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### 1. Statement

David's (D) statement implicates the Fifth Amendment.

- **Applicability of 5th Amendment**

The 5th Amendment is applicable to the states via the **14th Amendment**. Here, D made the statement in response to Detective Anna's (DA) question. Since DA works for the police department, the 5th Amendment applies.

- **Miranda**

California's **Miranda warning** derives from the 5th Amendment, which provides all criminal defendants the **right against self-incrimination**. (See *Miranda v. Arizona*). In *Miranda*, the US Supreme Court held that police officers must advise a suspect of certain rights prior to a **custodial interrogation**. A suspect is in custody if he or she would not **feel free to leave the encounter**. A suspect is interrogated when the police ask the suspect questions which are **designed to elicit an incriminating response**.

Here, DA advised D of his *Miranda* rights prior to conducting an interrogation while he was lawfully in custody.

As a result, DA satisfied her duty to provide D a *Miranda* warning before a custodial interrogation.

- **Invocation**

However, the issue is whether D invoked his *Miranda* rights.

A defendant can waive their *Miranda* rights. Once a defendant waives these rights, then the police do not have to re-*Mirandize* the suspect and can continue the interrogation. But this is not to say that once the defendant waives these rights that they are waived for good, rather, the defendant can invoke their *Miranda* rights at any time. Once a defendant invokes these rights, then the police must immediately stop interrogating the suspect.

After D was mirandized, D raised doubt as to whether he needed a lawyer. Unfortunately for D, mere statements of doubt do not constitute a valid invocation.

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As a result, D did not validly invoke his *Miranda* rights.

- **Police Coercion**

In determining whether a suspect's *Miranda* rights have been violated, the court looks to the level of police coercion and the voluntariness of the suspect's statement. Here, D voluntarily responded to DA's question as to how he was transporting heroin. Although D made this statement after expressing doubt as to his need for a lawyer, the court will likely find that D statement was voluntary and not a product of police coercion.

- **Conclusion**

The **court will deny D's motion to suppress his statement** because the statement was produced voluntarily and was therefore not a product of police coercion.

## **2. Text Message**

The text message implicates the 4th Amendment.

- **Applicability of the 4th Amendment**

The 4th Amendment is applicable to the states via the **14th Amendment**. Here, Officer Baker (Officer B) found the cellphone containing the text messages in D's pocket. Therefore, the 4th Amendment applies in this case.

- **Standing under the 4th Amendment**

California's search and seizure laws derive from the 4th Amendment which provides all citizens the right to be free from unreasonable searches and seizures of property that has a reasonable expectation of privacy. A reasonable expectation of privacy is one that society deems reasonable. In order to fulfill this right, police officers cannot conduct a search or seizure of property that has a reasonable expectation of privacy without a warrant. A valid warrant must: (1) be based upon probable cause; (2) state with particularity the area to be searched and/or the property to be seized; and (3) be issued by a neutral judge or magistrate.

Here, Officer B obtained the cellphone containing the text messages in D's pocket after he searched D. Since members of society have a reasonable expectation of privacy in their

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phones, Officer B needed a warrant to search D's person and seize the cellphone unless an exception to the warrant requirement applies.

- **Terry Stop**

A police officer can conduct a warrantless search during a Terry stop. A Terry stop allows an officer to "**stop and frisk**" a suspect if the officer has **reasonable suspicion** that **crime is afoot** (i.e., that the suspect committed, or was about to commit, a crime). A Terry stop is limited to **brief questioning** to relieve or confirm the officer's reasonable suspicion and a **brief "frisk"** of the suspect to ensure that the suspect is unarmed.

Based on DA's message, Officer B had reasonable suspicion to believe that D's car was involved in the crime of transporting heroin. Thus, when D ran the red light, Officer B was entitled by law to pull D over (stop) and pat-down (frisk) David.

Since the search of D was conducted during a Terry stop based on reasonable suspicion, Officer B's seizure of his phone was valid and the **court will deny D's motion to suppress**.

### 3. Heroin

- ***See Applicability of 4th Amendment as stated above***
- ***See Standing under the 4th Amendment as stated above***

Here, Officer B obtained the heroin after searching D's phone during the Terry stop. Officer B seized the heroin without a valid warrant and therefore, the seizure of the heroine is presumptively unreasonable unless an exception to the warrant requirement applies.

- **Exigent Circumstances**

A police officer can conduct a warrantless search during exigent circumstances in which the evidence may be destroyed.

After searching D's cellphone, Officer B searched the trunk of D's car to obtain the heroin as stated in the text message. Officer B will argue exigent circumstances warranted the warrantless search of D's car because D could dispose the evidence during the time it would take for Officer B to obtain a valid warrant.

Thus, Officer B's argument under the exigent circumstances exception will likely sustain a

court's denial of D's motion to suppress the heroin.

- **Hot Pursuit**

Similar to the exigent circumstances exception, a police officer can conduct a warrantless search of a suspect during hot pursuit of a suspect.

Here, Officer B pulled D over after noticing that the car matched DA's description of a car believed to be involved in transporting heroin, a felony. Thus, Officer B could argue that upon confirming his reasonable suspicion during the Terry stop, he was then in hot pursuit of D.

However, this this argument will fail since D was already in custody before Officer B searched the trunk of his car. Therefore, Officer B was no longer pursuing anyone at the point when he searched the trunk.

As a result, the court will not deny D's motion to suppress the heroin on this basis.

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**END OF EXAM**