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=====Start or Answer #1 (1494 words)=====

Question #1

85/90

Norm's Rights:

The Fourth Amendment to the United States Constitution (4th) gives Norm the right to be free from unreasonable searches and seizures in his person, houses, papers, and effects. A warrantless search and seizure is presumed to be unreasonable, but reasonableness can be found in one of the well-delineated exceptions to the 4th Amendment's prohibition on unreasonable searches and seizures. The touchstone of the 4th Amendment is reasonableness, and reasonableness is measured by the totality of the circumstances.

State Action:

The 4th only prohibits unreasonable searches and seizures by government actors. Officer Otis is a paid police officer, therefore he is a state actor.

Standing:

A person must have standing to object to a violation of the 4th. There must be a reasonable expectation of privacy present, one that society recognizes as reasonable. Standing attaches to people not places. Here Otis jumped the fence and entered the fenced backyard of Norm. This is the curtilage of Norm's residence. The curtilage is protected by the 4th when it is associated with the intimate activities of daily living and there is some manifestation of intent to remain private. The facts state that the rear yard was fenced and this appears to be protected curtilage. Norm would have standing to object to violations of his 4th Amendment rights.

Any issue re: the anonymous call by Mary?

Warrantless Search/Good Faith Exception:

Consent is one of the exceptions that will overcome the presumption of unreasonableness of a warrantless search. Officer Otis asked for consent to enter the backyard of the residence by someone who appeared to have apparent authority to consent. Although, Mary pretended to be Norm's wife, the officer did not know this and so he entered the rear yard on the authority of Mary's apparent consent. *good!*

*Excellent
succinct
discussion.*

Norm will argue that Officer Otis arrived in time to observe Mary pounding on the front door. This should have indicated to Otis that Mary was not a resident of the house and that she did not have apparent authority to provide consent to search. Norm will further argue that Otis should have questioned Mary as to who she was in order to determine if she had standing to consent.

But, because Otis was acting under apparent authority, all of the evidence that he will use against Norm will come in under consent. Otis had a good faith belief that he was free to search the yard and its contents.

Otis directed Norm to drop the gun:

Encounters with the police may be consensual, a detention, or an arrest. A consensual encounter is a voluntary state and officers may approach and engage a citizen in conversation without creating any legal constructs under the theory of a consensual encounter.

An investigatory detention requires the officer to have individualized, particularized, reasonable suspicion that there is criminal activity afoot. This is a fairly low standard, sometimes quantified as about 25% probability. With reasonable suspicion, an officer may detain an individual for an investigatory detention only long enough to verify or allay his reasonable suspicions. The officer may question the subject without Miranda

Where did this come from?

this is an overly broad statement of law

warnings during an investigatory detention while investigating his suspicions.

If the officer believes that the suspect is armed and dangerous the officer may pat the suspect down for weapons. If any contraband is discovered through the pat, not a fondle; but a once over pat, and if the contraband is immediately recognized as contraband, the officer may seize the item and remove the item from the person's clothing.

Norm was investigating shots fired in the neighborhood, so the shotgun shell would be immediately recognized by an officer, with his training and experience, to be evidence of the crime which he is investigating.

→ An individual is seized when he feels that his is no longer free to leave the scene. A person is seized when he submits to authority or is physically subdued. Here when Otis dropped the gun, he submitted to Otis's authority and was seized at that time. Otis handcuffed Norm and ordered him to sit. At this time, Norm was being held for an investigatory detention.

could have this up to the top the detention exceeds the pat.

The Camper Shell on Blocks:

Otis saw Wanda exit the camper, which was located in the backyard. The camper was on blocks. Automobiles are normally given less 4th Amendment protections than residences because they are mobile. Here the camper was placed on blocks and appeared to be used as a stationary residence. The camper should be afforded higher 4th Amendment protections than a mobile vehicle, it should be treated as a house for 4th Amendment analysis. ∴ *if a house, wouldn't a warrant be required?*

When Otis saw Wanda exit the camper he leaned in and saw a lab. Otis was legally present in the back yard because he entered under apparent consent. When he saw Wanda exit the camper it was objectively reasonable for Otis to infer that there may be others in the camper, or that Wanda may have access to weapons within her reach.

Otis was free to look into the camper, analogous to a Terry pat, to check for weapons. And Otis was free to look into the camper, analogous to a protective sweep to verify that no others were in the camper. This cursory inspection should last no longer than necessary to verify that no weapons or others were in the camper, and it should only look into areas that may harbor criminals or look for weapons in reaching distance.

Plain View:

*Excellent.
Very
rigorous
issue*
If an officer is legally present, the officer may seize any contraband or evidence that is immediately apparent as contraband or evidence. When Otis looked into the camper he saw a chemistry lab. Clandestine labs are indicative of illegal activity. A lab located in a "dead" camper in the back yard would appear readily to be illegal and contraband. Officer Otis was free to seize the readily apparent illegal lab. He entered and smelled the contents, verifying that this was contraband.

Norm will argue that this lab was not readily apparent as contraband because Otis did not verify the illegality until he smelled the contents, therefore the lab was not readily apparent as contraband and that the acts of Otis were unreasonable.

Because Otis was in the yard legally the drug lab will be received into evidence in the adversarial proceeding against Norm.

The Chevy's Cab:

Norm was still operating under apparent consent when he looked into the camper and he looked into the cab of the Chevy. So he had a right to search and seize contraband and evidence he found in the cab.

Norm would be able to objectively infer that people who operate clandestine drug labs would also have weapons present. Norm would objectively have probable cause to believe that there may be weapons in the cab of the truck and he looked and found a

So, this would be the P.C. exception? Acevedo?

firearm that he intended to use as evidence against Norm.

Norm will argue that neither he nor Wanda had been arrested. Therefore, the officer had no right to search the camper or the cab incident to arrest.

*little
argue
we.*

Otis will argue that Officer Otis acted reasonably and within the well-delineated exceptions to the 4th Amendment's prohibition against unreasonable searches and seizures.

Bobby's Rights:

Bobby's camera was taken to the courthouse by Officer Otis and the contents was downloaded. Otis seized the camera and searched it for data (pictures).

State Actor:

Officer Otis is a paid policeman, therefore he is a state actor.

Bobby will argue that it was state action, the taking of the camera from Norm's yard by Otis, which was unreasonable, and a violation of his 4th Amendment rights.

The state will argue that Officer Otis picked up abandoned property.

Standing:

The state will argue that because this is abandoned property, there is no reasonable expectation of privacy present. Bobby will argue that the officer should have known that the property belonged to the neighbors and that the officer had no right to do anything but try to determine who the property belonged to. *Any Riley-type issue?*

The Exclusionary Rule:

When evidence is seized in violation of the 4th Amendment, the evidence must not be admitted into evidence and any derivative evidence should also be excluded as "fruit of the poisonous tree".

Bobby will argue that the video was seized in violation of the 4th Amendment and therefore it should be excluded under Wong Sun. If the evidence is excluded, there will be no conviction and wardship creation.

Public Defender:

An indigent person is entitled to a public defender. Since Bobby is a juvenile, his parent's income is ^{not true} the measure of affluence needed to justify appointment of a public defender. The judge acted properly when he denied Bobby the public defender.

Bobby's Self-Representation:

Bobby was a juvenile. He had no ability or skill to defend himself in a court of law. The judge had a duty to inquire and voir dire Bobby before hand in order to determine if Bobby had the skill and ability to defend himself. The judge acted improperly and Bobby is entitled to a new trial, with adequate representation. *new*

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===== End of Answer #1 =====

2)

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===== Start of Answer #2 (1420 words) =====

Question #2

Whoa? What happened here? I must be getting old

State Action:

Deputy Dan was a paid police officer, therefore he is a state actor. State action is required to violate the constitutional rights under the 4th Amendment.

Standing:

There must be a reasonable expectation of privacy, which society is prepared to recognize. The expectation of privacy must be in the person who asserts the right. Brittany will have standing in her home.

6th Amendment Right To Counsel:

Massiah:

Under Massiah, police cannot question a suspect after adversarial judicial proceedings have commenced. Here, it appears that the DA has not filed charges yet, so no adversarial proceedings have commenced so Deputy Dan may ask about the bag under Massiah.

Miranda:

Miranda warnings have to be given before custodial interrogation can commence. If the person invokes her Miranda rights--self-incrimination and right to counsel--officer's cannot question the person about the

partially true for the 5th A.
charges. ^ Here there are no facts as to whether the warnings were given or whether there was an invocation of the right or there was a knowing, free, and voluntary waiver of the right after understanding the right. This was not custodial so Miranda will not attach.

Voluntary: (Due Process)

When Brittany told Dan about the sales out of her home, she appeared to voluntarily offer the information to Dan. There appears to be no due process violation here.

Brittany will argue that the question by Dan was designed to illicit incriminating

information, and that the question was charge specific. Therefore, since Brittany was represented by counsel, Dan was not free to ask these questions of Brittany.

How does this interface with your conclusion about Massiah above?
Warrants:

Warrants must only be issued upon probable cause, by a neutral and detached magistrate, and must describe the places to be searched and the things to be seized with particularity. Once the items specified in the warrant are seized then the officers must stop and go no farther.

There must be particularity in the things to be seized and the places to be searched.

The fact that the warrant was issued for "items of counterfeit fashion" may not be particular enough to make the warrant valid. A warrant is required so that police cannot go on a hunt looking for crime, they must have particular boundaries that should be contained in the face of the warrant.

∴ does this impact the validity of the warrant.

Judge Jim was apparently Dan's godfather.

The fact that the judge is Dan's godfather creates the appearance of bias in the judge.

The judge would not be neutral nor detached from the parties in the case. The warrant would not be proper because the judge is biased and is not neutral nor detached from the case.

The application affidavit used to secure a warrant must be populated with true facts and assertions. The fact that Dan withheld exculpatory information that did not ^(not sure what you mean here -) comport with his agenda) leaves the affidavit lacking in the veracity that would be expected to be presented to a judge by an officer in order to secure a warrant. The warrant should be challenged by Brittany based on the fact that the officer acted to deceive the court by withholding exculpatory information. *Franks hearing discussion.*

A warrant must be executed in a timely manner. A wait of 14 days before execution may be too long a wait because

the probable cause to secure the warrant may have become stale. This warrant may not be valid because the officers waited too long to execute the warrant. Brittany should challenge the warrant on the basis of staleness.

It appears that the officers had a warrant for 54 Center Street, but Brittany actually lived at 54B Center. Officers may execute a warrant at the wrong location, in good faith, and any incriminating evidence found in plain view may still be admitted. Brittany may argue that there was no particularity in the place to be searched on the face of the warrant and therefore the warrant would not

be valid.

Knock and announce rules are appropriate because unannounced entry by the police is very dangerous for all concerned. If the officers have some articulable reasons that they believe that entry under knock and announce is not warranted they may enter without the knock and announce.

Generally, warrants should be executed in the daylight hours, but exigencies may create circumstances that require officers to enter in the night and without an announcement.

Are there any good faith issues for Dan?

Dan would need reasonable suspicion that

criminal activity is afoot in order to detain Brittany. When Brittany asked Dan, "Are you here to buy that bag?", an objectively reasonable inference would be the creation of particularized, individualized, reasonable suspicion to detain Brittany to investigate.

Could he also detain her because she was on the site where a search warrant was being executed?
The statement would also create the probable cause necessary for Dan to arrest

Brittany for attempted sales of contraband.

Dan handcuffed Brittany, so at that time

Brittany was under custodial arrest.

At the time of custodial arrest, if Dan wanted to question Brittany about the offense, he would first have to give her the requisite Miranda warnings.

Incident to arrest, Dan may search the area within the immediate reach of Brittany for weapons and for evidence of the crime.

Dan will argue that he was legally present at the home in the place where the dog bit him. He will further argue that it was reasonable to open a nearby door to place the dog in the nearby room to prevent further injury to himself and the dog. Dan will argue that while legally present he observed boxes of purses in plain view and that he had the power to seize the purses under the plain view doctrine.

But, the plain view doctrine requires that the

officer be legally present and that the illegal nature of the contraband be immediately recognizable as contraband. Here, Dan could not distinguish a genuine bag from a fake one. The plain view doctrine will not allow the bags that Dan took to come into evidence.

*Excellent
succinct
analysis*

Was Dan also permitted to be there under the scope of the warrant.

After Dan read Brittany her Miranda warnings she replied "I thing I need to call Al (my attorney)."

Dan could argue that this was not an unequivocal invocation of the right to an attorney and that he could continue on with his questioning until the right was clearly and unequivocally invoked. Brittany will

argue that the statement was unequivocal.

The felony complaint was based upon the evidence seized in the search that was

based on a faulty warrant. The complaint

should be dismissed. *Correct issue and conclusion. Term should be to suppress the evidence. If, after that is done and the People have insufficient evidence to proceed, then the complaint*
Under the 6th Amendment right-to-counsel *is*

under Massiah, after adversarial

proceedings have commenced the police

cannot question a suspect about the case

when a party has an attorney without the

attorney present absent a waiver. Brittany

had hires Al as her attorney. Dan is not

allowed to question Brittany about the

offense unless Brittany waives her rights.

The DA had no right to order Dan to question Brittany.

Under the 6th Amendment right-to-counsel under Miranda, a custodial interrogation must not take place unless there is an attorney present, or there is a waiver.

This is assuming you found a valid invocation in her earlier statement, "I think I need to call AL."

Waiver:

A waiver of constitutional rights must be made knowingly, intelligently, and freely, after understanding the right and the effect of the waiver on those rights. Dan will argue that Brittany had an understanding of the rights and the effect of the waiver and that she acted freely without coercion.

What facts substantiate this?

Brittany will argue that she acted on the advice of a prisoner and that she had no understanding of the effect of the waiver and that the waiver is therefore ineffective. Here incriminating statement may come in if it can be shown that it was a waiver after complete understanding of the consequences. But, if Brittany can show that it was not so she may have the statement excluded.

The DA has a duty to provide the defense with any exculpatory information that would tend to help the defense. Here the DA withheld the statement until right before trial. This effected Brittany's fundamental

rights and ability to defend herself. The DA acted improperly and this evidence should not come in.

Conclusion:

Deputy Dan, the Judge, and the DA all acted in violation of the 4th, 5th, and 6th Amendments to the United States Constitution. Dan was not truthful on the affidavit for the warrant, the judge was biased and was not detached and neutral, and the DA attempted to elicit statements from Brittany that violated Miranda and Massiah. The warrant should not have been issued, so the entry into the home and

the evidence that was subsequently obtained should not be admitted into evidence. Nor should the statement that Brittany gave to Dan be admitted. Without the evidence there is ~~not~~ case against Brittany. The actions should be dismissed.

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===== End of Answer #2 =====

END OF EXAM