

QUESTION 5 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

Patti Police was working undercover at "The Bar," a lounge known for illegal drug activity. Dan Defendant encountered Patti at The Bar. Patti indicated she enjoyed smoking crack cocaine. Dan, eager to impress Patti, informed her that he would bring some crack cocaine for her the following evening. In fact, Dan knew nothing about crack cocaine.

Later that night, Dan informed his friend, Sam Salt, of his encounter with Patti. Sam had just purchased a 2001 BMW from a used car dealer. Sam indicated he was shocked when he discovered a bag filled with a substance Sam believed to be crack cocaine in the glove box of his BMW. Sam indicated the crack was in a brown bag inside his garage. Sam refused to give Dan any of the substance because he feared doing so would subject him to criminal liability. Sam intended to throw the substance out the next time trash was to be collected from his neighborhood.

Dan immediately went to Sam's home to take some crack from Sam's garage. The garage was attached to Sam's home. Sam and his girlfriend were inside Sam's home at the time. Dan pried open the locked garage door, and found the brown paper bag containing the substance in the corner of the garage. Dan placed in an envelope a small portion of a white rocky substance.

The next evening, Dan arrived at The Bar and handed Patti the envelope that contained the substance. Patti took possession of the envelope and Dan was immediately placed under arrest. When the substance was sent to a police lab for analysis, it was discovered that it was not crack cocaine at all but rather rock salt, which the previous owner of the BMW apparently kept in the car for snow and ice emergencies.

Discuss the charges, if any, which may be brought against Dan in relation to: (1) Dan's conduct at Sam's home; and, (2) Dan's conduct at The Bar. Explain your answer.

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