

QUESTION #3

The Providence Police Department has a “Community Substation” located near Marconi Gardens, a public housing project. “The Gardens” is plagued by rampant drug dealing and related violent crimes. Recently, the department inaugurated “Operation Tip-Off,” and invited the public to call the substation, anonymously, with information of interest to the police.

On April 15, 2008, around 11:00 p.m., the substation received such a call. The person on the line reported that “some dudes” from New York had come into “The Gardens” with guns to “rip off” a “home boy’s stash of weed.” She said they drove a dark colored truck and had just parked in the project’s main parking lot. She did not identify herself or say how she learned the information.

A car with two officers was dispatched. Back up units were also requested from Headquarters. The officers from the substation made it to the parking lot in less than a minute. They immediately spotted a green Ford Explorer with New York license plates parked in one of the spaces. They got out of their car and used their flashlights to look inside. On the floor behind the driver’s seat they saw a small nylon gym bag. It appeared to contain a narrow rectangular object about two feet long.

Just then, two men walked out of a nearby high-rise and toward the parking lot. The lighting was not good, but the officers could see that one was carrying a paper shopping bag. Officer Thomas Francona started walking toward the men while the other officer trailed behind to give him cover. The men immediately changed direction and walked away briskly. Francona continued in their direction and, as they walked out of sight around the corner of the high-rise, he radioed for assistance.

The two men turned the corner of the high-rise to find police cars from Headquarters blocking their way out of The Gardens. Neither of the men was carrying a paper bag. The back up officers stopped the men, placed them up against a patrol car and patted them down. While the “pat-down” was taking place, Francona walked up carrying a paper shopping bag. He said he had found it in a doorway the men had just passed. The police looked inside and found two large bags filled with a green leafy substance that looked and smelled like marijuana.

The men were handcuffed and given “Miranda” warnings. Neither responded and no one asked them any questions. They were taken to Headquarters where they were identified as Donald Jeter and Jimmy Damon. They were placed in different cells.

Meanwhile, Francona and his partner returned to the Explorer and radioed for a tow truck. They had it towed to the department’s impoundment lot. When the SUV arrived at Headquarters, the officer in charge of impoundments found that the vehicle was locked. He asked the tow driver to use a “Slim Jim” to open it. He wanted to get inside because department policy required that he immediately prepare a written inventory of the contents of impounded automobiles. The policy’s purpose was to avoid claims of theft or destruction. While doing the inventory, the officer opened the glove compartment and found rental papers with Damon’s name on them. He also came across the nylon bag Francona and his partner had noticed. He picked the bag up, and, from the heft and feel of it, was immediately convinced it contained a weapon. He looked inside and found a 12-gauge shotgun. He measured the weapon and found it was 24 inches in length overall, an illegal sawed off shotgun under Rhode Island law. He immediately called Francona to tell him about the rental papers and illegal shotgun found in the Explorer.

A few minutes later, Francona escorted Damon into an interrogation room. A detective waiting there repeated the Miranda warnings to Damon. Damon answered he did not know why they were hassling him. The detective reminded Damon of the marijuana in the paper bag. He also told him they had found the shotgun in the Explorer he had rented. At that point, Francona interjected a lie. He said that Damon's "buddy," Jeter, had told them that Damon planned to use the gun to rip off a drug dealer, and that he, Jeter, was there only because Damon promised to stop at Foxwoods on the way back. The detective compounded the lie. He said Damon was lucky; if the shotgun had been just an inch shorter it would have been illegal and Damon would get mandatory jail under Rhode Island law. He went on to say that Jeter "just wasn't believable" and if Damon would "come clean", especially before they went to the trouble of analyzing fingerprints already lifted from the shopping bag and gun, all he would have to worry about was a simple marijuana possession charge.

Damon took the bait. He admitted that the gun was his. He said he was in Rhode Island because he agreed to drive Jeter up to get some marijuana. He told the officers that he was going to get \$1500 from Jeter once the marijuana was delivered to Jeter's connection in New York. He said the only reason he brought the shotgun was that Jeter feared getting ripped off when they returned to New York. He said that he left the shotgun in the Explorer because he had no use for it in Rhode Island; that all he did was walk into the high-rise with Jeter and wait in the downstairs hallway. He claimed that Jeter was carrying the paper bag when they walked out of the building.

The police never learned the identity of the anonymous caller. Throughout the investigation, Jeter refused to answer any questions. None of

the high-rise residents said they recognized Damon or Jeter. No fingerprints were lifted off the bag or the shotgun.

Damon has been charged with Possession of Marijuana with the Intent to Deliver and Possession of a Sawed Off Shotgun. His trial attorney has alleged violations of Damon's rights under the Fourth and/or Fifth Amendments to the United States Constitution and challenged admission of both the shotgun found during in the Explorer, and Damon's confession to Francona and the detective.

Please evaluate Damon's likely success in suppressing **each** of those items – **the shotgun** and **the confession** -- and, in doing so, focus on the legal reasoning you would expect from the trial justice. Limit your response to issues related to the specified constitutional provisions.

Also, remember that it is more important to show an understanding of the relevant legal principles and how they may apply to the circumstances, than it is to give the "right answer."