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David's objections:

1) his statement " if i had anything to do with it, i would use my car".

Defendant's Miranda rights.

Miranda rights/ warning are given to a suspect when she under (1) custody " when a suspect is not free to leave; this is assessed based on a reasonable person point of view' is of the police and police tries to interrogate ' questioning of the police that cause a suspect to provide incriminatory statement against him/herself. (2) the suspect. Miranda rights advise the suspect that anything he/she says can and will be used against him in the court and that the suspect may choose to not to speak to them (police) and that an attorney may be provided for the suspect before questioning.

Here, as facts indicate here, David was in custody to interrogation. Accordingly, he was given his Miranda warning (rights) before interrogation started.

Here, we are told that right after David was given the Miranda warning, Detective Anna stated asking questions about if Dave knew anything about heroin transportation, and did not provide David to think or have an opportunity to answer his question.

David may argue that his statement " if i had anything to do with it, i would use my car" was not voluntary because he did not have time to think about whether or not he wants to assert his Miranda rights or not. This is however, a weak argument due to the fact that both the 5th, THE RIGHT TO REMAIN SILENT; and 6th AMENDMENT RIGHT < RIGHT TO HAVE AN ATTORNEY PRESENT, during question is only applicable when DEFENDANT AFFIRMATIVELY ASSERT HIS/HER RIGHT that she/he wants to remain silent or needs attorney as the U.S Supreme court under U.S v. Turner has held that a suspect is not invoking his right if he MERELY state whether or not she needs an attorney and only affirmative assertion of 5th or 6th, the questioning should be stopped.

Here, since Dave did not AFFIRMATIVELY ASSERT HIS/HER RIGHT under 5th or 6th

amendment, his subsequent statement would be ADMISSIBLE in the court and could also be used for impeachment purposes.

2) The text message that stated " the heroin is in the trunk, deliver it to the warehouse.

Was the traffic stop by officer baker legal?

We are told that the detective gave a description of David's car to all police officers, after Dave's statement that if I had anything to do with it, I would use my car and that officer baker followed Dave's car to see if the driver would do anything that could justify stopping the car.

The courts have held that pretext stops are legal and valid, and the fact that Baker was following him and hoping Dave making a traffic violation violated Dave's rights. Thus, the stop was valid because " because officer baker seen Dave "ran a light.

Dave cannot argue that because of the nature of stop " pretext" type of stop, and hoping for Dave to make a traffic violation, Officer's baker's stop was not valid since Dave committed an offense, here ' running a red light and thus, officer baker was within his right when he stopped David car.

Was ordering Dave out of the car valid?

It has been long established that when a driver committing a traffic violation and subsequently she is stopped by the police, the police can legally ask the driver and EVEN THE PASSENGER (which is not a case here, as it appears that Dave was driving his car alone and no one was with him at the time, officer baker stopped his car.

Thus, officer's baker's ordering Dave to exit from his car was both legal and valid.

Was pat-down search of David valid?

In order for officer baker to be able to pat-down Dave, he must have a reasonable suspicion that Dave has committed a crime or is about to committing a crime. Here, Officer

Baker originally stopped Dave due to a traffic violation which in itself would not allow his to pat-down, unless for officer's safety. Baker will argue that pat-down search of David was valid because he was told that Dave and his car was believed to be involved in transporting heroin and because of the nature of the information provided, Officer Baker was within his right when he performed the pat-down search on Dave. He will further argue that the information (transporting heroin) carries a risk that the persons involved might be armed and that pat-down was legal for his safety.

The court will likely agree with the state's argument, in this case, especially no facts indicate here that Officer Baker performed pat-down for purpose or investigating heroin transportation, which in that case, could have given Dave an argument to make the pat-down invalid.

Was removing Dave's cellphone from his pocket and subsequently "clicking on the icon" valid. If so did it constitute a search?

Search incident of arrest.

A police officer may search suspects pocket after he lawfully arrested and any illegal objects' contraband found as a result may be admissible to the court.

Here, Dave was not arrested and rather only pat-down by Officer Baker. It would be argued that because of his safety he was allowed to search Dave's pockets or to remove its contents from his pocket, even though Dave was not arrested. Yet.

However, Officer Baker's actions of TURNING the cellphone and Clicking on the ICON " to read the text, would be considered a search.

WARRANTLESS SEARCH OF DAVE's cell phone

A search occurs where someone has an expectation of privacy and police conduct a search. Here, Dave will argue that his expectation of privacy in his cell phone was at the highest and by turning his cell and clicking on the text message icon, Officer Baker conducted a search on his cell phone.

Officer Baker's actions could have been justified if HE HAD A WARRANT allowing him to search Dave's cell phone " or if he HAD a PROBABLE CAUSE to search the phone. Here,

Dave only committed a traffic offense and only knowing that he might be involved in heroin transportation does not amount for a probable cause to search his phone.

Moreover, there is no application exception for warrantless search that might have given Dave a valid reason to search the phone such as exigent circumstance, or automobile exception none of which applies..

thus since baker search the phone without valid warrant the evidence " text message WILL NOT BE ADMISSIBLE..

3. The heroin found in the trunk of the car is NOT admissible in the court because it was obtained as a result of a warrantless search and therefore is considered a "fruit of poisonous tree" since Baker did not have a warrant to search it

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END OF EXAM