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1. David's Motion to Suppress: His statement, "If I had anything to do with it, I would use my car."

The court should **reject** David's motion to suppress this statement.

(1) Rule: 5th Amendment: Miranda Rights: Miranda Rights give individuals who are (a) in custody and (b) subject to interrogation a right to remain silent and request an attorney. Once a natural person is in custody and subject to interrogation, officers are required to read that person his/her Miranda Rights before beginning any interrogation. The party in custody may exert either or both the right to remain silent and/or the right to an attorney. If the individual in custody wants an attorney, but cannot afford one, then the state is required to provide one. An individual in custody must **clearly and expressly** assert his/her rights to remain silent and/or request an attorney.

Here, Detective Anna is said to have lawfully brought David into custody and advised him of his Miranda Rights before beginning any interrogation. So, there is no reason to question the nature of his arrest, which must include probable cause, and was apparently generated by a tip from an anonymous informant. At issue is whether David's statement to Detective Anna--"If I had anything to do with it, I would use my car."--while in the interrogation room was validly obtained and possibly admissible evidence. Detective Anna read David his Miranda Rights after which David said he wasn't sure if he needed a lawyer or not. David's statement that he wasn't sure if he needed a lawyer or not is **not** a clear and express request for a lawyer. So, Detective Anna's continued interrogation did not violate David's 5th Amendment right to request an attorney, because David did not properly exert that right. A mere rhetorical question on his part does not, in and of itself, count as an assertion of his right to request an attorney. He would need to have made a more definitive statement, such as "I want a lawyer."

Furthermore, because David proceeded to talk freely with Detective Anna in the interrogation, he also implicitly agreed that anything he said in that context could be used against him in a court of law. Therefore, his statement that "If I had anything to do with it, I would use my car" is validly obtained. There is no evidence that Detective Anna coerced David into making the statement or otherwise violated his Miranda Rights.

2. David's Motion to Suppress: The text message that stated, "The heroin is in the trunk; deliver it to the warehouse."

The court should **affirm** David's motion to suppress this text message.

(1) Rule: 4th Amendment: Protects against unlawful search and seizure by government officials of constitutionally protected property, including property that is subject to a reasonable expectation of privacy.

Sub-Rule: Automobile Stop: a police officer may stop a vehicle for any justifiable reason, including but not limited to running a traffic light or stop sign, even if the officer's primary reason for making the automobile stop was reasonable suspicion of some other offense for which the officer does not yet have probable cause for arrest.

Here, Officer Baker was made aware earlier in the day of a description of a car matching David's that was believed to be transporting heroin. Officer Baker "saw the car described in the message" and "decided to follow the car to see if the driver would do anything that could justify stopping the car." Officer Baker's behavior in seeing the car, following the car, and waiting to see if the driver of the car would do something to warrant a stop is legal under the 4th Amendment.

a. Pat-Down: An officer has a right to request identification from the driver, to ask the driver to step-out of the vehicle, to pat-down the driver for any possible weapons, and to search the glove compartment and other front-seat compartments for weapons. The pat-down does not allow for the officer to search pockets, grab clothes, or otherwise search beyond plain touch for a possible weapon. The policy to allow officers to self-protect against weapons, but not to unduly infringe on the privacy of the individual.

Here, Officer Baker asked the driver, who was David, to get out of the car. This is legal under the 4th Amendment. Officer Baker's was entitled to do a pat-down of David to search for weapons, but was not entitled to seize items that were clearly not weapons, such a cell phone. Here, Officer Baker violated David's 4th Amendment rights in two ways: (1) Officer Baker has likely done pat-downs before and is familiar with the size, shape, and feel of a cellphone in someone's pocket. A cellphone is not a weapon, for purposes of the 4th Amendment search and seizure, and probably should not have been taken. Even if it was permissible for Officer Baker to seize David's cellphone, he violated David's 4th Amendment right to a reasonable expectation of privacy by opening the phone and reading the text

message.

b. Reasonable Expectation of Privacy (REOP): natural humans are protected under the 4th Amendment from search and seizure that infringes a reasonable expectation of privacy. While cellphones can be seized and the cellphone itself may be considered evidence (i.e., maybe there are fingerprints or blood on the exterior shell of the cell phone), the contents of the cellphone are protected by the 4th Amendments REOP. Here, Officer Baker violated David's reasonable expectation of privacy by (1) turning on the cell phone which was presumably turned off; (2) seeing a text message icon; (3) clicking the icon; and (4) finding and reading a text message on the phone. The fact the the text message was incriminating does not negate Officer Baker's violation of David's 4th Amendment REOP protection.

3. David's Motion to Suppress: The heroin found in the trunk of the car.

The court should probably **affirm** David's motion to suppress the heroin found in the trunk of his car.

(1) Rule: 4th Amendment: Protects against unlawful search and seizure by government officials of constitutionally protected property, including property that is subject to a reasonable expectation of privacy.

(a) Sub-Rule: Automobile Stop: Upon an initial stop of an automobile, the officer may pat-down the driver and any passengers and search the passenger's compartment of the car for weapons. The officer **may not** complete a search and/or seizure of the entire vehicle.

Here, Officer Baker validly stopped David in his car when he ran a red light. After the stop, Officer Baker had a right to ask David to exit the car, to pat-down David for weapons, and to search the passenger compartment for any weapons. Officer Baker did **not** initially have a right to search the contents of David's phone **nor** the entirety of Davids car, including the trunk where the heroin was found.

(b) Sub-Rule: Automobile Search: If an officer has probably cause to arrest a driver of a car after a valid stop of the car (either because the driver broke the law while driving or the officer has a valid arrest warrant for the driver), only **after** the valid arrest can the officer complete a full search and seizure of the car, including opening the trunk and impounding the vehicle.

Here, Officer Baker searched the trunk of David's car before executing a valid arrest, which violated David's 4th Amendment right to REOP. If Officer Baker had secured probably cause for an arrest upon stopping David (i.e., such as finding an unregistered weapon on his person), **then** Officer Baker could have searched the entirety of David's car, including the trunk, and impounded the car as evidence. In the absence of a valid arrest, the heroin in the trunk, which was found because of an invalid search of the contents of David's found, is **fruit of the poisonous tree** and should be suppressed.

(c) Sub-Rule: Fruit of the Poisonous Tree: Evidence that is found as the result of an illegal search or seizure is inadmissible. If the prosecution can demonstrate that (i) the evidence would have been found anyway or (ii) the evidence found is too removed from the illegal search/seizure, then it may be admissible.

Here, Officer Baker found the heroin in the trunk of David's car because he violated David's 4th Amendment REOP by accessing the contents of David's phone without a valid search warrant and using the contents of David's phone to find the heroin in the trunk.

Rule: Valid Search Warrant: The elements of a valid search warrant include: probably cause; administered by an unbiased magistrate; and particularity of the items to be searched/seized.

Officer Baker would have needed to obtain a valid search warrant--or to have met one of the search warrant exceptions, which in this case might have included plain view, exigent circumstances, or risk-of-loss of evidence--to have been able to access the contents of David's phone or the trunk of the car. Here, Office Baker did not have a valid search warrant. Also, the circumstances most likely did not give rise to one of the relevant search warrant exceptions, for either the phone contents or the trunk of the car: the circumstances were not exigent, the drugs were not in plain view, and there was no obvious risk that the drugs would "disappear" because there was no clear evidence the drugs were present at the scene.

Officer Baker did not have a valid search warrant or search warrant exception to search the contents of David's phone. But-for searching the contents of David's phone, Officer Baker would not have known to search in David's trunk to find the heroin. Because the trunk was searched without a valid search warrant or search warrant exception, without a valid arrest of David, and as a result of an invalid search of the contents of David's phone, the heroin found is a clear case of fruit of the poisonous tree. There is no clear evidence to support that Officer Baker (or any officer for that matter) would have found the heroin in David's trunk regardless of Officer David's invalid search and seizure. And,

the nature of Officer Baker's search of David's trunk and seizure of the drugs is intimately/closely tied to Officer Baker's invalid search of David's phone--there's nothing "remote" about the connection between Officer Baker's invalid search of David's phone and the discover of the drugs in the trunk.

For the above reasons, the court should probably affirm David's request for a motion to suppress the evidence of the heroin found in the trunk of the car.

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