

QUESTION #1

A few minutes before closing time Mark and Dan entered Buds Dispensery to steal money and marijuana. While Mark surveyed the inside of the store, Dan forced the owner, Fred, outside. As Dan pistol-whipped Fred to learn the location of all the high-grade hashish and marijuana, his gun accidentally discharged, wounding Fred. Dan then fled the scene. Mark came outside and saw Fred's bleeding body. Thinking Fred was dying, Mark pushed Fred over a nearby cliff, and drove away at high speed. Fred's gunshot wound was not serious, but he died from injuries sustained in the fall. A neighbor called the police and reported that he had heard a gunshot and had seen a car speed away from Buds Dispensery.

Police immediately set up a roadblock at which Mark's car was stopped. When an officer approached the car and demanded that Mark exit the car, Mark refused to get out. The officer then reached into Mark's bulging jacket pocket and pulled out a gun. The officer issued a valid *Miranda* advisement and Mark validly invoked both his right to silence and counsel. Mark was then transported to county jail. The next day Mark's car was towed to the police station and searched. Under the front seat police found a large compressed package of hashish, labeled "Buds Best." When an officer showed the package to Mark, he immediately blurted out: "Dan was the one who shot the guy."

Mark and Dan were indicted for the murder of Fred. Separate trials were ordered at the request of each defendant .

1. On appropriate motion, which of the following items of evidence should be excluded or suppressed at the trial of Dan:
  - (a) the gun taken from Mark's pocket;
  - (b) the package of hashish taken from Mark's car;
  - (c) Mark's extrajudicial statement?
2. Assuming all the facts stated are proved by proper evidence, may Mark properly be convicted of the murder of Fred and, if so, in what degree? Discuss.
3. Assuming all the facts stated are proved by proper evidence, may Dan properly be convicted of the murder of Fred and, if so, in what degree? Discuss.

\*\*\*\*\*

Question #2

An anonymous phone caller informed the police that Don had made a big buy of prescription drugs to sell to students at a Middle School. From earlier arrests and convictions, the police knew that Don was a drug dealer and that he dealt drugs to juveniles. The anonymous caller informed the police that, within the hour, Don would be driving his red BMW convertible down Main Street toward the Middle School and that Ruby, the blonde female passenger in the car with him, was his assistant in the drug trade. Before acting on the tip, the police confirmed that a red BMW was registered to Don. They also confirmed by surveillance that a red BMW convertible driven by Don, with a blonde female passenger, had entered Main Street and was heading in the direction of the Middle School. Don was driving carefully and not in violation of any traffic laws. However, believing that time was of the essence, the police did not attempt to obtain a search warrant.

Two blocks from the high school, the police stopped Don's car and asked Don and Ruby to exit the car. Over Don's objection, the police conducted a search of Don and the car. They found nothing on Don's person. They did, however, find and seize a .38 caliber revolver retrieved from the glove compartment when Don reached for his proof of insurance and 50 Hydrocodone pills contained in separate baggies in the trunk.

After the search of the car, Don was arrested and charged with possession for sale of the drugs and carrying a concealed weapon. Ruby was allowed to use her cell phone from the back seat of one of the patrol cars. A recording device in the patrol car recorded her conversation. Ruby was heard telling the caller, "It looks like we're going down this time. We just got busted for drug charges."

The prosecution has decided to charge both Don and Ruby with possession for sale and Don, separately, with possession of a concealed weapon.

1. Was the stop and subsequent search of Don's person and Don's car lawfully conducted? What arguments pursuant to the U.S. Constitution would you expect Don to raise? What arguments would the prosecution offer in response? Discuss.
2. Does Ruby have standing (a reasonable expectation of privacy) to challenge the search?
3. Is Ruby's recorded statement admissible and can it be used to support any of the charges against Don and Ruby? Discuss.
4. Assume that all the evidence is deemed admissible. Would Ruby's actions qualify as aiding and abetting? Discuss.

ANSWER -QUESTION #1

**ISSUE OUTLINE / EXPECTED DISCUSSION**

Rog 1(a) The gun

The admissibility of the gun turns on whether the warrantless search/seizure was justified under the TOC. Students are expected to cite quickly to Fourth Amendment S&S and to methodically work through the required threshold concerns as follows:

- Search/Seizure by a government actor?
- Does Mark enjoy a Reasonable Expectation of Privacy (“REP”)?
- No warrant here, so in order to be admissible need valid warrant exception.
- Here, LEA appear to be working under a sense of urgency (possible emergency) in a fleeing felon-like setting. Cite to facts re neighbor’s observations as supporting public safety concerns (“gunshots” and “car speeding away from the dispensary”).
- How might the seizure of the gun be justified? How is this police-citizen encounter properly labeled? Detention, giving rise to a “Terry” discussion? Stop and Frisk analysis. Is the roadblock stop a detention aimed at ruling-in or out if criminal activity is afoot? If so, is the “reach into Mark’s jacket pocket” proper under the “frisk” or “pat” component under “Terry?” Officer safety concerns abound on this set of facts (recent gunshots, car speeding from a possible commercial burglary). How does Mark’s refusal to exit the car factor-in? Amount to heightened officer safety concerns?
- Was the gun retrieved via “search incident to lawful arrest” under Chimel/Gant? Could be a defacto arrest here (roadblock plus demand to get out of the car). Note that this is not a routine traffic stop ala Berkemer.
- Mark would assert that the “reach-in” to his jacket pocket was not proper under the justification/protocol per “Terry” - it was not a cursory outer garment pat search. Ideally, the officer would have Mark step-out of the car and then conduct an outer garment pat search. But Mark refused to get out of the car.

Rog 1(b) The package of hashish

The anticipated discussion here would be the “Automobile Exception” (Ross, Carroll, etc.,...) and Inventory Search (car was impounded). Note that there is too much attenuation for “Search Incident to Lawful Arrest.”

- Reduced REP for moving auto (mobility factor plus held out in the open).
- Full cabin and truck can be searched per “Inventory Search.” Point value for articulating the rationale for the rule and strict adherence to set policy.

Rog 1(c) Mark’s Extrajudicial Statement

Mark’s blurt-out/statement came at a time when he was cloaked with full Miranda rights (advisement and RTS and RTC invoked). Police must scrupulously honor. The statement was likely made in a “custodial” setting. Was the statement made in response to questioning/interrogation? No direct questioning here,

but possibly “functional equivalent.” It appears that Mark made the incriminating statement in response or in reaction to being shown the stolen package of hashish. Although the officer did not engage in actual questioning, the display/showing Mark the package, was likely aimed at generating an incriminating response. Note that this would be deemed an incriminating response because Mark and Dan were acting in concert (Accomplices and/or members of a Conspiracy). A strong argument could be advanced to block introduction as against Mark. However, per the call of the question, it is Dan who is seeking to suppress Mark’s statement. **This poses a problem, as Dan cannot vicariously assert the rights of Mark.** Therefore, Mark’s statement would likely be admissible as against Dan as an admission by a co-conspirator.

#### Rog 2 State vs. Mark (Murder of Fred)

Murder is the unlawful killing of another with malice aforethought. Mark’s act of pushing Fred over the cliff was indicative of “Intent to Kill” as an express form of malice. The fact that Mark may have thought that Fred “was dying” does not serve to mitigate or undermine malice. Mark hastened the death of Fred. Intent to commit SBI/GBI is also a viable express malice theory on these facts. The implied malice theory, WWD/Extreme indifference to Life may also apply.

May malice be established by application of the Felony Murder Rule (“FMR”)?

[Attempt/Commission —————Flight] Here, Fred’s death occurred during the flight phase of the crime (Commercial Burglary as the enumerated felony).

Most jurisdictions treat FMR as “First Degree.”

#### Rog 3 State vs. Dan (Murder of Fred)

Burglary has been discussed above as an enumerated felony per FMR. Dan’s forced movement of Fred may be deemed “kidnapping,” even though movement (asportation) was slight/not significant. So, there are two paths to FMR. What is the significance of the gun “accidentally discharging?” This raises the issue of unintended deaths as falling under the ambit of FMR.

Causation: Both Dan and Mark are substantial factors in causing the death of Fred. Although the gunshot was “not serious,” it did place Fred in a vulnerable position of peril. There is support for both factual and criminal proximate causation on these facts.

Group Criminality: As mentioned above, Mark and Dan acted in concert with similar criminal objectives. Both “conspiracy” and “accomplice culpability” are viable theories to bind Mark and Dan.

## QUESTION 2

### ISSUE OUTLINE / ANTICIPATED DISCUSSION

#### Rog 1 The Stop and Search

This question invites discussion on the level of suspicion that may have justified the execution of the traffic stop. Don gets the attention of LEA based largely upon an anonymous tip. The tipster provided detailed info re the actions and intentions of Don and the info appears to be fresh (suggesting criminal activity is underway/ongoing). Under normal "tipster-obtained" info scenarios, LEA applies for a warrant, using the strength of the tipster-obtained info. Here, no warrant was sought/secured - seemingly due to a level of urgency (a valid point of contention)

Upon learning of the tip, LEA set-out to corroborate the validity of the information supplied by the tipster. Students were expected to note the value and importance of the corroborated info. In fact, the failure to engage in efforts to corroborate and ultimately confirm the validity of the tipster's info could prove fatal and severely undermine the justification for the stop, rendering the subsequent search/seizures unlawful/invalid.

Selling drugs to juveniles and doing so on school grounds (reasonable inference on these facts) raises a heightened public safety concern.

#### The warrantless search of Don's car

As owner of the BMW, Don enjoys an Expectation of Privacy (REP) in his car. This REP is reduced as a result of a spate of High Court cases ruling that drivers/operators of moving autos may have a modicum of REP, but that said REP is reduced due to the mobility and open/public display by virtue of driving on open and public roadways. The level of detail provided by the tipster was replete with references to the time in which the bad acts would occur ("within the hour,..."). Moreover, the tipster also provided detail re a potential crime partner (the blonde passenger and "assistant").

Was the traffic stop a detention? What level of probable cause and/or suspicion can be articulated by LEA? If LEA has PC to believe that the car and its occupants may possess/hold contraband (to wit, RX drugs for sale), does the subsequent search fall under a recognized SW Exception (Automobile Exception)? Is this scenario similar to *Acevedo*, *Belton*, *Ross*? The point of contention (POC) centers around the fact that LEA is relying exclusively on the tipster's info. In the High Court cases that support the Automobile Exception, the subject LEAs have actual personal knowledge that the subject vehicle is serving as a vessel for contraband.

Does an Emergency Exception apply? A compelling argument can be made to support the swift and immediate intervention by LEA. This may also raise the issue of PC to effectuate an arrest. The pathway here would be to assert that the drug sales to minors on or near school grounds is labeled as a felony. This could trigger a "search incident to lawful arrest" discussion.

The gun would qualify as a "Plain View" observation, as it was discovered when Don accessed the glove box at a time when the officer was lawfully positioned.

#### Rog 2 (Does Ruby have "Standing?")

This calls for a discussion of REP (Subjective and Objective) Ruby may have standing to challenge the search of her personal belongings, but she does not have standing that matches Don's. Ruby has no ownership interest in the car. The fact that she may be in constructive possession of items in the car does not mean that she is cloaked with objective REP.

Rog 3 (Ruby's recorded statement)

There is no REP here. Ruby spoke at her own peril. There is no level of coercion on these facts.

Rog 4 (Ruby as Aider-Abettor)

Mere presence does not rise to the level of aiding and abetting the commission of a crime. Ruby's admission, captured by the surreptitious taping, would not be enough to support BRD for Aiding and Abetting ("Corpus" Rule could be cited here).

1)

1) Possible exclusion of evidence for Dan's trial

(A)

The gun taken from Mark, was reasonably obtained by police by way of a terry stop. Officers are allowed to pat down and check individuals suspected of crimes in order to ensure their safety if they have a reasonable and objective sense that they could potentially be in danage. Since this was a lawful stop as police set up a roadblock due to the call about a gunshot, police would be on high alert to find any gun from vehicles traversing the area. The officer saw a bulge in Mark's pocket and did a simple pat down search and were able to identify a gun in his pocket. It is reasonable to admit the gun into Dan's trial as it was seized lawfully from Mark and Marks and Dan committed the crime together. Even though Mark and Dan are having separate trials it is reasonable to use the evidence lawfully in the possession of police.

*cite to Franks - R-A-C*

*Was Mark seized? might this be an arrest? Terry protocol could be a POC*

*⊖ Δ? arg.*

*→ what's the counter-argument?*

(B)

The package of Hashish was a reasonably obtained by police as they lawfully obtained Mark's vehicle. The inventory search exception allows police officers to reasonably search a vehicle that is lawfully in their possession in order to make a catalog of the items within it. Mark's vehicle was lawfully obtained by police after he was arrested. The police are lawfully allowed to check the inventory of the vehicle and use it in criminal investigations. The Hashish was found in Mark's vehicle, but Dan and Mark were co-conspirators in the crime and thus it is reasonable to assume that the hashish was obtained by the actions of Mark and Dan. Therefore, it is reasonable to allow the hashish as evidence in Dan's trial.

*Dan does not have RFP - standing to chal. the search.*

*✓ +*

assault?  
invoked?

1-R-A  
Miranda  
analysis  
must be  
thorough

The fifth Amendment gives protection of self incriminating statements. Mark had previously used his rights for an attorney, and so his attorney must be present at each significant step of the criminal justice system as per the Sixth Amendment. Mark's extrajudicial statement; however, was given as an exclamation to Mark seeing the Hashish. Police did not question him on the subject and his statement was freely given. Therefore, the police did not interfere with his right to council and the statement was lawfully given should be allowed in Dan's trial.

N/A

cite to the operative rules. 2 type of Qing (discuss both)

2) Mark's role in the murder of Fred

Homicide

In the fact pattern there was a death of a person (Fred) so there was a homicide. Homicide is the unlawful killing of a human being by another human being. During the events of the robbery Fred was killed when he was pushed off the cliff. Therefore there is a potential murder by Mark.

Actual cause

AC + PC

For Mark to be potentially found guilty of the murder of Fred, he must be the proximate cause of his death. This has been identified as a, "but / for," scenario by the courts. Meaning, but for the actions of the defendant, the plaintiff would not have ben killed. Here, we see that Mark found Fred outside the dispensary with a gunshot wound that appeared to him to be fatal as he believed that Fred was dying. Mark then pushed Dan off the cliff to seal his fate and drove away. Mark was, however; mistaken in believing the gunshot wound was fatal, as post mortem, it was revealed that the gunshot wound was not fatal. Here, we can see that but for the actions of Mark, Fred would not have died.

Proximate cause

"M" hastened the death



For Mark to be found guilty of the murder of Fred he must be not only the actual cause of his death, but also the proximate cause. Proximate cause is when an outcome is reasonably foreseeable from the actions taken by the defendant. Here, we see that the death occurred during a burglary with loaded weapons. Based on these facts it is reasonably foreseeable that a death would occur during an armed robbery as it is a high stress situation with dangerous loaded weapons. Therefore, it is reasonable to conclude that Mark was the proximate cause.

### Murder with Malice

Murder is the express killing of another with malice aforethought. There are two types of malice when discussing murder, express and implied malice. There are four malice theories between the two types of malice. Express malice occurs when the defendant has the intent to kill the plaintiff, while implied malice occurs when the defendant acts in a way that may cause great bodily injury to another, acts in a way that shows a reckless disregard for human life, or the murder occurs during an enumerated felony. Enumerated felonies have been identified under law to be extremely dangerous and are more likely to cause severe injury or death. The types of felonies listed are; burglary, arson, rape, robbery, and kidnapping.

### Express Malice - intent to kill

Based off the fact pattern we can reasonably assume that Mark did not go to the Buds Dispensary with the intent to kill Fred as we are told that Mark went with Dan with the express intent to steal money and Marijuana. However, when Mark found Fred outside, it could reasonably be argued that he formulated the intent to kill him when he pushed Fred off the edge of the cliff, thus resulting in his death. The courts have identified that it does not take a long amount of time to formulate the intent to kill, therefore it is reasonable to assume that Mark could have formulated the intent to kill Fred when he found him

*premed -  
delib.*

outside the dispensary with the gunshot wound. However, this is more difficult to prove and would be better to make a case against mark for murder by an enumerated felony. (see below)

Implied Malice

Great Bodily Injury

✓ Here it could be argued that Marks actions could be seen as an intent to cause great bodily injury to those in the area of the crime. Marks action of pushing Fred off the cliff could reasonable be seen as one that would cause great bodily injury. Therefore it could be argued that Mark committed a murder by implied malice. *As 2°?*

Reckless Disregard for Human life

✓ It could be argued that Mark acted in reckless disregard for human life when he pushed Fred off of the cliff. A reasonable person would not push a person off of a cliff solely because they assumed that he was heavily injured by a gunshot wound. Mark could have left him there or even called an ambulance to aid him due to his injury. Mark instead acted with reckless disregard when he pushed him off the cliff. Therefore it could be argued that Mark committed a murder by implied malice.

Enumerated Felony (FMR) *Need a rule stat.* A → (C) → (F)

Here ~~in our~~ fact patten Mark and Fred committed a burglary against Fred's dispensary. Fred's death occurred during the action of the felony so it is reasonable to find that his death was a result of felony. It is clear that Mark was attempting to cover his tracks and leave no witnesses of his crime he and Dan had committed. It is likely that Mark will be found guilty of murder as a result of the enumerated felony.

*→ 1-R-A-C FMR*

Manslaughter

There are two types of killings of a person that do not occur with Malice, the two theories being legally adequate provocation, and imperfect self-defense. Legally adequate provocation occurs when the defendant kills another whom they have a relationship with while that person has engaged in an act that has heightened the emotions of the defendant leading to the killing of the plaintiff. Imperfect self-defense occurs when the defendant believes they are in harms way and have no choice but to kill in order to protect themselves.

*What about v m?*

For this set of facts, there is no arguable heat of passion nor imperfect self defense, as Mark committed the act while engaging in an enumerated felony against Fred and his dispensary.

Conclusion

It is likely that Mark will be found guilty of murder as a result of the enumerated felony in the first-degree.

*kidnapping?*

3) Dan's role in the murder of Fred

(See rules for Homicide, Murder, and Manslaughter above)

*Accomplice  
Culp. - Liab.*

Express Malice

Same as Mark, Dan did not have the express intent to kill Fred when they went to commit the burglary. Therefore, it is reasonable to conclude that Dan can not be found guilty of murder by express malice.

Implied Malice

### Great Bodily Injury

Here it could be argued that Dan's actions had the intent to cause great bodily injury to those in the area of the crime. Dan's action of pistol whipping Fred with a loaded weapon, could reasonably be seen as one that would cause great bodily injury. Therefore it could be argued that Dan committed a murder by implied malice.

### Reckless Disregard for Human life

It could be argued that Dan acted in reckless disregard for human life when he pistol whipped Fred. A reasonable person would not pistol whip someone solely because they wanted to gather information about where they could find the good hashish and money. Therefore it could be argued that Dan committed a murder by implied malice.

### Enumerated Felony

Here in our fact patten Mark and Fred committed a burglary against Fred's dispensary. Fred's death occurred during the action of the felony so it is reasonable to find that his death was a result of felony. It is clear that Dan was attempting to cover his tracks and leave no witnesses of his crime he and Dan had committed. It is likely that Dan will be found guilty of murder as a result of the enumerated felony by way of conspiracy.

### Manslaughter

Same as Mark's analysis, there is no arguable heat of passion nor imperfect self defense, as Dan committed the act while engaging in an enumerated felony against Fred and his dispensary.

### Conspiracy

---

From the fact pattern ~~we~~ see that Mark and Dan entered Buds Dispensary to steal money and marijuana. Mark and Dan worked together as a team to complete the crime. Based on the information given in the fact pattern it is reasonable to assume that Mark and Dan had entered into a conspiracy together. A conspiracy occurs when two or more individuals enter into an agreement to commit a crime and then commit an overt act in furtherance of the crime and it is a specific intent crime. From the fact pattern ~~we~~ see that Mark and Dan had committed burglary against Fred and his dispensary as they had entered with the shop with the intent to steal money and marijuana. All crimes that occur during a conspiracy are placed on both parties. Therefore it is reasonable to assume that Dan will be guilty of Murder in the first degree of Fred.

Conduct

So long as, ... ?

Defenses

Abandonment of Conspiracy

Dan may ~~try~~ to claim a defense that he had abandoned the conspiracy when he fled after he had shot Fred when he tried to pistol whip him. This argument; however, is flawed as he had committed an overt act in furtherance of the conspiracy

Conclusion

It is likely that Dan will be found guilty of murder as a result of the enumerated felony in the first-degree by way of conspiracy.

**END OF EXAM**

2)

1. Was the stop lawful?

4th Amendment

The 4th Amendment (4th A) protects citizens from unconstitutional government searches and seizures of their property and possessions. For an LEO to search and seize someone's property/possessions the LEO must have a warrant, probable cause, or the situation must be subject to a valid search warrant exception.

Here, the facts explicitly state that the LEOs did not seek a warrant to search Don's (D's) car. The facts also do not state that the LEOs had any articulable facts on which they would have been able to stop D in terms of a "pretext" stop. Nothing indicates that D had committed any sort of traffic violation. D did not consent to a search and since the LEOs had no traffic reason in which to stop D, nor any facts in which to develop probable cause to search his car, the search likely violated D's 4th A protections.

*The tipster?*

Thus, the stop (which was a detention) and the search both violated D's 4th A rights.

*P.C. to believe car contains drugs for sale ?*

Prosecutors would argue that the anonymous tipster gave them enough information to develop probable cause. When a tipster to police is anonymous the LEOs must take into account the totality of the circumstances, the particularity of the information, and the reasoning why the tipster would have the knowledge they are choosing to share with the LEOs.

Here, the tipster shared multiple things that the LEOs were able to confirm in multiple ways to validate the intelligence. The tipster shared that D had made a big purchase, and

*Corrob.*

LEOs knew D to be a big drug dealer. The tipster knew that D was going to sell to middle schoolers, which LEOs knew D for that in the past. The tipster knew the color, type, location, and the passengers of D's car. The LEOs were able to confirm this via surveillance footage and DMV registry. This is a large amount of particular information for a tipster to give. The facts do not indicate that the tipster had been reliable in the past or not, but since the LEOs were able to confirm so much of the information in real-time, the intelligence that came to them via the tipster seems more than reasonable reliable.

good

F/A  
⊕

Thus, prosecutors would argue that in view of the totality of circumstances (ToC) that the LEOs did not need to see D commit a traffic violation nor did they need to see him commit acts that would develop reasonable suspicion, or probable cause, from. That the tipster provided them with enough information to form probable cause that justified the stop and search. As D was only 2 blocks from middle school when they stopped the car, the officers could argue that there was not time to apply for a warrant. As if they had D could have minutes later sold teenage harmful prescription drugs. As drug overdoses are the #1 cause of accidental deaths in teens, prosecutors would argue there was no time to wait as D could have sold a bag of drugs and a teen could have easily overdosed before a warrant was issued. One of the search warrant exceptions is exigency in regards to public health/safety. Prosecutors would argue that the LEOs potentially saved some teen lives by not applying for a warrant.

good

⊕  
don't cite to non fact-pattern facts

Conclusion on #1: A judge or jury would likely find that D's 4th A rights were violated and the exigency warrant exception was not a valid defense as the LEOs could have simply waited to see what D's car did and stopped him once he appeared to make a sale to a teen. If he did not make a sale, they could have followed him for a reasonable amount of time to see if he made any traffic violations for which they could pull him over.

---

## #2 Ruby's standing

passenger  
standing  
voted?

The 4th A protects a person and their possessions. Since LEOs conducted the search without a warrant there is a 4th A violation, but Ruby does not have standing to claim that same violation as the search was of D and his car. The facts only indicate that Ruby was placed in the back of a patrol car. There is no indication that she was searched. For a 4th A right to be violated the search/seizure has to violate one's own privacy and possessions. Ruby does not have an objective or subjective expectation of privacy in D's car when on a public street.

Thus, Ruby does not have standing to challenge the search.

## #3 Ruby's Statement

Miranda warnings are designed to protect a person from the risk of self-incriminating statements. A person is free from coerced confessions. The Miranda warnings are to be given before a custodial interrogation where the suspect is to be informed that they have the right to remain silent, if they choose to speak what they say will be used against them, they have a right to an attorney, and if they cannot afford one an attorney will be appointed.

custody?

Here, Ruby (R) was placed in the back of a patrol car. This would indicate that she was at least detained, but R would argue she was in custody. If R was in custody then she should have been read her Miranda rights before any sort of interrogation was commenced. R was in the back of a patrol car and was allowed to use her cell phone. R would argue that though she was not being questioned that she was given her phone in a car that was recording sound so that she would make incriminating statements. Though she was not being questioned the officers were inciting her to incriminate herself.

---



F/A  
⊕

Prosecutors would argue she was only detailed while the search was conducted. LEOs are allowed to detain vehicle passengers while a search is conducted to prevent evidence tampering and officer safety. Prosecutors would also argue that R was not being interrogated at the time she made the statements, that she was freely talking on a cell phone in a police car on a public street two blocks from a middle school. No reasonable person would expect to have a private phone call in that setting. Prosecutors would also argue that R's statements about "we're going down this time" were made completely separate from any influence of D, the LEOs, or any other influence. Meaning her statements were completely attenuated from the 4th A violation of D's car.

Also,  
no rep  
in  
back  
of  
patrol  
car

Conclusion: R statements would be admissible because they were attenuated from the "fruit of the poisonous tree," they were given where she had not REOP, and she was not under arrest or being interrogated at the time they were given.

#### #4 Ruby Aiding/Abetting

✓ Aiding and abetting (A/A) a crime is complete once a person encourages, aids, counsels someone to commit a crime and commits and act in furtherance of the target crime.

Here, since R's statement that would be admissible (see supra), the prosecutors would hone in on a few key words to prove that R admitted to A/A. First, R says "we're" meaning her and D. This indicates that she and D are acting in concert with one another or that they were two people performing the act criminal act. Second, R says "this time." This shows that this was not her and D's first time doing this type of crime. D was known to police to sell drugs to juveniles. The tipster said that R would be with D and that she was his assistant in the drug trade. R admitting to "this time" confirms what the tipster said and what the LEOs already knew about D.

---

Thus, R likely could not simply claim she was a passenger in the car and did not know what D was up to. A trier of fact would convict R of A/A.

**END OF EXAM**