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**1. His statement, "If I had anything to do with it, I would use my car"**

**Fifth Amendment**

Fifth Amendment protects someone from self-incrimination. Custodial interrogation only applies to Miranda. Custodial means a reasonable person would not feel free to leave. Incriminating means the police know that they are eliciting an incriminating statement from a party. Miranda can be waived knowingly, intelligently, and voluntarily.

Miranda rights

Here, the facts indicate that when David was subject to lawful custody that he knew would not feel free to leave. Moreover, the facts indicate that Detective Anna promptly advised him on his Miranda rights, so even the second element is established.

Therefore, David's Miranda rights were not violated.

"I am not sure if I need a lawyer or not"

The defendant unequivocally must assert that he needs a lawyer and it cannot be ambiguous.

Here, the statement, "I am not sure if I need a lawyer or not" would be considered unequivocal because David is not sure if he needs a lawyer or not because of this ambiguity. Detective Anna can use this evidence. The facts indicate that she had given David his Miranda rights, so David knew he had a right to a lawyer, but because he stated "I am not sure" a reasonable person would construe this as unambiguous then he was not certain.

Therefore, this statement would not be suppressed.

"If I had anything to do with it, I would use my car"

Here, if David has unequivocally asserted his right to a counsel then Detective Anna would violate his rights because she needed to then re-mirandize David in 14 days, but because here she quickly asked David about transporting the heroin this would be fine and would not violate David Fifth Amendment right.

Moreover, Detective Anna would argue that David waived his Miranda rights. This is because when David did not invoke his right to a counsel. He knowingly told Detective Anna that he would be using his car. Also, he intelligently knew this when he was in lawful custody and knew why Detective Anna had subject him to an arrest. This is because during the interrogation Anna had received an anonymous tip about the informant that David was involved with. Lastly, Detective Anna would argue that when he advised David of his Miranda rights and asked him if he knew anything about heroin statements. That he still voluntarily told Detective Anna that If he had anything to do with the transportation of heroin then he would be using his car. David voluntarily admitted to this.

In conclusion, the statement should not be suppressed,

Impeachment

If the court finds that there was a violation of David's volunterr statement. The prosecution can still use David's statement for impeachment purposes.

**2. The text message that stated, "The heroin is in the trunk, deliver**

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## **it to the warehouse: and**

### Fourth Amendment

Fourth Amendment prohibits unlawful searches and seizures by the government. In order to assert a 4A claim, the defendant must show government action and reasonable expectation of privacy.

#### Government action

The defendant must show there was government involvement.

Here, there was government involvement because Officer Baker works for the local police department and due to hearing his colleague's message (Detective Anna) and working under the direction of state there was government involvement.

Therefore, there there was government involvement.

#### Reasonable expectation of privacy

Defendant must show that he or she had a reasonable expectation of privacy to the places searched and seized.

Here, the cellphone is considered a constitutionally protected item because it is private, so David did have a reasonable expectation of privacy. Due to the cell phone requires a warrant. Officer baker must either show he had a warrant to search the phone or there was a waiver of warrant.

### Warrant

A warrant requires probable cause, particularity, neutral and detached magistrate, and warrant cannot be tainted due to passage of time.

Here, Officer baker had probable cause because Detective Anna did mention to him that David possible will or is about to commit a crime by transporting heroin, but there was no facts indicating that he had a warrant.

Therefore, Officer Baker must have a warrant exception.

### Routine stop

routine traffic stops do not require a warrant

Here, Officer baker would argue because he was informed from his own colleague, reliable source, that David might transport the drugs he had more than reasonable suspicion to justifiably stop the car of David. This is because he noticed that David had ran a red light and due to this Officer Baker had probable cause to order David out of the car. On the other hand, David would argue that Officer Baker should not have ordered him to step out of the car because when someone rans a red light does not justifiable mean they are in possession of illegal drugs or weapons. However, Officer Baker would argue to the contrary that he was justifiable because David told his colleague about a possibility of transporting cocaine and because he ran a stop light. He had every right to pull him offer and direct him to step out of the vechile.

Therefore, there does not seem to be a violation of 4A when David was ordered to step out of the vechile.

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Warrant exception- stop and frisk

When a police officer has reasonable suspicion that crime is afoot. Moreover, police officer is permitted to frisk someone if he or she had a reasonable suspicion they can be harmed.

Here, Officer Baker had reasonable suspicion to pull over David because he had confessed in a way that he was involved in transporting heroin. Due to this, Officer Baker had more than a reasonable suspicion (lesser standard than probable cause) to pull over David. Additionally, Officer Baker would argue that the frisk was permitted because usually people that are carrying heroin would most likely protect themselves with weapons. Due to his own safety, Officer Baker would argue he was justified to pat-down and search David. Although, there was no immediate contraband, he still was permitted to search David.

Thus, there was no violation of 4A patting down.

Text message- "The heroin is in the trunk' deliver to the warehouse"

As mentioned before, Officer Baker must have had a warrant to be able to search within the phone of David. He was permitted to confiscate the cellphone, but because a cell-phone needs a search warrant then presumably Officer Baker did violate the rights of David by searching it.

Consent

A consent requires actual or apparent authority and must be voluntarily.

Here, the facts do not indicate that David voluntarily allowed officer Baker to look through his phone. Although, he had the actual authority as he was the person that had this phone. The

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facts still illustrated that Officer Baker still had to have a search warrant for the phone.

### Conclusion

The text message should be suppressed.

### **3. The heroin found in the truck of the car**

#### **Warrant exceptions**

The warrant exceptions are consent, search incident to arrest, exigent circumstances, stop and frisk, and automobile exception.

#### **Exigent circumstances**

Exigent circumstances: hot pursuit, destruction of evidence, and safety.

Here, there was no hot pursuit as Officer Baker was not chasing David. However, due to his safety and that there could be a possibility of David destroying the heroin evidence because he told Anna about it. Officer Baker would argue he was justified to search the trunk of the car, where he found 30 pounds of heroin.

Therefore, this exception is applicable.

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Automobile exception

Unlike a vehicle to search incident to arrest, if a police officer has probable cause he would be allowed to search a search of a trunk.

Here, another exception that Officer Baker would argue is that because of the message he had received from Detective Anna. He would argue that because there was suspicion that David was involved in transporting heroin and that he had lawfully arrested David. That he was permitted to search the trunk of his car because he had probable cause to believe that the heroin would be in his trunk.

Therefore, this exception is applicable.

Consent

A consent requires actual or apparent authority and must be voluntarily.

Here, the facts do not indicate that Baker had consented for Officer Baker to search his trunk. Therefore, this exception is not applicable.

Search incident to arrest

After a lawful arrest, an officer is permitted to search the immediate (wingspan) of the arrestee.

Here, David was arrested after Officer Baker searched his drunk, so David was not in an lawful arrest. Moreover, the vehicle exception to search incident to arrest would not be applicable because that does not apply to a trunk.

Therefore, this exception would not be applicable.

### **Exclusionary rule**

When a defendant constitutional right has been violated.

Here, David most likely would argue that the text message and heroin should be excluded because of the actions of Officer Baker.

### **Independent source**

here, officer baker would argue that through another source they would have found the drug.

### **Inevitable discovery**

The discovery would have been anyway by lawful means

Here, David would argue that the heroin and text message should be excluded because Officer Baker was waiting for for David to do anything, so he can justify the stop. David would argue

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that because of this Officer Baker was able to find the message on his phone and find the heroin in his car. On the other hand, Officer Baker would argue that even if he was in violation that because David had voluntarily admitted about the suspicion he is involved with the transportation of heroin that in any shape or form they would have lawfully been able to retrieve the heroin. After a person is arrested, impoundment or booking the defendant has not reasonable expectation of privacy. If the warrant exceptions are not applicable, Officer Baker with argue because of the booking exception as a party has no reasonable expectation when he or she has there care impounded. That the officers would have found the drugs.

Also, officer Baker would argue that even because David has no reasonable expectation of privacy when officers impounded his car. That they nonetheless would have been able to retrieve the drug.

Thus, this is established.

#### Passage of time (purged tainted)

Here, Officer Baker would argue that later int he day hew as able to arrest and find the heroin. As a result of this, the discovery of the heroin was not attenuated because there was an intervening cause such as David running a stop light.

Therefore, this is met.

#### Standing

Under exclusionary rule, a party must have standing: injury in fact, caused by the defendant, and can be redressed.

Here, David had an actual or immediate injury because he was arrested for 30 pounds of heroin. This was caused by Officer Baker arresting him. Also, this David's arrest can be redressed because if he is not guilty he can prove that the decision was favorable to him

### Conclusion

The heroin found in the truck should not be suppressed

Question #4 Final Word Count = 1840

**END OF EXAM**