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===== Start of Answer #1 (1214 words) =====

**1. How should the court rule on each of Calvin's motions?**

**Exclusionary rule**

Exclusionary rule is a judge-made rule that under this rule, any evidence obtained as a violation of 4th, 5th, and 6th Amendments cannot be used against the defendant at the criminal trial.

Here, if Officer committed any violation of 4th, 5th or 6th Amendment, the evidence he obtained will be suppressed.

**(1) Motion to suppress the radio as evidence**

**4th Amendment**

The Fourth Amendment protects citizens from unreasonable searches and seizures by government.

**Warrant requirement**

Police must first obtain warrants prior to their search and seizure, unless any exception applies. The warrant must be issued by neutral magistrate, with particularity on items to be seized and place to be searched, based on probable cause.

Here, Officer Prowl ("Officer P") stopped Dan on the street, searched, and seized the car radio from the search, without any warrant. Unless Officer P's conduct falls within an exception to the warrant requirement, this will be illegal

police misconduct and the car radio will not be introduced.

### **Stop and Frisk**

Police can stop and frisk the suspect if he has a reasonable suspicion that the suspect is committing a crime and if there is an articulable facts that the suspect is armed and dangerous.

Here, Dan was running down the street with fully buttoned-up heavy winter coat on a summer afternoon. Officer P may be justified in having a reasonable suspicion because Dan's behavior (winter clothes in summer afternoon and running) may cause any reasonable police to feel suspicious.

However, it is not clear whether any of Dan's conduct can create the articulable facts that he may be armed and dangerous. Although Dan was wearing heavy winter coat, all buttoned up, there is no specific details in fact that indicates that Dan is armed and dangerous.

Therefore, Officer P's stop and frisk does not fall within exception to the warrant requirement.

### **Consent**

Prosecution may argue that Dan consented to the search and seizure and thus it was not illegal.

Here, the facts state that Officer P ordered Dan to stop and Dan complied his order. However, facts do not state whether Dan consented to the search and seizure by Officer P. Dan may argue that he did not feel free to object against Officer P's authority and did not know whether he could object. Dan will further argue that because Dan was merely forced to let Officer P to conduct search and

seizure on him, consent exception cannot apply.

However, police does not owe any duty to inform the suspect that he has a right to object.

Therefore, the court is likely to determine that the Officer P's search and seizure falls within the consent exception.

### **Conclusion**

The court should grant Calvin's motion to suppress the radio under consent exception.

**(2) Motion to suppress Dan's confession to Officer Query under Miranda for any use at trial**

### **Fifth Amendment: Miranda Warnings**

The Fifth Amendment guarantees the freedom from self-incrimination. Under the Fifth Amendment, any statements of the suspect obtained by police during custodial interrogation without giving Miranda warnings cannot be used against the suspect in the criminal trial, unless the suspect makes an intelligent and voluntary waiver of his rights. The purpose is to offset the coercive nature of police-dominant interrogation.

### **Was there a Custody?**

Custody is an equivalent of an arrest and a person is in custody if he does not feel free to leave.

Here, Dan was arrested by Officer P and was taken to the police station.

Therefore, Dan was in custody and he did not feel free to leave.

**Was there an Interrogation?**

Interrogation refers not only to express questioning but also to any words or conducts on the part of the police that police should know are reasonably likely to elicit incriminating response.

Here, Officer Query ("Officer Q") met with Dan and began asking him questions about the radio. This was express questioning and police was actively trying to obtain incriminating statements from Dan.

Therefore, there was an interrogation.

**Were the Miranda warnings given before the interrogation?**

Facts does not state that police gave any Miranda warnings to Dan before Officer Q initiated his questioning. This was a violation of Miranda.

**Was there any Intelligent and Voluntary Waiver by Dan?**

The suspect's waiver must be intelligent and voluntart for the purpose of the Fifth Amendment Miranda.

Here, prosecution will argue that even though police did not give Miranda warnings to Dan, he already knew of his rights and Dan voluntarily made a confession that he stole the radio when he had a choice not to. Therefore, police will argue that Dan made an implied waiver, which was voluntary and intelligent.

Facts state that Dan initially stated clearly that he did not want to talk. This was

Dan's unequivocal invocation of his right to remain silent and police should have scrupulously respected his invocation. However, Officer Q responded that he could not tell the DA that Dan was cooperative, if Dan chooses to remain silent. This was a threatening and coercion upon Dan, against Dan's free will.

Dan will argue that because of Officer's threatening, he did not feel that he had any choice and thus he did not make an intelligent and voluntary waiver of his right to remain silent.

The court is likely to agree with Dan.

Therefore, Dan did not make any intelligent and voluntary waiver.

### **Conclusion**

Because Dan's confession was obtained during custodial interrogation and police did not give proper Miranda warnings to Dan before their interrogation, Dan's confession cannot be admitted. The court should grant Calvin's motion to suppress Dan's confession to Officer Q under Miranda for any use at trial.

### **(3) Motion to prohibit Dan from testifying at trial**

A lawyer has a duty to make sure his client and witnesses tell the truthful testimonies during trial. If the lawyer knows that his client or any of the witnesses are likely to testify falsely at trial, he needs to take some actions to prevent that.

In that situation, a lawyer must first persuade his client or witnesses not to testify falsely. However, if the client persists in testifying falsely, the lawyer cannot make a motion to prohibit his client from testifying.

Here, Dan told Calvin that he was going to testify falsely at a trial that the radio

