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David is being charged with transportation of heroin. He moves to suppress both statements and evidence.

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

The 5th Amendment provides the rights against self-incrimination. In order for statements to be admissible the statement must be voluntary and comply with the requirements of the Miranda warnings.

**Exclusionary Rule**

Evidence and statements seized in violation of the 5th Amendment will be inadmissible at trial as fruits of the poisonous tree.

**Voluntary**

14th Amendment Due Process requires that statements be made voluntary. A statement is voluntary if it is a product of free will and rational intellect. This is determined by the totality of the circumstances.

Here, the facts do not indicate that David was coerced in any physical or emotional manner. The facts do not give rise to David not having rational intellect. David is in fact lawfully in custody and was not put under any harm to procure any involuntary statements.

**Miranda**

The Miranda warnings must be given when a defendant is in custody and prior to any questioning or interrogation. A defendant is in custody when he is not free to leave, such as being held at a police station or cell. An interrogation is present when the circumstances will illicit questionings and answers. The facts state that David was lawfully in custody and is subject to interrogation. Detective Anna also gave David the Miranda warnings before proceeding to any questioning, so Miranda warnings were legally given.

**Invoking of Miranda**

The defendant must understand the nature of the Miranda warnings and if the defendant wishes to invoke Miranda, a right to remain silent and to have counsel, the defendant must state so unambiguously and clearly. This is a very clear standard in that invoking Miranda would not leave any doubt whether it was invoked or not.

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Here, David's responding "I am not sure if I need a lawyer or not" is ambiguous. David did not state with certainty that he does in fact want a lawyer present and that he does not want to answer anymore questions. David will argue that this was sufficient to give Detective Anna notice that he was invoking Miranda rights. However, Detective Anna will argue that the statement is very vague, and that vagueness is grounds for failing to assertively invoke Miranda.

Once Detective Anna resumed questioning, David voluntarily answered "If I had anything to do with it, I would use my car." David will once again argue that this statement was not "voluntary" because he had just prior casted doubt on whether or not he needed a lawyer. However, this argument would fail and not apply to protect the subsequent statements because David was not assertive, clear, and concise on invoking his 5th Amendment rights to counsel and remain silent.

### **Right to Remain Silent**

A defendant has the right to remain silent if he correctly and validly asserted Miranda rights. Here, as discussed above, David did not meet the requirements for invoking Miranda. As such, his right to remain silent was not violated, and his statement was not fruit of the poisonous tree. David will make a last effort argument in that since Detective Anna ultimately released him because he refused to answer anymore questions, that he properly invoked his right to remain silent. However, in this case, David already said the voluntary statement before he was released.

### **Conclusion**

The court should deny the motion to suppress this statement.

## **2. Motion to suppress text message "The heroin is in the trunk; deliver it to the warehouse"**

4th Amendment protects public from unreasonable searches and seizures. This is incorporated to the states via the 14th Amendment. Defendant must show that there was government conduct. The D must show a reasonable expectation of privacy or substantial ownership.

### **Exclusionary Rule**

Evidence seized in violation of the 4th Amendment will be inadmissible at trial as fruits of the poisonous tree.

### **Warrant Requirement**

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Generally, a warrant is required to search one's places or property. There are a number of exceptions to the warrant requirement.

### **Traffic Stop**

A warrant is not required for routine traffic stop. A warrant is also not required when a police officer has reasonable suspicion or probable cause to pull over a vehicle for violating traffic rules.

Here, Officer Baker was patrolling when he heard and likely read Detective Anna's message. The message had description of the vehicle describing David's car and that she had reasons to believe that the vehicle was involved in transporting heroin. Upon seeing a similar car, Officer Baker had probable cause to believe that the driver and the car might match the description he was informed to be on the lookout for.

### **David running red light**

Officer Baker had the right to pull over David when he violated this traffic violation. This now turns on what rights does David have pursuant to the traffic violation stop. At a traffic violation stop, the officer may order the Defendant outside of the vehicle and do a stop and frisk of the outer layer of clothing to see if there are obvious evidence of contraband or weapons. Typically, one running a red light does not give rise to suspicion or reasonable belief that the driver is also carrying contraband or weapons. In this case, Officer Baker had probable cause to believe that the driver might in fact match up correctly with the suspect, and in fact it did turn on that fact. Once Officer Baker had reason to believe that the driver was in fact David, he was right in ordering David out the vehicle for a frisk.

### **Cell Phone**

David is moving to suppress the text message found on the cell phone. Here, David will argue that he has a reasonable expectation of privacy for his personal cell phone. Had the cell phone turned out to be an empty cigarette box, the act of opening the box to see what is inside would be justified. generally, frisking an outer layer will reveal weapons or contrabands that are obvious, which will give rise to the officer being able to search the remainder of the car. Here, Officer Baker turned on David's cell phone and read the message that was displayed on the screen. David will argue that this violates his privacy because the phone was turned off and Officer Baker did not have probable cause to turn on the phone to see if drugs will appear somehow. Officer Baker will argue that he did not exceed the scope of his search because the phone did not have a password barrier that he would have to surpass, and that the message appeared clearly on the screen without additional barriers to protect its content. It is common for

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Officers to confiscate cell phones during these stops and that is what Officer Baker did in this instance.

### **Conclusion**

The court will find that Officer Baker did not exceed the scope of his search, and that turning on the cell phone to see the message did not violate David's reasonable expectation of privacy. Although courts have previously ruled that individuals do have an expectation of privacy for their cell phones, those cases turn on whether the prosecutor did anything to crack the code to the phone to receive evidence therein. Here, Officer Baker did not have to do that; the message was readily on display when the phone turned on.

### **3. Motion to suppress the heroin found in the trunk of the car.**

The outcome of this motion turns on whether the heroin found in the trunk was evidence seized in violation of the 4th Amendment and will be inadmissible at trial as fruits of the poisonous tree.

### **Warrant**

Generally, a warrant is required to search one's places or property. There are a number of exceptions to the warrant requirement.

David is moving to suppress the heroin found in the trunk. If the court finds that the text message was found in violation of David's amendment rights, then they will find that the discovery of the heroin in the trunk is also a violation of David's amendment rights because it is the fruit of that poisonous tree. However, the prosecutor will argue that the heroin would have been found in the trunk even if they didn't read the text message.

The officer has the right to order the driver out of the vehicle if there is probable cause that contraband and/or weapon could also be found in the car. This is considered an "emergency" circumstance in that it helps prevent the driver from taking off/driving off with the evidence in the car. Here, Officer Baker had probable cause, based on how the car and driver matched Detective Anna's description, that David was in fact transporting heroin. Based on this, he could order David out the car and do a sweep of the car to see if any other contraband shows up.

David will argue that because there was no contraband found on him, and the facts does not state that contraband could be seen in plain view in the vehicle, the search of the trunk would exceed the scope of the stop.

### **Inventory Search**

The prosecutor can also assert that the heroin would have been found once the car was

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impounded into the lot for processing. The state has the right to search vehicles for inventory once it has been impounded into their control. David will argue that the vehicle might not have been impounded after all if it was just a regular traffic stop to issue a ticket for running the red light. However, Officer Baker would have arrested David upon stopping the vehicle because he had probable cause that David was the suspect the department was on the lookout for, and the vehicle would naturally be impounded then.

### **Conclusion**

The court should deny the motion to suppress the evidence of the heroin found in the trunk because it was not fruit of the poisonous tree.

Question #4 Final Word Count = 1667

**END OF EXAM**