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### **1. D's Arguments in Support of her Suppression Motion and Prosecution's Response**

#### **Exclusionary Rules**

Evidence obtained in violation of a Defendant's Constitutional Rights will not be admissible at trial against the Defendant. Additionally, under the Fruit of the Poisonous Tree Doctrine, evidence derived from evidence produced from the violations will also not be admissible at trial. However, this doesn't mean that the D is entitled to a dismissal of the charges or indictment. He will only be entitled to suppress the illegally obtained evidence.

However, there are exceptions to the Exclusionary Rule. For example, if the evidence was evidence that would have been found by police investigation, it would be admissible; If there is an intervening act, usually from the D's statement, it will not be excluded. Miranda Violations will only suppress the confession but not the physical fruits found from the statement. Additionally, if there was a good faith by the officer, in a later invalid warrant requirement, the evidence will not be excluded.

#### **4th Amendment**

The 4th Amendment protects against unreasonable searches and seizures. In order for a party to bring a 4th Amendment claim, the party must show: (1) State Action and (2) Standing.

#### **State Action**

Here, Detective Fond followed D after he received an anonymous email stating that D was the robber. Police Officers are considered State Agents; therefore, State Action is satisfied.

#### **Standing**

In order to have standing, the party must show that they had a reasonable expectation of privacy in the thing/place being searched and that society recognizes the privacy as reasonable. This is both an objective test and a subjective test. There is no reasonable expectation of privacy to things the party leaves for the world to see or in public fields.

#### **Warrant Requirement**

In order for a search/seizure to be reasonable, a warrant must be issued. A warrant is proper if it is issued by a neutral, detached magistrate, there is probable cause, and the place/thing to be searched is laid out with particularity. A search is considered invalid without a warrant unless a

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warrant exception applies.

**(a) D's "hot" Statement**

D will argue that she had a reasonable expectation of privacy in her conversation in the payphone she was using. She will argue that because she was on the phone with someone, she wouldn't expect another person to eavesdrop on the information. She will argue that because this expectation was reasonable, Fong needed a warrant in order to hear her conversation about the "hot" Roman Coins. However, this is a weak argument because D made this statement when she was in a alley way (a public place). A person does not have a reasonable expectation of privacy in public places and bears the risk of being overheard when she is talking somewhere where people around her can hear here.

Therefore, D's Statement should not be suppressed.

**(b) D's "call your buyer" Statement**

Here, D will have a batter argument to having a reasonable expectation of privacy because Fong bought a parabolic microphone that promised to enable a listen to hear the chirping of birds from a distance of 150 feet. He proceeded to aim the microphone at D, who was using the same payphone in the alley, and heard her say softy, "fine, call your buyer and let me know if we have a deal for the hot coins."

The Supreme Court has held that listening enhancing devices that are not for common use, used for eavesdropping on citizen is considered a search under the 4th Amendment. Fong will argue that since she was in the same place and same alley, it shouldn't be considered a search because she was in a public place. However, society will find it reasonable that a person will not be spied on by a devise that is not commonly known to the public.

Therefore, D's "call your buyer" statement should be suppressed because D had a reasonable expectation of privacy and society considers it reasonable. It would only be admissible if Fong has a warrant exception.

**(c) The Roman Coins**

As stated above, there are exception to the Exclusionary Rule. Fong had a good faith belief that the warrant was valid. When he put all the information into an affidavit for a search warrant for D's house, it was signed and obtained. Thats when he found the coin.

Therefore, the Good Faith Exception will apply and the coins will most likely not be suppressed.

**Warrant Exceptions**

### **Hot Pursuit**

Fong can argue that a warrant was not needed because he was in hot pursuit of a felon. However, this exception needs probable cause which F did not have.

### **Exigent Circumstances-Destruction of Evidence**

F will argue that he needed to act quickly because if he waited to get the warrant, the coins could be gone and there would be no way of knowing where they went.

### **Consent**

Fong can argue that by her stating the terms "I have a set of 'hot' roman coins" in a public place, she has consented to people around her listening to the statement bears the risk that that person would be an officer.

## **2. D for Robbery**

Every crimes requires an Actus Reus, Mens Rea, and concurrence of the Actus Reus and Mens Rea. Some crimes, like murder, also require Causation. A crime can be specific or general. Robbery is a specific intent crime.

Robbery is the trespassory taking and carrying away of personal property of another, with force or threat of force, with the intent to permanently deprive the person of said property.

### **Tresspassory**

In order to satisfy this element, D must have not have had consent to deprive the owner of the property. Here, it is clear that Oscar did not consent for D to rob him and him having to give her his coin. Therefore, this was trespassory.

### **Taking and Carrying Away of Personal Property of Another**

In order to be charged with robbery, there must be a taking and carry away of personal property of another. Asportation can be slight and in general, any movement of the property will satisfy this element. Personal Property can be any tangible item. Here, O (which is of Another) handed D a set of valuable Roman Coins and Fled. This element is satisfied.

### **Force or Threat of Force**

Here, D pulled out a gun that appeared to be a real gun. Although the gun was a toy, this has no relevance to the elements of robbery. D pulled out a gun and pointed it at the owner.

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### **Intent to Permanently Deprive**

Since Robbery is a specific intent crime, if D didn't have the intent to deprive, she will not be liable. However, the facts show that D intended to deprive. She was ready to sell the coin to a buyer. Therefore, this element is also met.

In Conclusion, D is guilty of Robbery.

### **Defenses**

A defendant must prove by a preponderance of the evidence any affirmative defense. However, if the State switches the burden on a element of a crime, it will be subject to reversal. The State always has the burden to proving an element of the crime beyond a reasonable doubt.

### **Mistake of Fact**

D can argue that she cannot be held guilty of robbery because she was using a fake gun. This argument is weak, however, because nothing in the facts state that Oscar was aware that the gun was a toy. This defense will not work for D.

Question #3 Final Word Count = 1242

**END OF EXAM**