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======== Start of Answer #1 (3113 Words) ========

Question 1.

The Fourth amendment of the United states, via the 14th amendment, says that the people have the right to be free of unreasonable searches of their person, places, effects and papers, unless a netural deatached magistrait issues a warrant, supported by probable cause, under oath or affirmation, describing with particulatory the place to be searched and the things to be sezied.

In order for there to be a search there has to be probable cause (PC) or in some cases reasonable articulabe suspicion (RAS).

Can a bus be pulled over for a random drug check?

In order for a detention or an arrest there must be some individulized suspicion that a crime has taken place or will be taking place. In Indinappalis v. Edmonds the courts held that unless there was individulized suspicion drug checkpoints who's purpose was to look for general crimes, opposed to DUI checkpoints which looked for drunk drivers who could be a danger to the general safety of the public, these drug checkpoints were unconstitutional and were not allowed. Simliar to Edmonds this bus traveled through a high crime area, which indicates a targeting of the specific type of person whom may be on the bus. And while there was notice displayed stating that the bus might be checked for safety, there is no indication that any passanger saw it. Also, checking for contraband would not be "passanger safety" under Edmonds.

Great discussion

There was no probable cause, there was no reasonable articuable suspicion to have targeted the bus.

Was there a seziure of the bus?

When officer Orton (OO) pulls behind the bus at its regular stopping place there is no sezuire. The passangers expect to stop on a bus line and OO did not use his emergency lights to signal the bus driver Bob (B) to stop; therefore, there was neither a submission to authority nor physical contact from OO that would indicate that the bus was seized.

Was B seized?

OO approached the bus which had its doors open. There are no facts that support why the doors were open. It could be either due to the fact that there were passagners getting on or getting off, or due to the fact that B has seen OO approaching from behind. If it was because B saw OO it could be argued that B was seized as he had submittied to authority at that point, the open doors signaling an invitation to enter.

When OO approached the bus and saw the empty bottle of vodka rolling around on the dash it probably gave rise to RAS if not PC. Also factoring in that B was a public city bus driver and if under the influence or alcohol could conceievebale put many peoples lives in danger OO could site public policy, of PC was lacking, to check into B's condition.

The check was quick, within OO's rights to do and B would have no standing in a complaint against any violation of his rights. P offered really to prolong the detention.

Was Paul (P) seized?

As P went to exit OO told him to get back on and sit down. In Hodari the court established that a sezire occurs when a person either submits to authority or through the use of physical contact. In this situation P went back on the bus and sat down. It is reasonable to assume that he did not feel free to leave.

If so, what was the particularized reas. susp. as to P?

Were the rest of the passangers seized?

do no prolonged detention?
The detention was brief, only 10 minutes, which seems reasonable for OO to complete his investigation. There are no facts that anyone else tired to leave or was spoken too. There could be an argument for boths sides as to if they felt seized or felt like they were free to go. However the stop as minimally intrusive.

The rest of the encounter wiht Paul.

Was there RAS or PC to invesetigate P?

Paul was nervous and figity. These things by themselves are not indiciative of a crime or illegal activity, in fact many people feel nervous by the presense of police activity, especially in high crime areas.

When OO asked for P's ID and P produced it the encounter was consensual, at least to OO it was. P may still feel that he was being detained and that he had no choice but to turn over his ID. Or, a request/demand for ID under ~~Hodari~~ Hiibel requires a lawful detention
OO then called in to check P's status which turned up the warrant. At this point there is only evidence of a past crime as well as the figiting and perhaps the location of the bus in a high crime area. Alone each of these may not give rise to RAS or PC, however if the totality of the circumstances is put to use then perhaps OO then had PC to take his investigation to the next level. or arrest on the warrant.

When OO asked to search P's bag P did not concent. OO then took the bag having no warrant and no probable cause, at least that is what P would argue. OO would say that he had the authority to take the bag as he could have easily arrested P for the outstanding warrant and then sezied the bag, searching it using incident to arrest as the reason. However OO did not arrest him and with no custodial arrest OO's rights to search P deminished. There was no evidence of a crime and no PC for him to sezie the

bag. Search incident to arrest will not be supported in this case as you have to have actual custody in order to use the rule.

P never obtained a warrant therefore his plain touch of the bag is in violation of P's 4th A rights. P would have reasonable expectation of privacy in his bag, as well as socity would be prepared to recgonize that a person traveling, not on a plane or through metal detectors into specific buildings, should have a reasonable expectation of privacy on a bus. + the lock = her manifestation

OO would argue that any time you are in public with a bag there is a deminished expecation of privacy and that the warning posted on the bus even let riders know of this deminished capacity (expectation). Furthermore, vechiles already have a lower expectation of privacy by there very nature. Socity is well aware of the safety reasons for these type searches and OO would claim that there was PC which supported his sezure of the bag.

The Bag.

Did OO have PC to squeeze the bag?

OO sezied the bag in violation of the 4th. He did not have a reason to have it and did not have consent from P to take it. It does not say whether he told P he would get a warrant, however the facts are he never did get a warrant therefore held the bag for one week with no cause. Had he got the warrant he would have had authority to search it. Had he thought there was evidence of contraband while on the bus he could have searched it. Had he been concerned for public policy he could have searched it and once he brought it back to the station he should have searched it for no other reason than to inventory search it which protects the police from accustaions of theft and gives the owner a list of what was actually accounted for.

OO never does seek the warrant which means the bag was held wihtout PC for one

week.

Pauls Return.

Was P sezied when he came back to the police station?

You hit all the issues here, but I would include more organization other than "Paul's return"

Paul's return was voluntary. OO put P in an interregation room and left him there for one hour. There was paperwork to do however the length of time and the location could rise to the level of detention. There are no facts to establish the conditions, door open or closed, if someone stood guard, but if P did not feel free to leave, even if he arrived voluntarily, using an objective standard he could be considered detained.

OO would say that he put P in the room so that he had a place to do his paperwork and that since he arrived on his own he was free to leave whenever he wanted. The paperwork is a written form of gathering information however P is not under arrest and if he were questions such as these, name, address, etc are not deemed to be a cticial stage in the booking process and no need to counsel is present, especilaly since he is not under arrest. However P could make the claim that he was in custody and that any questioning required the reading of his Miranda rights.

At least lay out the Miranda rule one

It also could be argued that if P was in custody and there was no Miranda given the fact that the information on the tag was different, and that is what OO used to call into question P's information, that the information was used against him in violation of his 5th ameendmet right not to self incriminate.

good

When OO returned he did not ask any questions, however he did make a statement, an untrue statement that the bag had been searched and drugs discovered. This statement could be seen as OO's attempt to illciate information from P in hopes of gaining a confession. OO could say that it was a simple comment not designed to do anything.

At this point it is doubtful P would feel free to leave. It also seem apparent that P is in custody and being interrogated. This is where OO should have read P his Miradna rights before going further. Miranda rights are designed to keep the police from violating the suspects right of due process as well as informing the suspect of their consitituational rights. A person in custody being questioned has the right to remiain silent, the right to an attoney, and if they can't afford an attorney one will be provided for them at no cost. P was in custody and being questioned he should have had his Miranda rights read to him.

Was P's confession knowing and voluntairly?

In order for P's confession to hold up in court it must be knowing, voluntary and made intelligently. OO was lying to P when he hold him they had found drugs. OO had not given P his Miranda which would have informed P that he could have an attorny. An attoney could have been there to help P protect his 5th A rights not self incriminate as well as allow him to excersize his 6th amendment righst to consel. Because his confession was not made knowingly and voluntarily and was illicated by untrue information the confession itself may be deemed inadmissiable under the exclusionary rule which says that if the information is obatined in a manner which violates a persons consitutional rights the results that are obtained are exclused from evidence.

Pauls Warrant.

OO learns later that the warrant was no longer good and had been recalled. Good faith allows for just that situation, where an officer in the field relies on what they are told, in a nonmalicios manner, and executes thier job. In this case P did claim that the warrant was no longer valid, however OO was being told it was. OO could have taken P in but he did not. If the rest of the encounter had not had some many violations of P's rights then the good faith excpetion of the warrant would have allowed for the evidence to be admitted.

======== Start of Answer #2 (1544 words) ========

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Arrest of Sid

The 4th Amendment [4th Am] protects people from unreasonable searches and seizures by governmental agent. A warrantless arrest must be supported by probable cause [PC]. One can be arrested in public if there is probable cause to believe that they commited or were committing a crime. In this case there are no facts to support why Sid [S] was arrested as a suspect of the bank robbery. If there was no probable cause to arrest him, then his arrest was illegal and he can challenge any evidnce obtained from that arrest. The exclusionary rule is a judicially created rule that excludes evidence coming from violations of one's consitutional rights. Here, S had a right to be free from unreasonable searches and seizures, and he was seized when he was arrested, so if there was no PC to arrest, he has standing to object to evidence so obtained.

Probable cause issue as to the robbery arrest

Dex and Sid in jail

When Dex [D] visited S in jail, S was under custodial arrest. If D was going to do any interrogation, or any contact designed to elicit an incriminating response, D would have to first tell S his Miranda rights: right to be silent, anything you say can be used against you, right to an attorney, right to have attorney appointed prior to questioning if you can't afford one. Usually handwriting exemplars are not interrogations, because people don't have a reasonable expectation of privacy [REP] in their handwriting. Here, however, it appears that D was trying to gain incriminating evidence, honing in on the spelling mistakes that were on the robber's note, and comparing that to S's writing. If this was designed to elicit an incriminating response, then D should have Mirandiazed S and the handwriting exemplar would be excluded under the exclusionary rule.

May also be relevant to Vol. unlawful

Issue re: 6th A Rt. to counsel w/ writing exemplars.

Then after that, D did give a Miranda warning to S. S remained largely silent, but if he had stated that he understood his rights and waived them, what he said

would have been admissible unless it was tained by the prior unmirandized handwriting fiasco, or the arrest which arguably didn't have probable cause to support it. Is silence a waiver? Statement ... "this may be your last chance...?"

When S was arraigned, his 6th Amendment [6th Am] right to counsel applied as per Massiah because adversarial proceedings were commenced. He should have had a Public Defender or other attorney with him at the arraignment as that is considered a critical stage of the proceedings. It appears there may have also been a bail bond hearing, and counsel should ahve been there also.

second arrest of S

The reporting party [RP] stated that there was a prowler in the neighborhood. The description was general- a young white male looking like he didn't belong, looking in windows. Tips from the public at large are usually presumed to be valid, but they are judged by the totality of the circumstances. They are analyized by both the basis of the information, the veracity of the informant, and the prediction of future criminal activlity. Here, since the man was peering into windows, and that can be illegal, there may have been a valid report of criminal activity. A seizure for 4th Am analysis only occurs when one submits to governmental authority, either by submission to application of force, or by submitting to a show of authority. There are three kinds of enocounters with governmental agents: 1. Consensual encounters, which trigger no 4th Am protections; 2. Detentions, which require articulable reasonable suspicion [ARS] of criminal wrongdoing to be legal; and 3. Arrests, which require probable cause. O did not make consensual contact with S after the tip, although that is what he may have been attempting. As only ARS is required for a detention, S was dressed similarly to the described person, and was in the same general location, there may have been ARS to detain S based on the phone call alone. Under Terry, this would have provided legal basis for a very brief detention, only until

O's suspicions about S were allayed or sustained. When S ran, the totality of the circumstances supported a detention as most innocent people don't run when they see cops. But flight alone is not reasn. suspicion,

Keep labeling to train a sense of organization.

O said that he released the dog because he feared that S may be armed. The law allows for more leeway for law enforcement when there is a grave public safety concern or exigency. There were no specific facts given to support this belief however, although with the hoodie, the bag he was carrying, and the call of the suspicious person, O was probably justified in trying to detain S. The use of the biting dog probably went too far as there was not any firm reason to believe that S committed a crime at this point, much less a violent felony. Because there was no probable cause to support an immediate arrest of S at that point for a major crime, the violent chase and capture appears unreasonable. When S blurted out that he had robbed the bank, this statement will probably be considered involuntary under a 5th and 14th Amendment due process analysis as he was blurting out a confession just to make the dog stop biting him. If the court finds this to be an involuntary statement gainged in violation of his due process rights, it will be absolutely excluded from any proceeding. If instead the circumstances were not in violation of his rights, it will be considered a voluntary blurt-out and they will be admissible, but this does not seem likely. Although O did not tell S that he was under arrest, it appears that S was in custody when he was handcuffed, as his liberty of movement was significantly impaired.
Because there was no interrogation at the time of the blurt-out, Miranda does not apply at this point.

There are about 3 or 4 separate issues here - please paragraph

Duffel bag

The seizure of the duffel bag found by O can be justified in a number of ways. The most obvious way is that there is no REP in abandoned property, and S abandoned the bag, so there would be no 4th Am violation. If S was lawfully
Did he abandon it after detention or before (like Hodari?)

arrested, [unlikely] then the bag could be seized and searched as a search incident to arrest, which allows the serach of items in the suspect's possession or direct vicinity to be seized and searched. If instead the abandonment of the bag was involuntary because of the dog attack, and the arrest was not legal, then the bag should be supressed, and the money in it. IT would be considered the fruit of the poisonous tree, and would be excluded to deter police misconduct as may have happened here. P.C. exception?

In field show up

Although in-field show ups are legal, they are frowned upon absent exigent circumstances because they are very suggestive. There was not reason in this case to do an immediate identification of S, while he was handcuffed and in the cop car. THese circumstances are very suggestive, and probably violate S's due process rights. The cops should have done a line-up at hte jail the next day, or done a photo line-up with 6 similar looking people to avoid the suggestiveness. The in-field line up coudl be suppressed, and an in court identifcation only allowed if there was an independant basis for the witness's identification of S as the 'man.' Is there any 6th A right in a show-up.?

Clearly state the rule

Public defender

Under the 6th Am, people have a right to counsel. This means a right to competent and unconflicted counsel. Here, when the PD realized that he had previously represented Tammy [T], he should have recused himself and allowed the court to appoint another attorney [from another office, probably]. His refusal to cross examine T would be considered incompetent counsel, and would additionally violate S's right to confront witnesses against him. THis is reversable error, and could be grounds for a reversal of his conviction and a new trial.

Representing himself

Although people do have a right to act as their own counsel, it is generally a bad idea and there is a high standard that must be met before the court can consider a defendant to have knowingly waived their right to have counsel appointed. Here, it appears that S wanted to represent himself because his PD wouldn't cross examine witnesses. And, the judge allowed S to because he wanted to hurry the case along. All this seems fishy, and probably would not be upheld on appeal.

Did the judge meet the standard State law

Right to be present during trial

The judge told S that he could represent himself so long as he didn't disrput the proceedings. The defendant has a right to be present at his trial, but this right may be lost or waived if they are disrputive. Here, sexual epithets to the witnesses would be considered disruptive. A defendant must be warned before being expelled from the porceedings, and must again be allowed to be present if they can subsequently control themselves. It may be that there were not adequate warnings given to S, and thus would be error. It may be harmless error if it can be proved that it did not create a difference in the outcome. But, for S to be excluded from the trial when he is acting as his own counsel would not be upheld on appeal unless some counsel was appointed to his case as the proceedings went on.

======== End of Answer #2 ========
END OF EXAM