

JD & Ethical Issues Fact Pattern

John, 15 years old at the time, was sitting at home, playing video games one Tuesday afternoon in October when his friend Joe, also 15 years old, called to ask him if he wanted to go to the local Sac-O-Suds store to buy some candy. It was about 11:00 A.M. John's mother was at work and his sister was in school. John's Mom had dropped them off at school together on her way to work, but John didn't feel like going that morning, as had been the case most days this fall, so he had walked home. John said he would enjoy getting together with Joe, so Joe told him he would meet him in front of his house in a few minutes.

At about 11:30, Joe pulled up in front of John's house driving a Pontiac Grand Am. The keys were in the ignition and Joe told John it was his Aunt's car. They went to the Sac-O-Suds and, while John was paying for his candy, Joe was walking around the store. They left together and Joe drove back toward John's house. While they were driving, Joe told John that he had stolen some sunglasses, batteries and a bag of potato chips from the store. It was a nice day and the boys decided they would like to have lunch in the park, so Joe pulled into a McDonald's drive thru and they ordered two Happy Meals. On the way out of the parking lot, Joe made a left turn out of the driveway. A car which was coming from their right, and was about three car lengths away from them as they turned, stopped short, screeching the tires and loudly tooting the horn.

A police car was driving toward Joe and John, from their left, as they made the turn. His attention was drawn to them by the horn and the loud, angry words from the driver, whose window was down, as was the police officer's. Activating the emergency lights and siren, the officer made a U-turn and began chasing the car. Joe saw the police officer coming up quickly behind him, slowed down and pulled the car off to the right side of the road, just at the edge of the park. As the police officer pulled in behind them, Joe yelled to John and told him to run. John thought Joe was worried about the things he had stolen from the store. Joe then exited the car, which was still in drive. As the car headed toward a tree, John opened the door and began to run into the park. Other officers in the area quickly apprehended Joe and John (after a brief scuffle in which an officer's thumb was bent back) and returned with them to the scene where the car had come to rest against the tree. A headlight was broken and the grill and hood of the car were slightly crumpled.

With Joe and John seated in separate police cars, the original officer emerged from the back of the Grand Am holding a loaded gun in his hand, indicating that it had been found under the passenger seat. When he sees this, the officer who has John in the back says "look at that", to which John replies "I'm screwed now". A subsequent search of the car revealed a quantity of marijuana in the console between the front seats and two "dime" bags of cocaine in the closed ashtray in the front dash. A box of bullets was found in the trunk, in the spare tire compartment, covered and held in place by a screw and wing nut, located under carpeting.

Once at the police station, the original officer learned, through a DMV check on the license plate, that the car had been stolen a week before when the driver had left it, with the engine running, while he went into a convenient store to buy a pack of cigarettes. The police officer then questioned Joe and John about the gun and the drugs. Both of them denied any knowledge of the presence of those items in the car. When asked about the car, Joe said it belonged to his older brother, 22, who told him he had bought it three days ago. He said his brother was “passed out” on the couch and so he “borrowed” his keys and used the car to pick up John. John said he had no idea the car was stolen, but figured something was wrong when Joe told him to run. After several hours, both Joe and John signed statements stating what they had already told the officers.

Joe and John are both given appearance tickets, telling them that they will be contacted by the Probation Department. A week later, they are both given directions to come to Probation at different times. Joe meets with Probation first and agrees to an adult diversion program. John meets with Probation, but is told that, because he has missed 25 of a possible 30 days of school that fall, he is not eligible to participate in diversion. Three days later, he is served with a summons and a delinquency petition, charging him with Criminal Possession of a Weapon, Criminal Possession of Stolen Property, Criminal Possession of a Controlled Substance, Unauthorized Use of a Vehicle, Assault in the Second Degree and Resisting Arrest. Just prior to his case being called, you are assigned to represent John, whose mother is not present, because she is at work. John is remanded to secure detention and you are given an adjourned date for an appearance in three days. The County Attorney advises you that she is looking for a misdemeanor finding and restitution in the amount of \$3,100. She gives you a copy of an estimate from a collision shop and copies of police reports relating to the incident.

When you meet with John at detention, he tells you that Joe has written him a note telling him he is sorry for getting him in trouble, especially since John didn’t know anything about the car, the gun or the drugs which Joe says his brother admits were his. John has given you the letter and Joe’s phone number.