

Essay Question No. 4

Answer this question in booklet #4.

Bernie was a local hood who had been in trouble with the law for all of his adult years. Shortly after being released from custody on his umpteenth offense, Bernie ran into Sammy, an old friend with whom he used to steal cars. Sammy suggested that they get into the car-stealing business again.

Bernie told Sammy that car stealing was out of the question because he intended to get a straight job and live a clean life. But Sammy wouldn't take "no" for an answer. After days of Sammy's incessant begging, Bernie finally gave in and promised to do one final "job."

Sammy went out and bought some bolt cutters to get through the chain link fence at the local BMW lot and then cased the joint to see when the employees went home after closing. Then, on a chilly winter evening, Sammy picked up Bernie, drove to the BMW lot, and instructed Bernie to cut through the fence and hotwire a car while Sammy acted as a lookout. Bernie was getting busy with the bolt cutters when a passing police officer thought the scene looked a little funny and decided to take a closer look. Stepping out of her patrol car, Officer Jones approached Bernie and said, "Pretty cold night out, isn't it?"

Bernie panicked upon seeing the uniform and said to the officer, "None of this was my idea, you know. Sammy talked me into stealing the car." (Sammy, watching from across the street, took off.)

Although the police officer knew full well what was going on, she decided to play it cool. "Well, why don't you tell me your side of the story?" she asked Bernie. "That Sammy sounds like a real son of a gun." The officer then invited Bernie to sit in her warm squad car and talk about what was going on. Bernie sat uncuffed in the front seat and poured out his story about trying to stay straight and how Sammy was the only reason he tried to steal the car. Officer Jones occasionally asked follow-up questions such as, "Did you go with Sam to get the bolt cutters?" and "Where were you going to sell the car?" After about 15 minutes, when Bernie finished talking, the officer took Bernie into custody for attempted vehicle theft.

1) Does Bernie have an entrapment defense? Why or why not?

2) Police catch up with Sammy and charge him: (a) with attempted vehicle theft; and (b) as an accomplice to the vehicle theft. Discuss whether the facts support either charge.

3) Bernie's lawyer moves to suppress, on *Miranda* grounds: (a) Bernie's first statement to Officer Jones; and (b) all of Bernie's statements that he made in the police car. Discuss what a court would consider in deciding whether to grant or deny the motion.