

QUESTION 12 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV

On April 24, 2012, Danny Driver was showing off to his passenger, his wife Patty, by driving their new orange Camaro at 90 miles an hour on 1-75 (speed limit 70). State Troopers Smith and Jones were parked in the median and set out after Driver. Smith also radioed ahead to Troopers Clark and Campbell, parked a couple miles ahead.

Smith and Jones eventually pulled Driver over and Clark and Campbell arrived seconds later, parking behind Smith and Jones' cruiser, which was behind the Camaro. Smith approached the Camaro's driver's side while Jones approached the passenger side. Smith asked Driver for his license. Driver said, "I don't have one, it's suspended." Driver was asked to get out of the car and Smith placed him under arrest, handcuffed him, and put him in the backseat of his cruiser which was equipped with handles that did not open the doors from the inside.

Jones asked Patty for her license, which she produced along with the vehicle registration bearing her's and Danny's names, and proof of insurance. Nevertheless, Patty was asked to exit the vehicle--which she did. She was handcuffed and placed in the back of the Campbell-Clark cruiser, equipped identically as the Smith-Jones cruiser. Just before locking her in, Jones said, "You'll be able to drive that hot-rod home, but hubby is coming with us. We'll let you know when we're done."

With Jones watching Driver and Clark and Campbell watching Patty, Smith went back to the Camaro, opened its door, and saw a man's jacket behind the driver's seat. Smith went through the jacket and found both a small handgun and one ounce of cocaine, both of which he seized.

After only Driver was charged with gun and drug offenses, his counsel moved the court for suppression of those items, claiming the search was invalid because it was done without a search warrant. The prosecutor responded only that the search and resultant seizure were lawful as an exception to the warrant requirement as "a search incident to a lawful arrest."

What arguments should Driver's attorney make in response to the prosecutor? Should Driver's motion be granted? Explain your answers.

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