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The Fourth Amendment prohibits unreasonable searches and seizures. A person's reasonable expectation of privacy (REOP) may not be infringed upon absent probable cause or other circumstances. Here, Delia was charged with robbery and is attempting to use the judge made exclusionary rules to prevent certain evidence from being used in a suppression motion. The prosecution will counter Delia's suppression arguments as follows:

**1(a) - Delia's statement: "I Have a set of 'hot' Roman coins for sale that need to go a discreet collector. I will call you pack at 9:00 p.m. tonight."**

There is no REOP in conversations had in public.

#### Delia's Arguments

Delia will argue Detective Fong (DF) improperly followed her listened to her private phone conversation, violating her REOP. Delia will further argue that the email from an anonymous source does not support the probable cause for following her.

#### Prosecution Response

The prosecution will argue DF did not violate any rights by following Delia in public or overhearing her conversation on the phone as DF walked passed. DF will further argue that the email provided probable cause to follow her in the first place.

#### Court Ruling

The court will rule that this statement can not be suppressed because Delia has not REOP at a public phone in a public place when someone walks by and overhears a conversation. The court might agree with Delia that an anonymous email does not provide the reliability necessary for probably cause but since no probable cause was needed to obtain this statement, the statement will not be suppressed.

The court will deny Delia's suppression motion as to this statement.

**1(b) - Delia's statement: "Fine, call your buyer and let me know if we have a deal for the hot coins."**

Evidence that is obtained through bad faith police action, such as false statements, is not admissible.

#### Delia's Arguments

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Delia will argue that the use of the parabolic microphone and improper entrance by stating "lives are at stake" into Nell's house violated her Fourth Amendment rights.

#### Prosecution Response

The prosecution will respond that the microphone was not special equipment and purchased at a pet store. Further, the prosecution will state that Nell consented to use of his deck at 9:00pm at night.

#### Court Ruling

The court will likely rule that the use of the microphone was permitted because it was not a special tool and available to the public at a pet store. Moreover, the conversation was at a public payphone where Delia has little REOP. Regarding the use of Nell's deck, the court will rule that DF improperly used a false statement to enter the premises. Thus, although Nell granted consent it was premised on a fraudulent misrepresentation.

The court will likely rule this statement should be suppressed because it is the "fruit of a poisonous tree."

### **1(c) - The Roman Coins**

#### Delia's Arguments

Delia will argue that the search warrant was improperly based on the email and statements from using the microphone on Nell's porch.

#### Prosecution Response

The prosecution will respond that the search warrant was valid and signed by a judge.

#### Court Ruling

Even assuming the search warrant properly listed the coins as the item to find, the court will look to the independent source and inevitable discovery doctrine to allow the coins to enter evidence. Although the court will view the search warrant as defective since the above statement came from DF's improper conduct, the coins would be available from inevitable discovery or possibly from the buyer of the coins, an independent source.

Delia's motion to suppress the coins will likely be denied.

### **2 - Delia is likely guilty of robbery**

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Robbery is the trespassory taking away of the property of another with intent to deprive where the person is present and force or threat of force is used. Delia pulled out a toy gun that appeared to be real, pointed it at Oscar, and Oscar handed her a set of Roman coins. This is likely robbery.

trespassory taking away

Deia fled the coin shop after Oscar handed her the coins.

of the property of another

Oscar was the owner of the coin shop, the coins were from within the coin shop. Likely Oscar owned these coins. Thus, even if Oscar did not own the coins (maybe they were on consignment from someone), the coins were property of another.

intent to deprive

Delia may argue that since nothing was said, there was no intent to deprive. However, any reasonable jury will find that a person entering a coin shop, with a gun that looks real, and where the gun is pointed at the owner, the intent to deprive is present.

Alternatively, Delia may argue that she was at the coin shop looking to scare a friend with her fake gun and had not intent to deprive. This will likely fail.

where the person is present

Oscar was in the coin shop.

force or threat of force is used

Actual force is not required for robbery, threat of force suffices. Here, Delia pointed a gun that looked real at Oscar, this is threat of force. Delia will argue that the gun was a toy and that since it was impossible for her to shoot Oscar there was no force. Delia will further argue that she said nothing to indicate she would shoot or the gun is real. However, factual impossibility is not a defense.

Delia is likely guilty of robbery.

Question #3 Final Word Count = 904

**END OF EXAM**