

Essay Question No. 4

Answer this question in booklet #4

In 2002 Joe was convicted of a felony in Alaska. During the summer of 2003, Joe was working on a project in a remote area of central Alaska, accessible only by boat. Because of concerns about recent bear sightings in the area, his foreman had brought along and stored a handgun in the foreman's boat. The foreman told the crew that the handgun was in the boat for easy access.

One morning Joe was awakened by noises outside his tent, noises he believed were that of a bear. Without waking his tentmate, Joe got out of his tent to see what was going on and saw a grizzly trying to open a food container. When Joe tried to shoo the bear away by waving his jacket at the bear, the bear dropped the food container and charged Joe. Joe ran to the boat to get the handgun. Joe fired the handgun twice. The bear was not hit, but disappeared into the brush.

Following the shots, everyone at the camp was up and out of the tents. A Fish and Wildlife Trooper also heard the shots and immediately came into camp. Joe, knowing he had a felony conviction and was not permitted to possess a handgun, put the gun back in the boat as soon as he saw the trooper and said nothing. When the trooper asked about the shots, the others pointed to Joe as the person who had been up and outside first. The trooper, wondering what Joe was hiding, decided to investigate further.

The trooper directed Joe to come with him into Joe's tent, asked the foreman who attempted to come in with them to stay outside until Joe and the trooper were done talking, and closed the flap to the curious camp members. The trooper asked Joe what happened. Initially, Joe was reluctant to talk. The trooper suggested that what had happened was that Joe had been scared by a bear and fired off shots to get the bear out of camp.

Joe was still reluctant to say what had occurred. The trooper told Joe that it was okay to tell the trooper what happened, that if Joe would just tell him what happened, it would be no big deal. The trooper commented that getting Joe's statement was just a formality as the trooper had to write up some kind of a report for the District Attorney's Office for any investigation. The trooper told Joe that, if Joe chose not to answer the trooper's questions, the report forwarded to the District Attorney's Office would include Joe's failure to cooperate. The trooper said that he could guess that things might not go so well for Joe if that were to happen. Following this comment, Joe then told the trooper what happened. Joe volunteered that it was not even his gun, as he

had not had a handgun since he was convicted of his felony last year. Their conversation in the tent lasted about twenty minutes.

Hearing about Joe's felony conviction, the trooper arrested Joe for misconduct involving a weapon in the third degree (felon in possession of a concealable firearm) in violation of Alaska Statute 11.61.200(a)(1).

1. Joe first filed a motion to suppress his statements on the basis that they were obtained in violation of *Miranda*, but the trial judge denied this motion. Joe now intends to file a second motion to suppress his statements to the trooper, arguing that the statements were involuntary. Discuss the basis for such a motion and whether this motion will be successful.

2. Joe's lawyer intends to give notice of a necessity defense to the charge. Discuss whether Alaska recognizes this defense and its likely success in Joe's case.