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## **Constitutional Protection of Accused Persons**

### **1. If the driver moves to suppress the use as evidence of the marijuana and cocaine found in the search of the truck, the court should**

*After completing their search of the driver and the truck, the police went over to the young woman and searched her purse. In her purse, they found a small quantity of heroin. Both the driver and the young woman were arrested and charged with unlawful possession of narcotics. The only passenger was a young woman who was in the back of the truck. The police saw her get out and stand at a nearby bus stop. They stopped the truck and searched the driver. In the pocket of the driver's jacket, the police found a small bottle of pills that they recognized as narcotics. They then broke open a locked toolbox attached to the flatbed of the truck and found a small sealed envelope inside. They opened it and found marijuana. They also found a quantity of cocaine in the glove compartment. Police received information from an undercover police officer that she had just seen two men (whom she described) in a red pickup truck selling marijuana to schoolchildren near the city's largest high school. A few minutes later, two police officers saw a pickup truck fitting the description a half block from the high school. The driver of the truck matched the description of one of the men described by the undercover officer.*

- Grant the motion as to both the marijuana and the cocaine
- Grant the motion as to the marijuana but deny it as to the cocaine
- Deny the motion as to the marijuana but grant it as to the cocaine
- **Deny the motion as to both the marijuana and the cocaine**

Note:

*Under the automobile exception to the warrant requirement of the Fourth Amendment, the police may search a vehicle if they have probable cause to believe that it contains contraband, fruits, or instrumentalities of a crime. If the police have probable cause to search the vehicle, they may search the entire vehicle and all containers that might contain the evidence they are searching for. Therefore, if the police have reason to believe there is illegal contraband in the car, they can search the entire car for the contraband, including containers.*

*D is correct. An undercover police officer reported that the driver of the vehicle was selling marijuana and gave a description of the truck and the driver. This information gave the two police officers the probable cause needed to stop and search a vehicle matching the description. The automobile exception allows the warrantless search of the vehicle, including any container in the vehicle that may contain the evidence sought, and the belongings of the people inside the vehicle. The police were thus constitutionally permitted to search the glove compartment, the locked toolbox, and the sealed envelope for more evidence of marijuana. The motion should be denied as to both substances.*

*A is incorrect. Neither the marijuana nor the cocaine should be suppressed because, under the automobile exception, the police had probable cause and thus could conduct a warrantless search of the entire vehicle, including every container, before properly discovering both substances.*

*B is incorrect. The marijuana and the cocaine, not just the cocaine, were properly discovered in the course of a search pursuant to the automobile exception. The police had probable cause to believe drugs were in the car or on the driver's person, and therefore, were constitutionally permitted to search the entire car, including every container.*

*C is incorrect. As stated above, the marijuana and the cocaine, not just the marijuana, were properly discovered in the course of a search under the automobile exception.*

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## 2. If the young woman moves to suppress the use as evidence of the heroin, the court should

After completing their search of the driver and the truck, the police went over to the young woman and searched her purse. In her purse, they found a small quantity of heroin. Both the driver and the young woman were arrested and charged with unlawful possession of narcotics. The only passenger was a young woman who was in the back of the truck. The police saw her get out and stand at a nearby bus stop. They stopped the truck and searched the driver. In the pocket of the driver's jacket, the police found a small bottle of pills that they recognized as narcotics. They then broke open a locked toolbox attached to the flatbed of the truck and found a small sealed envelope inside. They opened it and found marijuana. They also found a quantity of cocaine in the glove compartment. Police received information from an undercover police officer that she had just seen two men (whom she described) in a red pickup truck selling marijuana to schoolchildren near the city's largest high school. A few minutes later, two police officers saw a pickup truck fitting the description a half block from the high school. The driver of the truck matched the description of one of the men described by the undercover officer.

- **Grant the motion, because she did not fit the description given by the informant and her mere presence does not justify the search**
- Grant the motion, because the police should have seized her purse and then obtained a warrant to search it
- Deny the motion, because she had been a passenger in the truck and the police had probable cause to search the truck
- Deny the motion, because she was planning to leave the scene by bus and so exigent circumstances existed

Note:

Under the automobile exception to the warrant requirement of the Fourth Amendment, the police may search a vehicle if they have probable cause to believe that it contains contraband, fruits, or instrumentalities of a crime. An automobile stop constitutes a seizure not only of the automobile's driver, but also of any current passengers.

A is correct. Although there was probable cause to search the driver and the vehicle itself, that does not extend to the young woman, who had exited the car and was no longer a passenger. While the automobile exception would have allowed the search of a passenger's purse had she remained in the vehicle, she had exited the car before the car was stopped and searched. Therefore, the police cannot use the automobile exception to search her without a warrant and absent any other applicable exception, the motion to suppress should be granted.

B is incorrect. The police did not have grounds to seize the woman's purse to begin with. They had no warrant, and there was no exception to the warrant requirement. Thus, without grounds, the seizure of the purse would have been unconstitutional.

C is incorrect. Despite the fact that the vehicle could be searched, the woman's earlier presence in a truck does not give the police officers probable cause to search her purse because she had exited the vehicle. The woman was not in the car when the initial officer observed the drug deal taking place, and she was not in the car when it was stopped. If the woman had still been inside the car when it was stopped, the police would have been able to search her purse, but not once she exited the car.

D is incorrect. Exigent circumstances are inapplicable here because there was no emergency and no probable cause to believe the woman might destroy evidence. The mere fact that a person might leave an area where the police are located does not grant the police the right to search them without probable cause. There was no probable cause to search the woman, and no exigent circumstances, so the woman's motion to suppress should be granted.

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### 3. The motion should be

*Suspecting that a defendant had slain his wife, police detectives persuaded one of the defendant's employees to remove a drinking glass from the defendant's office so that it could be used for fingerprint comparisons with a knife found near the body. The fingerprints matched. The prosecutor announced that he would present comparisons and evidence to the grand jury. The defendant's lawyer immediately filed a motion to suppress the evidence of the fingerprint comparisons to bar its consideration by the grand jury, contending that the evidence was illegally acquired.*

- Granted, because, if there were no probable cause, the grand jury should not consider the evidence
- Granted, because the employee was acting as a police agent and his seizure of the glass without a warrant was unconstitutional
- **Denied, because motions based on the exclusionary rule are premature in grand jury proceedings**
- Denied, because the glass was removed from the defendant's possession by a private citizen and not a police officer

Note:

*A grand jury can charge a criminal defendant by determining there is probable cause to prosecute by returning the bill of indictment. A grand jury may base its indictment on evidence that would not be admissible at trial. Costello v. United States, 350 U.S. 359 (1956). Nor may a defendant have the indictment quashed on the grounds that it is based upon illegally-obtained evidence. Motions to suppress evidence based on the exclusionary rule are premature in grand jury proceedings and will be denied.*

*C is correct. A grand jury may properly hear evidence that violates the exclusionary rule, and a motion to exclude illegally-obtained evidence is premature during grand jury proceedings and should thus be denied.*

*A is incorrect. The grand jury may properly consider evidence of many kinds, including the fingerprints here, even if there was no probable cause for obtaining it.*

*B is incorrect. As explained above, the motion to exclude is premature during grand jury proceedings, regardless of the constitutionality of the employee's actions on behalf of the police. The fact that the motion is premature supersedes any other Fourth Amendment violation that should be raised in another stage of the trial proceedings.*

*D is incorrect. This answer reaches the correct answer with the wrong reasoning. The motion should be denied because it is premature. Any ruling on the merits of the motion to suppress would be premature because the exclusionary rule for Fourth Amendment violations is inapplicable to grand jury proceedings.*

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### 4. The man's confession is

*A man entered the police station and announced that he wanted to confess to a murder. The police advised the man of his *Miranda* rights, and the man signed a written waiver. The man described the murder in detail and pinpointed the location where a murder victim had been found a few weeks before. Later, a court-appointed psychiatrist determined that the man was suffering from a serious mental illness that interfered with his ability to make rational choices and to understand his rights and that the psychosis had induced his confession.*

- **Admissible, because there was no coercive police conduct in obtaining the man's statement**
- Admissible, because the man was not in custody
- Inadmissible, because the man's confession was a product of his mental illness and was therefore involuntary
- Inadmissible, because under these circumstances, there was no valid waiver of *Miranda* warnings

Note:

*The Fourteenth Amendment protects suspects from involuntary confessions. However, only official coercion or compulsion will cause a confession to be involuntary. A confession is not considered involuntary simply because it is the product of a mental disease that prevents the confession from being of the defendant's free will. Colorado v. Connelly, 479 U.S. 157 (1986).*

*A is correct. Because a statement is not considered involuntary when it is the result of mental disease, and there was no coercive police conduct in obtaining the man's statement, it should not be suppressed, and the confession is admissible.*

*B is incorrect. This answer reaches the correct answer with the wrong reasoning. Despite whether the man was in custody at the time he made the confession, there was no coercion or compulsion by the police to induce the man's statement. Subsequently, the statement is admissible because it was not involuntary, irrespective of whether he was in custody. See Colorado v. Connelly, 479 U.S. 157 (1986).*

*C is incorrect. In order to find that the confession was inadmissible based on involuntariness, there must have been some sort of coercion by the police to induce the statement. The exclusionary rule does not reserve the right to make statements only when rational and properly motivated. Moreover, the Court in Connelly held that a confession is not involuntary just because it is made as a result of mental illness.*

*D is incorrect. There was no police misconduct of any kind in this case, which means there was no violation of Miranda. The police gave Miranda warnings and the man signed a valid waiver. Under Connelly, the man's mental illness would not be grounds for excluding the confession.*

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## 5. Which of these grounds provides a constitutional basis for relief?

Six months later, the defendant filed a motion to set aside his guilty plea on each of the following grounds. The presiding judge asked the defendant whether he understood the nature of the charges, possible defenses, and maximum allowable sentences. The defendant replied that he did, and the judge reviewed all of those matters with him. He then asked the defendant whether he understood that he did not have to plead guilty. When the defendant responded that he knew that, the judge accepted the plea and sentenced the defendant to 25 years. The defendant was indicted in a state court in January 1985 for a robbery and murder that occurred in December 1982. He retained counsel who filed a motion to dismiss on the ground that the defendant had been prejudiced by a 25-month delay in obtaining the indictment. Thereafter, the defendant, with his counsel, appeared in court for arraignment and stated that he wished to plead guilty.

- The judge did not rule on his motion to dismiss before accepting the guilty plea
- The judge did not determine that the defendant had robbed and killed the victim
- **The judge did not determine whether the defendant understood that he had a right to jury trial**
- The judge did not determine whether the prosecutor's file contained any undisclosed exculpatory material

Note:

A guilty plea waives various rights, including the right to a jury trial under the Sixth Amendment. The court must establish that the plea is voluntary and intelligent by addressing the defendant in open court on the record. *McCarthy v. United States*, 394 U.S. 459 (1969). The judge must be sure that the defendant knows and understands: (i) the nature of the charge(s) against him and the crucial elements of the crime(s); (ii) the maximum possible penalty and any mandatory minimum; and (iii) that he has the right to plead not guilty and that if he does plead guilty, he waives the right to trial. If the defendant is not fully advised of each of his constitutional rights and/or does not knowingly and voluntarily waive each of those rights, the plea will be subject to a motion to set it aside.

Federal Rule of Criminal Procedure 11(b)(3) requires that the judge ascertain a factual basis for accepting a guilty plea, although this does not mean the judge has to determine that the defendant did, in fact, commit the crime.

C is correct. If the judge did not determine whether or not the defendant understood that he had the constitutional right to a jury trial, the defendant could not have voluntarily waived that right, and his motion to set aside the plea should be granted.

A is incorrect. The judge is not required to rule on all pre-trial motions prior to accepting the entry of a guilty plea. A guilty plea may be knowingly and voluntarily entered at any time, even if there are pending pre-trial motions.

B is incorrect. For the court to properly accept a guilty plea, the judge is not required to make a factual determination that the defendant committed the offense charged. The judge is only required to determine that a factual basis exists for the plea. Fed. R. Crim. P. 11(b)(3).

D is incorrect. The prosecutor's duty to disclose exculpatory material does not have to be fulfilled prior to the court's acceptance of a knowing and voluntary guilty plea.

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## 6. As to the defendant's motion to suppress, the court should

The defendant moved to suppress the use of her statement to the police officer as evidence on two grounds: first, that the statement was acquired without giving *Miranda* warnings, and second, that the police officer had deliberately elicited her incriminating statement after she was in custody. At the station, after being given *Miranda* warnings, the defendant stated that she wished to remain silent and made no other statements. A grand jury indicted the defendant on a charge of arson, and a valid warrant was issued for her arrest. A police officer arrested the defendant and informed her of what the warrant stated. However, hoping that the defendant might say something incriminating, he did not give her *Miranda* warnings. He placed her in the back seat of his patrol car and was driving her to the police station when she said, "Look, I didn't mean to burn the building; it was an accident. I was just burning some papers in a wastebasket."

- **Deny the motion**
- Grant the motion only on the basis of the first ground stated
- Grant the motion only on the basis of the second ground stated
- Grant the motion on either ground

Note:

The Fifth Amendment has been interpreted to protect defendants against compelled self-incrimination under *Miranda v. Arizona*, 384 U.S. 436 (1966). Warnings given pursuant to *Miranda* and a valid waiver of those rights are prerequisites to the admissibility of any confession made during custodial interrogation. Whether a defendant is in custody is determined by examining: (i) whether a reasonable person under the circumstances would feel free to terminate the interrogation and leave; and (ii) whether the environment offers "the same inherently coercive pressures" as were present at the station house in *Miranda*. See *Howes v. Fields*, 132 S. Ct. 1181 (2012). Regarding the interrogation requirement, this refers not only to express questioning but also to any words or actions on the part of the police that they should know are reasonably likely to elicit an incriminating response from the suspect. *Rhode Island v. Innis*, 446 U.S. 291 (1980). However, *Miranda* does not apply to spontaneous statements not made in response to interrogation, although officers must give warnings before following up with questions.

A is correct. *Miranda* warnings need to be given only if the person is subject to custodial interrogation. The defendant was in custody pursuant to the warrant while in the back of the patrol car. However, while the police officer was driving her to the station, she was not subject to interrogation. Her voluntary, spontaneous statement in the vehicle to the officer should not be suppressed on the ground that the officer failed to give her the *Miranda* warnings. Merely hoping for incriminating statements is insufficient action by the officer to be considered an interrogation for *Miranda* purposes. The officer did not ask any questions, he did not deliberately elicit any statement, and the statement was knowingly and voluntarily made.

B is incorrect. As explained above, the defendant made her statements in the police vehicle voluntarily and spontaneously, so no custodial interrogation took place. This means there was no requirement that the police officer must give her *Miranda* warnings. Subsequently, the first ground stated is not a sufficient basis for granting the motion.

C is incorrect. When the police officer merely hoped that the defendant would make incriminating statements, this does not amount to deliberately eliciting the confession. She voluntarily made her incriminating statements, thus rendering the second ground an insufficient basis for granting the motion.

D is incorrect. Neither the first nor the second ground presented to support the defendant's motion is sufficient basis for granting it, as stated above.

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## 7. Her motion to prevent the introduction of the dress into evidence will be

*The customer is charged with shoplifting. A department store had experienced a growing incidence of shoplifting. At the store's request, the police concealed an undercover detective at a vantage point above the women's apparel fitting rooms where she could see into these rooms, where customers tried on clothes. The detective saw a customer enter a fitting room, stuff a dress into her pocketbook, leave the fitting room, and start for the street door. By prearranged signal, the detective notified another police officer near the door, who detained the customer as the customer started to go out into the street. The customer was placed under arrest, and the dress was retrieved from her purse.*

- Granted, because the police should have secured a search warrant to search her bag
- **Granted, because a customer has a reasonable expectation of privacy while using a department store fitting room**
- Denied, because the search and seizure were made incident to a valid arrest based on probable cause
- Denied, because the detective could see into the room and thus the customer's activities were legitimately in plain view

Note:

*B is correct. The motion to suppress evidence will be granted if the customer can show that she was subject to an illegal search by the state. The Fourth Amendment protects people from unreasonable searches and seizures by the state. The first issue in this Fourth Amendment analysis is to determine if there was a search or seizure. By watching the customer in the fitting room, the detective was conducting a search. The customer had a reasonable expectation of privacy in a department store fitting room, which was private and could only be seen by the detective when she was concealed at a vantage point above the rooms. A person has a reasonable expectation that they will not be watched in a place that is closed from public view such as the fitting room. The customer had an expectation of privacy in the fitting room, and that expectation is one that society has recognized as justified.*

*The second issue to determine is whether the search was conducted by a state actor. The detective was working for the police department which was conducting surveillance. The detective was clearly a state actor. Finally, there is no exception to the warrant requirement that would allow for the search. The fitting room was not in plain view; the detective had to conceal herself above the fitting room to be able to see in, which is not a place visible in plain view. Therefore, the customer's motion to suppress should be granted because her reasonable expectation of privacy was violated by the detective's search.*

*A is incorrect. The police officer who stopped the customer as she was exiting did not need to acquire a search warrant for the purse. He had been given information from the detective that gave him probable cause to arrest the customer and search her purse. The illegal search occurred when the detective observed the customer in the fitting room, not when the other officer made the arrest and searched the purse.*

*C is incorrect. The arrest, or seizure, of the customer and her purse were properly based on probable cause. However, the observations of the detective constituted an illegal search, which would allow suppression of the dress as evidence. If it weren't for the detective's illegal search, there would not have been probable cause for the arrest, and the seizure of the dress would be fruit of the poisonous tree.*

*D is incorrect. The detective was able to observe the customer's actions only by concealing herself in a vantage point above the fitting room, and the customer had a reasonable expectation of privacy in the fitting room. Therefore, the plain view exception to the warrant requirement does not apply here. Since the customer has a legitimate and reasonable expectation of privacy in the fitting room, the detective's watching her from above was an illegal search, and the dress should not be allowed into evidence.*

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## 8. The man's constitutional rights were

The jury found the man guilty, and the man appealed, contending that the court's instructions on the issues of whether the woman was his wife and whether he reasonably believed she had consented violated his constitutional rights. The court also instructed the jury that it should find the defendant not guilty if it found either that the woman was the man's wife or that the man reasonably believed that the woman had consented to the sexual intercourse, but that the burden of persuasion as to these issues was on the defendant. At the conclusion of the case, the court instructed the jury that in order to find the man guilty of rape, it must find beyond a reasonable doubt that he had sexual intercourse with the woman without her consent. A man is charged with the rape of a woman. At trial, the woman testifies to facts sufficient for a jury to find that the man had sexual intercourse with her, that she did not consent, and that the two were not married. The man testifies in his own defense that he believed she consented to sexual intercourse and that she was his common-law wife. A statute provides: A person commits the crime of rape if he has sexual intercourse with a female, not his wife, without her consent.

- Violated by the instructions as to both issues
- **Violated by the instruction as to whether the woman was his wife, but not violated by the instruction on belief as to consent**
- Violated by the instruction on belief as to consent, but not violated by the instruction as to whether the woman was his wife
- Not violated by either part of the instructions

Note:

In a criminal case, the prosecution must prove each element of a crime beyond a reasonable doubt. The burden of persuasion only shifts to the defendant when he claims an affirmative defense.

B is correct. In this case, the prosecution must prove three things: (i) that the man had sexual intercourse with a woman; (ii) that was not his wife; and (iii) it was without her consent. All three elements must be proven by the prosecution beyond a reasonable doubt. Therefore, the burden of persuasion about whether the woman was the man's wife must be on the prosecution. The burden of persuasion only shifts to the defendant when he claims an affirmative defense. Here, the defendant did assert a reasonable belief that the woman had consented, which is an affirmative defense because it does not go to any element of the crime. Thus, placing the burden on the defendant to show that he reasonably believed that the woman had consented would not violate his constitutional rights.

A is incorrect. As explained above, placing the burden on the defendant to convince the jury that he had a reasonable belief of consent is an affirmative defense because it does not go to the elements of the charge of rape. As a result, the instruction as to the affirmative defense was constitutional.

C is incorrect. Again, the instruction regarding the element of whether she was the defendant's wife was unconstitutional in that it improperly shifted the burden. However, a reasonable belief of consent is an affirmative defense because it does not go to a specific element of the charged crime.

D is incorrect. For the reasons stated above, the instruction as to reasonable consent was not unconstitutional, while the instruction as to whether the woman was his wife was unconstitutional.

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## 9. With regard to the diary, the court should

The defendant was charged with murder. His attorney has moved to exclude the diary from evidence on the ground that its admission would violate the defendant's privilege against self-incrimination. Counsel has also argued that the defendant could not give informed consent to the search because more than 48 hours had passed since the making of the entry and hence he could not remember the existence of the incriminating entry at the time he gave his consent. There is no evidence that the police officers who secured the defendant's consent to the search were aware of his memory impairment. After the defendant was charged, the police visited him and asked if they might search his home. The defendant consented. The police found a diary written by the defendant. An entry dated the same day as the victim's disappearance read, "Indescribable excitement. Why did no one ever tell me that killing gave such pleasure to the master?" A defendant was charged with the murder of a man who had been strangled and whose body was found in some woods near his home. The defendant suffers from a neurological problem that makes it impossible for him to remember an occurrence for longer than 48 hours.

- **Admit it, because the defendant's consent was not obtained by intentional police misconduct and the defendant was not compelled to make the diary entry**
- Admit it, pursuant to the good-faith exception to the exclusionary rule
- Exclude it, because the defendant was not competent to consent to a search
- Exclude it, because use of the diary as evidence would violate the defendant's privilege against self-incrimination

Note:

The Fourth Amendment to the U.S. Constitution provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The police may constitutionally make a warrantless search if they receive the consent of the individual whose premises, effects, or person are to be searched. Consent must be "voluntary," meaning it was not "the product of duress or coercion, express or implied." *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

The Fifth Amendment to the U.S. Constitution states that "no person . . . shall be compelled in any criminal case to be a witness against himself. . . ." Not all activity that might incriminate a person is protected – only "testimonial" activity is covered by the privilege. To be protected, the communication must also be compulsory. The main impact of this requirement is that where a person voluntarily puts information in written form, the document is not privileged even though it is incriminating and may even be testimonial. See generally *United States v. Doe*, 465 U.S. 605 (1984).

The "good faith" exception only applies when a warrant issued to the police is invalid but they reasonably believed it was valid and relied upon that belief.

A is correct. The court should admit the diary because the defendant's consent was voluntary and the writing was not compulsory. Under the Fourth Amendment, people are protected from warrantless searches, but voluntary consent to a search waives this protection. By obtaining the defendant's consent, without any evidence of duress or coercion, and unaware that he had a memory condition, the consent was voluntary. Moreover, the diary's written statement regarding the killing was freely made, not compulsory, and therefore admitting it does not violate the right against self-incrimination.

B is incorrect. This answer reaches the correct answer with the wrong reasoning. The diary should be admitted as the fruit of a legal search that was consented to, not because of the good-faith exception to the exclusionary rule, which applies only when there is a problem with a warrant that the police reasonably believed was valid. Here, there was no warrant necessary because of the voluntary consent to search.

C is incorrect. The defendant was competent to consent to the search. First, his lack of knowledge that they would find his diary, which contained incriminating statements, did not render him incompetent. Second, his memory condition was not known to the police, and consent will only be involuntary if obtained by duress or coercion, neither of which were present here.

D is incorrect. The search that uncovered the diary was consented to, the statement in the diary was freely and voluntarily made, not the result of police compulsion. As such, the privilege against self-incrimination does not bar it as evidence against the defendant.



## 10. Consistent with the law and the Constitution, the jury may convict the defendant of

*The jurisdiction has a death penalty that applies to felony murder. A defendant was charged with felony murder because of his involvement in a bank robbery. The evidence at trial disclosed that a friend invited the defendant to go for a ride in his new car, and after a while asked the defendant to drive. As the friend and the defendant drove around town, the friend explained to the defendant that he planned to rob the bank and that he needed the defendant to drive the getaway car. The defendant agreed to drive to the bank and to wait outside while the friend went in to rob it. As they approached the bank, the defendant began to regret his agreement to help with the robbery. Once there, the friend got out of the car. As the friend went out of sight inside the bank, the defendant drove away and went home. Inside the bank, the friend killed a bank guard who tried to prevent him from leaving with the money. The friend ran outside and, finding that his car and the defendant were gone, ran down an alley. He was apprehended a few blocks away. The defendant later turned himself in after hearing on the radio that the friend had killed the guard.*

- Felony murder and impose the death penalty
- **Felony murder but not impose the death penalty**
- Bank robbery only
- No crime

Note:

*Felony murder applies where there is a killing during the course of a violent felony. If the killing is foreseeable from the illegal actions, then an accomplice can be convicted of felony murder. In other words, if a death is caused in the course of a conspiracy to commit a felony, all members of the conspiracy are liable for murder if the death was caused in furtherance of the conspiracy and was a foreseeable consequence. Courts have found most deaths that occur in furtherance of the conspiracy to be foreseeable.*

*The Eighth Amendment prohibits the imposition of a penalty that is grossly disproportionate to the seriousness of the offense committed. The death penalty may not be imposed as a punishment for felony murder upon an accomplice who "did not take or attempt or intend to take life, or intend that lethal force be employed." *Enmund v. Florida*, 458 U.S. 782 (1982). However, an accomplice to felony murder may be given the death penalty, even if he did not kill or intend to kill, if he participated in a major way in the underlying felony that resulted in murder and acted with reckless indifference to the value of human life. *Tison v. Arizona*, 481 U.S. 137 (1987).*

*B is correct. The defendant's aiding and abetting the friend by agreeing to drive the getaway car, driving the friend to the bank, and knowing that the friend intended to rob it, makes him guilty of the felony murder charge. However, the defendant's lack of intent to kill, his driving off after dropping the friend off, and his turning himself in after the fact, indicate that a sentence of death would be disproportionate and therefore unconstitutional.*

*A is incorrect. Although the defendant could be properly convicted of felony murder based on his knowing involvement in aiding and abetting the commission of the felony bank robbery, pursuant to the Eighth Amendment, the death penalty may not be imposed for felony murder unless the defendant's involvement was major and he acted with reckless indifference to the value of human life. Here, the defendant's decision to drive the getaway car and then leave, combined with his lack of intent to kill, establish that the defendant did not act with reckless indifference to the value of human life.*

*C is incorrect. The defendant may be convicted of the felony murder charge, not solely robbery. The defendant could reasonably foresee that a death could have resulted in the course of his friend robbing a bank.*

*D is incorrect. The defendant acted as a co-conspirator to his friend's plan to rob the bank. His decision to drive the getaway car and drop his friend off at the scene of the crime (despite leaving before the crime was committed) amount to grounds to convict the defendant of not only robbery, but also of felony murder because death was a reasonably foreseeable result.*

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