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How should the court rule on each of the motions to suppress?

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

#### 5th Amendment

The 5th amendment is applicable to the states via the 14th amendment and preserves a defendant's right against self - incrimination. In addition, when someone is in custody and before interrogation, they are to be Mirandized (read their Miranda rights).

Here, Detective Ann had David in lawful custody and was about to subject David to interrogation because she had received a tip from an anonymous informant that David was involved in transporting heroin. Detective Anna advised David of his Miranda rights and asked him if he knew anything about heroin shipments.

Therefore, David was Mirandized and advised of his rights prior to interrogation and because David responded he did not appear to waive his right.

#### Understanding of Rights

When someone is Mirandized they agree that they understand their rights to attorney, to remain silent. Once a person exercises those rights, the government actor must comply whether that is to stop questioning or contact that person's attorney or the public defender's office to arrange for representation.

Here, it is unclear that David understood his right to remain silent upon questioning by Detective Anna. When she asked if he knew anything about heroin shipments, David replied "I am not sure if I need a lawyer or not." David seemed to demonstrate confusion about why he was being interrogated, and perhaps what the consequences were of him answering questions and not having an attorney present. Unfortunately, because he was not clear and unequivocal that he wanted an attorney present before answering questions Detective Anna proceeded to question him.



Detective Ann next asked David how he was transporting the heroin. David responded, "If I had anything to do with it, I would use my car."

Here, because David did not clearly and unequivocally assert his Miranda rights, he responded to Detective Anna's question and provided a response.

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Detective Anna released David from custody when he refused to answer any more questions. Thus, this does demonstrate that David understood his rights because he eventually refused to answer.

Therefore, David's response to the interrogation would not be suppressed because he was Mirandized and waived his right by answering the Detective's questions and understood his actions.

2. The text message that state, "The heroin is in the trunk; delivery it to the warehouse"

### 6th Amendment

The 6th amendment applicable to the states via the 14th amendment protects citizens from unlawful search and seizure. The defendant must show government conduct and a reasonable expectation of privacy. Any unlawful result of searches and seizures may be suppressed if an exception applies.

Here, Detective Ann after releasing David, sent a message to all police officers describing David's car, stating that it was believed to be involved in transporting heroin. Later that day Officer Baker, who had heard the message, saw the car described. Officer Baker decided to follow the car to see if the driver would do anything that could justify stopping the car. When the car ran a red light, Officer Baker stopped the car and ordered the driver, who was David, out of the car. Upon an officer stopping a car for a vehicle offense, such as running a red light, an officer is permitted to ask the driver to step out of the car.

Therefore, the activities up to this point were lawful.

### Terry Stop and Frisk

An officer is permitted to stop someone without probable cause and search the person if they have a reasonable suspicion of criminal activity afoot.

Here, because the bulletin that was shared with officers surrounding David's car and the potential for transporting heroin, Officer Baker had enough reason to pat-down David. During a pat-down an officer is permitted to reach into pockets if they feel something during a pat-down. Officer Baker found a cell phone in David's pocket, which he then turned on and saw a text message icon, clicked the icon and found a message to David stating "The heroin is in the trunk; deliver it to the warehouse."

Here, the actions that Officer Baker took was a violation of David's 6th amendment right

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because Officer Baker was not allowed to turn on the cell phone or search it any manner without a warrant. David's cell phone had a reasonable expectation of privacy regarding his cell phone, especially because it was turned off, and it involved a government actor-Office Baker.

Therefore, while Officer Baker was permitted to conduct a Terry stop and frisk he was not permitted to access David's cell phone without a warrant.

### Plain View Doctrine

While conducting a search without a warrant an officer is allowed to seize contraband and other items of evidence if they are in plain sight of the officer. They cannot search for anything.

Here, while Officer Baker was permitted to reach into David's pocket and retrieve what he felt, the cell phone, he was not permitted to turn on the cell phone and read/check text messages because it was not in plain view when he had the cell phone in his hand.

Therefore, because of the exceptions above, the text message that Officer Baker read would be suppressed.



3. The heroin found in the trunk of the car.

### Fruit of the Poisonous Tree

When evidence is suppressed in violation of the 6th amendment any further evidence that results is said to be fruit of the poisonous tree.

Here, because the text message that Officer Baker read which then led Officer Baker to search the trunk of the car, where he found 30 pounds of heroin would be suppressed under Fruit of the Poisonous tree because what led Officer Baker to search the trunk was the text message.

Therefore, the heroin found in the trunk of the car has the potential to be suppressed under this doctrine.

### Automobile Exception

An officer is permitted to search the contents of the car if he/she believes that it could contain contraband or evidence of criminal activity. The officer is permitted to check the cabin of the car, front seat, back seat, under the seats and even the glove box. However, the Officer is not permitted to search the trunk without a warrant or until following an arrest unless he has reasonable suspicion or probable cause.

Officer Baker searched David's trunk following the text message which led him to find the heroin. Because the text message was unlawfully obtained, the finding of the heroin in the trunk

could be suppressed.

### Search Incident to Lawful Arrest

An officer having stopped a car is permitted to search the car following an arrest.

Here, Officer Baker arrested David after the search of the car.

Therefore, the evidence could also be suppressed since it was not conducted following an arrest

### Inevitable Discovery

Inevitable discovery can be used by officers to claim that evidence would have been found regardless of errors in locating in the first instance.

Here, Officer Baker would try to claim that because he arrested David and arranged for the car to be taken to the police impound lot for processing, the heroin would have been discovered upon the lawful search of David's automobile following his arrest. Because once a car is impounded as a result of an arrest it procedure to conduct an inventory search.

Therefore, it is possible that Officer Baker would be able to have the evidence admitted using inevitable discovery.



Question #4 Final Word Count = 1248

**END OF EXAM**