific intent crimes because it shows that a person did not have the intent to commit the crime and bring about an intended result. Here, intent to kill is not within the fact pattern therefore, Voluntary intoxication will not come to Deb's defense.

### Necessity

*choice of evils*

Necessity is a justification defense when a person does an act that would be criminal because avoiding the act would cause greater harm. here, deb avoided the pedestrian she almost hit and drove onto the sidewalk and hit vince. she avoided the pedestrian but this did not prevent any harm as she still killed someone. This would not be a defense for Deb.

*might serve as mitigation*

### Murder conclusion

deb would most likely be found for second degree murder of Wanton Wilful Disregard, and the defense probbaly would not be successful mitigating it to Involutnary manslaughter because deb was intoxicated and intoxication will not come to her defense here.

### 2. Will Debs Motion to supress her statment be Successful?

There are 3 ways to challenge a confession: 5th amendment, 6th amendment, and due process voluntariness standard of the 14th amendment.

*4th Am too*

### 6th amendment

The **6th amendment** can be ruled out because Under the Messiah doctrine, the 6th amendment gives a suspect right to counsel when questioning occurs after a critical stage in the criminal judicial process has begun. Any questioning of a suspect where there 6th amendment attaches must be done with their attorney present.

Here, no adversarial proceeding have begun therefore, Deb cannot object to admission of his confession based on a 6th amendment violation because the 6th amendment had not yet attached.

### 5th amendment

The 5th amendment protects a suspect against self incrimination. If the suspect is in a setting of custodial interrogation, they must be read their miranda rights.

### Custody

custody occurs when a person does not free feel to leave. Here deb was not in custody. She was on the public street with one police officer. This was a place where a reasonable person would feel free to leave and it was not a police dominated atmosphere. Thus, Deb was not in custody.

### Interrogation

Interrogation is either direct questioning or the functional equivalent of questioning that the police know or should have known would elicit an incriminating response. Questioning that has to do with public safety will bot be sufficient as interrogation. Here, the officer asked if Deb was alright. Deb was just in an accident and the officer asked her a simple question regarding her safety. The offcier did not intent to elicit an incriminating response. Thus, interrogation did not occur.

*we have*  
*could be a PDL, but w/o custody N/A*

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## Conclusion -- Miranda

miranda warnings are not needed here. The officers do not need to warn her of her miranda rights after she voluntarily blurted out her statement.

## Due Process voluntariness

Another way to challenge a confession is to allege that it was not voluntary under the circumstances. The police may not engage in any coercive behavior in order to elicit an incriminating statement from the defendant. If police engage in coercive behavior, the confession will be inadmissible and not be able to be used against Deb in trial.

here, the police did not engage in any tactics that would deliberately elicit a response from deb. Deb did not have any susceptibilities known to the officer. Deb's statement was blurted out to the officer and was completely voluntary. Statements that are blurted out by suspects and that are voluntary will be admissible.

## 4th amendment

OK

The right of persons to be secure in their persons, papers, houses and effects against unreasonable searches and seizures must not be violated. AND no warrants shall be issued by upon probable cause by a neutral and detached magistrate upon oath and affirmation describing the things and places to be searched and seized. All searches without a warrant are presumed unreasonable unless there is a valid search warrant exception.

A search occurs when a governmental actor goes into a space where a person has a reasonable expectation of privacy. deb would argue that the police intruded on her expectation of privacy while recording her on a public street but deb's argument probably won't win. There is no search on these set of facts.

E REP



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### reasonable expectation of Privacy

Under the *KATZ* Test, there is a subjective and objective component. A person must believe that they personally have a right to be secure in the place searched (subjective) and society must deem this belief as reasonable (objective). Deb would claim that she shouldve been secure in her car but society would not deem this as reaosnable because It is known that there is no reasonable expectation in an automobile. because it is open to the public on open thoroughways. Therefore Deb could not say that she has a reasonable expectation of privacy on public roads. Thus, the video of her car will be admissible. *Yup!*

The police surveillance also does not have a reasonable expectation of privacy. This surveillance did not look inside her car through enhanced technology not accessible to the public. It was a device that captured debts activity while she was on public roads. Thus, this will not be unreasonable under the 4th amendment because deb did not have a resonable expectation of privacy.

### Conclusion

Because debts statement was voluntary and her 5th and 6th amendment rights dont attach, her statement to the police officer will be admissible. and the surveillance video will be admissible becuase Deb does not have a reasonable expectation of privacy with surveillance footage on public streets.

**END OF EXAM**

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