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Motion to suppress regarding:

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

The issue here is whether David has made a valid request for counsel/a lawyer.

The 5th amendment guards the right against self incrimination. This requires that a suspect be informed of their miranda rights if they are in custody and under interrogation. Violation of this right will lead to any statements of confessions to be inadmissible as it would be deemed unlawfully obtained, evidence found based on a miranda violation however will not be subject to the fruit of the poisonous tree exception.

The facts here indicate that david was definitely in custody and he was under interrogation by Ann, additionally Ann had rightfully informed him of his miranda rights. Davids response however would not amount to a valid request fro a lawyer as it was not clear and unequivocal. Statements inquiring about the presence of a lawyer or statements like that made by david would not be clear enough to amount to a request for a lawyer, rather david was required to state that he wanted to speak to his lawyer or that he would exercise his right to remain silent. Due to this Ann's continued questioning of David would not give rise to a 5th amendment violation.

As such, the court should deny the motion to suppress his statement.

2. Text message "The heroin is in the trunk, deliver it to the warehouse"

The issue here is whether an unlawful search has occurred.

The 4th amendment establishes the prevention from unlawful searches or seizures. This occurs where an officer enters or invades a persons reasonable expectation of privacy without a validly executed and procured warrant based on probable cause and in the absence of an exception to a warrantless search.

The facts here indicate that officer baker has followed david based on the message from ann, he has waited for david to do something justifying baker to stop him and has the searched his

pockets and uncovered his phone.

- Following David

The facts indicate that officer baker going off the message decided to follow david. This action in following david was not unlawful as he did not approach david, additionally there is no indication that david was aware of this tail.

- The initial stop:

Officer baker has committed no breach of 4th amendment by stopping david as he did so due to a routine traffic stop, although his reason for following him was not correct as he was hoping and lying in wait, david however did do something in running a red light which justifies the stop.

- The search:

Officer baker however ordered david out of the car and did a pat down search of david.

An officer is permitted to execute a terry frisk where he has a reasonable suspicion. This terry frisk however is a cursory sweep intended to ensure the safety of the officer and should not be invasive.

The facts do not provide any information to indicate that officer baker had a reasonable suspicion, permitting him to engage in a mere terry frisk of david which would justify patting down david and if he felt something that may indicate a weapon to then go into davids pockets. The only basis for the search here is his bias arising from ann's message, which would not be adequate grounds to permit a search. Officer baker goes further to go in his pockets, turned on cell phone AND open text icon on davids phone. These actions go well beyond the limits of officer bakers initial traffic stop, here he is clearly intruding on davids reasonable expectation of privacy firstly via going into his pockets and second by inspecting the contents of his phone. Baker would require a warrant based on probaly cause to conduct a search such as this and there gives rise to a breach of davids 4th amendment right.

As such the motion to suppress the text message would be granted.

3.The heroin found in the trunk of the car

The 4th amendment right as stated above would apply here. Further exceptions to a search without a warrant include an exigent scenario, a search incident to arrest, an automobile search incident to arrest, an automobile exception, consent and more.

- Running a red light

As stated above david ran a red light which was the basis of the stop, this would not give rise to an exception of the warrantless search however, as a routine traffic stop is not grounds to search the vehicle unless any of the exceptions as stated above arise.

- Exigent scenario

The exception of exigency allows for a warrantless search where a suspect is in hot pursuit, where there is indication that the suspect will destroy evidence or to protect from imminent danger.

Although david is on notice of the polices intrest in his, the facts here do not give rise to the immediacy and urgency of an exigent scenario justifying a warrantless search, as such this would not be an adequate exception here.

- Consent

An officer may search any part of property that the owner or someone with control of the property gives consent to be searched a valid search may cover the trunk of a car.

In this scenario David has not given any consent to search his car, as such this will not be a valid defesne.

- Automobile search incident to arrest (Automobile SITLA)

As stated above an exception to a warrantless search occurs via an automobile SITLA. This is a cursory check aimed at protecting the officer following the lawful arrest of a suspect, this permits searches of items within lunging distance of the suspect. An officer may arrest a suspect where there is a warrant for their arrest, where they have committed a misdemeanor in the officers presence or where the suspect has committed a felony.

In this scenario, there appears to be no indication of an arrest. Officer baker has stoped david for a mere traffic stop, david has committed no misdemeanor, or felony neither is there a warrant for his arrest. As such baker was not permitted to perform an Automobile SITLA and this would not provide any grounds for a warrantless search of the car. Furthermore, even if this was the case this exception does not include a search of the trunk.

- Automobile exception
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This exception allows for a lawful search to occur of a car where probable cause has arisen given and grants the ability to search the parameters of the car based on what the warrant would allow, and thus even a trunk of a car.

In this scenario, officer baker may argue he had probable cause to search the trunk based on the text he received, which would allow for an automobiles exception and therefore grant probable cause to search the trunk. However, although david was in-fact transporting contraband via the heroin, officer baker has no adequate grounds for valid probable cause. He was directed to search the trunk based on an initial unlawful search of davids phone, due to the fruit of the poisonous tree any evidence found based on this unlawful search would not be admissible as it is a breach of his 5th amendment rights.

Due to the inadequacy of the various warrantless search exceptions and in the absence of any defense of attenuation, inevitable discovery or the independent source rule (which the facts does not indicate is in play) the motion to suppress the 30 pounds of heroin found in the trunk would be granted by the court.

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END OF EXAM