

QUESTION 4 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II
OR IN EXAMPLIFY ANSWER SCREEN 4

Dorothy lay in a bed in a hospital room being treated for a gunshot wound to her arm. She could not move from the bed because she was hooked up to an IV of medicine, an oxygen machine and a blood pressure machine. Her cell phone was on her nightstand next to her.

Dorothy's family was visiting her at the hospital but had just left her room to eat dinner in the hospital cafeteria. Two police officers entered Dorothy's hospital room through the open door. The officers left the door open and sat next to her bed. The officers told her they were investigating the circumstances of her gunshot wound.

Dorothy told them she was the sole patron in a party store buying cigarettes when an unknown, masked assailant entered the store, robbed the cashier and fled. She said she and the cashier exited the store to see if the gunman was gone. They stood next to each other. They saw the gunman running away, then turn around, look toward them and fire a gunshot in their direction. Dorothy was struck in the arm by the bullet.

The police told Dorothy the cashier's version of the facts was the same as Dorothy's version.

The police continued to talk to Dorothy for fifteen minutes. Dorothy repeated that she was awaiting surgery for her bullet wound and was in pain. The police continued to question her as she lay in her bed. At one point Dorothy said she was "tired" and no longer wished to talk. The police continued to ask her questions. After another ten minutes, Dorothy blurted out that she went to the store with her boyfriend but entered alone. She called him on his cell phone from within the store and told him it was empty. Her boyfriend then entered the store, robbed it, fled and shot her by mistake.

Dorothy was never given any *Miranda* warnings. The people seek to use Dorothy's statement against her.

Determine whether the statement can be introduced against Dorothy at trial. Provide the legal basis for your conclusion.

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