

Essay Question No. 3

Answer this question in booklet #3

The Fairbanks police were called to investigate an incident reported by Marty's Club discount store security guards. When an officer arrived at the store, he was told that about ten minutes ago a young woman had been attempting to shoplift three DVDs and had made it out of the store. However, she was confronted by a store security guard in the store parking lot. The security guard initially was able to take the DVDs from the woman, but the woman tried to grab them back from the security guard. The two struggled over the DVDs in a tug-of-war until the woman kicked the security guard in the shin. The security guard released his hold on the DVDs and the woman fled out of the parking lot.

Witnesses told the officer that they saw the woman run out of the parking lot and enter the passenger side door of a car parked along the curb near the parking lot. The witnesses did not see if anyone else was in the car. They described the car as a light green Ford Explorer. The car headed west on the main road leading from the store. The police officer radioed other officers in the area for back-up, jumped into his patrol car and headed west in pursuit. About a mile from the store, the officer saw a Ford Explorer on the road ahead of him. Although the officer considered the vehicle's color as more a light green-blue rather than green, the officer had seen no other Ford Explorer on the road. He turned on his siren and lights and stopped the vehicle.

The driver of the vehicle, a man, produced his vehicle registration and driver's license which identified him as Dan Davis. The car was registered to Dan and he was a validly licensed driver. The officer could see that there was no one in the passenger seat or in the middle row of seats. However, the officer could not see very well into the very back of the vehicle because of tinted windows, although there appeared to be a tarp or gear spread out back there. The police officer ordered Dan to get out of the car and told Dan that he was going to conduct a pat-down search for weapons. As Dan was getting out, the officer asked Dan for permission to search the car. Dan said no.

After Dan got out of his car and the officer began to pat him down, the officer received a radio message that other officers had stopped a green Ford Explorer in the area and that the suspect, a woman named Debra King, had been in the vehicle with the stolen DVDs. She had been arrested. However, in light of Dan's refusal to let the officer look in the back of his car, the officer was suspicious that there was something in the car that Dan did not want the police officer to see. The officer wanted to ask Dan some additional questions, but first he continued the pat-down for officer safety. During the pat-down, the officer reached into Dan's jacket pocket checking for weapons and found a plastic baggie containing white powder. The officer, having seen cocaine before,

recognized the powder as cocaine. The officer opened the baggie and did a field test of the substance. It tested positive for cocaine. Dan was arrested for misconduct involving a controlled substance in the fourth degree (possession of cocaine).

1. Dan's attorney considers filing suppression motions on the basis that the police violated Dan's right to be free from unreasonable searches and seizures. Discuss the grounds for and the likely success of any suppression motions concerning (a) the stop of Dan's vehicle and (b) his detention and pat-down by the police officer before the police officer was told of Debra King's arrest.

2. Dan's attorney also considers filing suppression motions on the basis that the police violated Dan's right to be free from unreasonable searches and seizures by the police officer's conduct after the police officer was told of Debra King's arrest. Discuss the grounds for and the likely success of suppression motions as to (a) Dan's continued detention and (b) the pat-down search and the manner in which it was conducted.

3. The Prosecutor's Office is considering the charges to file against Debra King. Discuss whether the facts of Ms. King's case can satisfy the elements of the following offenses:

- a. robbery
- b. felony theft
- c. misdemeanor assault