

4)

1. Motion to suppress David's (D) statement, " If I had anything to do with it, I would use my car"

Government action

A person is entitled to his 4th amendment, 5th amendment and 6th amendment rights when a government action takes place which may hamper a person's right to privacy, right against self incrimination and right to counsel after arraignment respectively.

5th Amendment

5th amendment gives person a right to refrain from saying anything that may be self incriminatory while being interrogated in police custody. Rights may have said to be violated if the person while interrogation in custody are not given proper Miranda rights.

Custody

A person is said to be in custody when he/she feel confined in one place and have no place to move around in their free will.

Interrogation

A person is said to be interrogated when the questions may incriminate the person.

The interrogation must stop as soon as the person invokes his/her Miranda rights. The rights have to be invoked in a clear and concise manner.

Here, D was lawfully in custody as indicated in facts. Detective Anna (A) was interrogating D about heroin based on a tip she had received from her informant. The facts indicate that A advised D of his Miranda rights before she proceeded to ask her questions. D responded to the question stating he wasn't sure if he needed a lawyer. That is when A asked D how he'd transport the Heroin and D responded that if he had anything to do with it, he would use his car.

Generally, when the person invokes his right by staying silent, saying he doesn't not want to talk anymore or by asking for a lawyer, the questioning must immediately stop. D did not explicitly ask for a lawyer and thus can be said he did not invoke his rights.

The response to the question he has moved to suppress must thus be overruled and be admitted by the court as is has been asked after Miranda rights and without his invoking his rights.

2. Motion to suppress text message that states, " The heroin is in the trunk; deliver it to the warehouse"

4th amendment gives a person rights from search and seizure where he has his rights to privacy and without warrant and probable cause.

Traffic stop

Police can stop a person when he is in violation of a traffic stop even if the stop is for some other reason.

Here, Office Baker (B) stopped the suspicious car he had reason to believe was involved in transportation of heroin as per A's message as soon as it violated the red light. This action is in accordance to the law.

However, B ordered the driver to to get out of the car.

Police is not allowed to ask the person to leave the car without a reasonable cause. Here, B had a reason to ask D to leave the car based on the message.

Terry Stop and Frisk

An officer can frisk a person without a warrant and if he has a reasonable doubt only when the police feels he can be in danger and retrieve the item found while frisking if the item seems like a contraband etc. Here, B pat down search of D and found a cellphone. He further went on to check the message D had received. D can argue that the cellphone in his pocket was not any contraband or shaped like dangerous weapon that the police can retrieve without a warrant. Moreover, he has privacy over the contents of the mobile phone. B was unlawful while opening D's message and checking any message. B had no warrant to check his pockets or his phone as this was in violation of his privacy.

Warrant and exceptions

A warrant is required when there is search when the person has reasonable expectations to privacy. But there are exceptions to the warrant search.

A warrant is not required when there is an Exigent circumstances, seizure, Automobile search,

Plain view, administrative search and consent.

Here, B can argue that B had a reasonable cause of searching D without a warrant based on A's message however, despite of the same, without a warrant, he can search D based on the exception of seizure. However, there is no exception to looking at the contents of the mobile phone when retrieved from D.

A police is only allowed to look at the digital contents of the phone and cannot inspect the phone and messages from the phone. Thus the contents of the phone, the words cannot be admissible and court can grant the motion to suppress.

3. Motion to suppress Heroin found in the trunk of the car.

Under Fruits of the poisonous tree theory, anything retrieved during the search which is not admissible and not allowed cannot be admissible either.

Here, heroin found from the car was based on the text B saw on D's phone while he frisked D. D can argue that this is fruit of the poisonous tree and thus is tainted as well just like the phone message content. Had he not been searched and retrieved of his phone and had the police not read his message, the heroin would not have been found.

However, there are exceptions to this rule as well. One of the exceptions states that the tainted item is no more tainted had it been retrieved anyway devoid of the violation in a legal way.

Moreover, A person has a certain aspect of privacy in his car and when the car is stopped with reasonable suspicion, the police can only search the nearby area of the car and not beyond the passenger seat.

However, as mentioned above and also here, a warrant is not required when there is an Exigent circumstances, seizure, Automobile search, Plain view, administrative search and consent.

Under the Automobile search exception, police can search the entire car if the they have a reasonable doubt of the crime, which B had. B can argue that under this exception, they would have found the heroin nevertheless when they searched without seeing the message on D's phone.

This can be an argument that B can make which may or may not be granted by the court. B had all the reasons of searching D's car as the facts state that he was waiting for D to make a mistake to stop the car and thus would have searched the car and found the heroin from the car. If the court sides with this argument, the motion may not be suppressed but if the court reasons with the tree of the poisonous tree theory despite of its exceptions, the motion may be suppressed.

Question #4 Final Word Count = 1120

END OF EXAM