

you mentioned the law. You seemed to
a good, working understanding of the law. You seemed to
hit your strides in Q2. Keep working on weaving the
Criminal Procedure Stark+Slater Sum
you into your analysis, and laying out the
requirements for warrant exceptions.

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===== Start of Answer #1 (2148 words) =====

1) Was the initial detention of D-Dog lawful?

Under the 4th Amendment, persons are protected against unreasonable searches and seizures of their persons, homes, papers, and effects. Further, a warrant may only be issued by a neutral magistrate upon a showing of probable cause, and must specifically state the place(s) and person(s) to be searched and/or seized.

Terry v. Ohio
In re Terry, a lawful seizure of a person requires a reasonable articulable suspicion that criminal activity is afoot (RASCA). Further, the totality of the circumstances are considered in determining whether RASCA is present. A detention/seizure, then, occurs when a person submits to force or force has been applied to a person.

Here, the officer relied on a couple of things to develop RASCA for a potential detention; firstly, the anonymous tip. Generally, in looking at such a tip, the veracity and specificity are considered. Here, the use the facts! Was it accurate? Predictive of activity? particular tip was very specific, and is likely to be considered to have some veracity. Additionally, the officer also believed that D-Dog, driving the suspected vehicle, had an outstanding warrant. This, in addition to the tip, add to RASCA, which greatly enhance the officer's ability to detain D-Dog.

There should be some discussion of the Hodari situation here.
Upon being asked to pull over, D-Dog flees. Upon wrecking, he is finally detained, and likely arrested (despite having been taking to the hospital). See below for discussion relating to potential arrest detainment, and search and seizure of D-dog's effects.

2) Was the Terry stop and frisk of Ruby lawful?
Standing?

In re Terry, an officer may stop and frisk a person who, if the officer has a reasonably articulable suspicion of criminal activity, and if the officer reasonably believes a person to be armed and dangerous, for the purpose of finding a weapon. Start here:

1. Was she detained? If so, was it lawful?
2. What facts support the need for a pat? pat?

Here, there is no indication as to the officer's thinking when he approaches and pats down Ruby. While it's possible he developed RASCA, it's very unclear whether he believes she was actually armed and dangerous. There is the fact that she ultimately was found to be holding a weapon; however, the evidence he seized (drugs, etc.), doesn't seem to have been made in a light pat search for weapons, as is permitted for a lawful Terry search.

Search: seizure of her purse → gun?

Given the seemingly unlawful nature of the search and seizure, Ruby's attorney would seek to suppress all evidence obtained/seized from the search. Under the exclusionary rule, because this evidence was obtained in violation of Ruby's 4th Amendment rights, this evidence would likely be excluded from use by the prosecution's case against Ruby.

What about the gun?

As an aside, this evidence may potentially be used against other parties (see D-Dog below).

3) Was the search and seizure of Ruby's iPhone lawful (assuming it's Ruby's)?

The Supreme Court has held that cellphones have a heightened standard of privacy standard under the law, due to the nature of them being locked, the quantity and quality of data therein, etc. Thus, generally speaking, without some other exception (i.e. Consent), a search and seizure of a phone would be unlawful without a warrant.

Here, the officer has no such warrant to look through Ruby's phone. Even if she was properly arrested, the search incident to arrest exception would not apply due to the explicit need for search warrants for phones. If charging Ruby, the prosecution could potentially argue inevitable discovery, in that the information seized from the phone would have been discovered through other means; however, it's not clear from the facts that, but for a valid warrant showing probable cause, they could have discovered this information lawfully.

Thus, at least as to Ruby, the search of the phone, and seizure of information, etc., therein, is unlawful. Thus, it would likely be excluded under the exclusionary rule, and, at most, be used to impeach Ruby if she testified—thereby waiving her right to self-incrimination under the 5th Amendment. Or, if D-Dog's, against him) ?

Even if not Ruby's (again, facts unclear as to who it belongs to), it was still unlawfully seized.

Do they both have standing?

4) Was Ruby lawfully arrested?

Generally speaking, a warrant is not necessary to arrest a person if an officer believes it is reasonably likely that a crime has been committed and that it is reasonably likely that the person arrested committed said crime; thereby, developing probable cause to make an arrest (i.e. that it is more than likely the arrestee committed a crime).

Here, the officer only arrested Ruby, a passenger in the case, based on an unlawful Terry seizure. There

seems to be no other evidence present, other than that unlawfully acquired in violation of Ruby's 4th Amendment rights, for the officer to develop probable cause to arrest. Based on this, the arrest of her, and any evidence obtained therefrom, would be invalid. The prosecutor could still potentially arrest Ruby, (you) despite the improper arrest, however, the evidence discovered likely can't be used against her.

5) Was D-Dog arrested or detained? Was the subsequent search of his bag at the hospital lawful?

Detention, *supra*, requires an actual application of force or submission to force. Generally, courts ask whether a reasonable person would believe they were free to go. While at the hospital, it seems likely that D-Dog, at a minimum, is finally detained. Although, he was probably not detained until this point, as he was fleeing and had not had any force applied, nor had he submitted to force (see above for further discussion); thus, the question turns on whether D-Dog was placed under arrest.

Arrest, *supra*, is needed for an exception to potentially apply to search and seizure of D-Dog's effects. Here, it's not clear whether D-Dog has actually been arrested, or if he was even subsequently placed under arrest; although, the officer probably has probable cause at this point to make an arrest. Even if there was probable cause, an actual arrest is necessary for the exception to come into effect.

Stronger than that: "high speed chase."

In light of the same, it seems as if the officer should have obtained a warrant to search D-Dog's possessions at the hospital, or waited for him to come out of surgery to place him under arrest—which was not done. The prosecution may argue that the plain sight exception was present. In particular, items in plain sight are not protected under the 4th Amendment because they do not have the same level of privacy—nor is the 4th Amendment, necessarily, implicated. Because, however, the officer opened the closed bag, he probably overreached. D-Dog most certain had a heightened level of privacy in something that was closed.

define requirements

do you mean you have to be told?

Thus, under the exclusionary rule, the items seized by the officer are likely not admissible as evidence against D-Dog. It's not clear whether D-Dog's defense objected to this evidence. But, the facts indicate that he was convicted. If not objected to as a violation under the 4th, he could not overturn his conviction because the objection would be deemed waived. He could, however, request a new trial based on deficiency of counsel; although, this gets into facts that aren't necessarily at issue. It's unclear whether the objection was preserved.

Non-issues for this class.

The prosecutor could also argue exigency, as to the search and seizure of the bag. If there is the potential for destruction of evidence, such a search would be lawful. It's not clear that a magistrate isn't readily available to issue a warrant, however, and that such urgency or possibility exists.

Does the bloody backseat change this?

6) Was the fingernail clipping lawfully taken from D-Dog

Here, the officer seized, without a warrant, a fingernail scraping from D-Dog's hand, as well as a blood draw.

With respect to the blood draw, it's unclear why the officer took it. For such things, generally a warrant is required, but an exception, such as exigency could be shown, to show a valid seizure. Generally, exigency exists to preserve dissipating evidence. If the officer was trying to determine that D-Dog may have been driving under the influence, the exigency exception would likely apply—as previous courts have held blood alcohol is a rapidly dissipating evidence. If, for other purposes however, then the exception is less likely to apply and the blood draw would be determined to have occurred in violation of D-Dog's 4th Amendment rights. *Look at recent case law.*

As to the fingernail, this was taken to determine if the kidnapped victim's blood had been on his fingernails. Given that blood can be easily washed from fingers, the exigency exception seems to apply in this case. In particular, there is no valid arrest (at least factually); thus, the best argument for the prosecution is to argue exigency to show a valid 4th Amendment seizure of the fingernail clipping and blood found thereon. Even if not, the officer's observation would fall under the plain site exception, at the very least, which wouldn't show whose blood, but would show the presence of blood. *view?* *Again, tell me the requirements for this to apply.* In all likelihood, the fingernail clipping and blood draw come in and a motion to suppress would likely be denied, but depending on the facts and charges, the opposite could be true (particularly for the blood draw).

7) Can D-Dog's confession be admitted?

Generally, *Miranda* warnings are required to be read if a person is in custody (i.e. reasonably believing they are not free to go) and if there is an interrogation (i.e. an officer saying something that he/she reasonably believes would elicit a response. Any confession obtained in violation of a *Miranda* warning is inadmissible for the truth of the matter (Further, the Fifth Amendment protects a person against self-incrimination, and any confession must be made voluntarily and without coercion.) *Separate P*

Here, there was no *Miranda* warning. However, there is a public safety exception to the rule, in that if there is a missing victim (essentially exigency), then *Miranda* need not be read so as to protect public safety in some manner. The fact that there is an outstanding missing person seems to be enough of a

not clear from facts

public safety concern that D-Dog's confession/response would come in over a motion to suppress. There is a potential question as to the voluntariness of the response, given he was in an accident, etc.; however, this would turn on facts which are not clear (i.e. whether he was drugged after surgery, etc.). The voluntariness, however, could result in a different outcome, but it's more likely the exception of public safety would override.

Lastly, because D-Dog says she's gone, the facts might indicate that such urgency was necessary, and that the officer likely ^{new}, or should have known, the Victim was dead. If that's the case, the exception re public safety/policy wouldn't be sufficient, and a valid *Miranda* warning would have been required for the confession to come in. There are still the issues of whether D-Dog was technically in custody, which turns on the objective standard mentioned above.

8) Standing and Exclusionary Rule

Standing to claim a violation under the 4th Amendment requires that a person have a reasonable expectation of privacy in the thing searched and/or seized. *that society is willing to recognize*

Despite some of the evidence obtained directly from be obtained unlawfully, and thus not permitted under the exclusionary rule, D-Dog has no standing to object to evidence unlawfully obtained in violation of Ruby's 4th Amendment rights. The facts are slightly unclear, but if Ruby's ^(any info) information obtained from the phone could be used against D-Dog because he would have no standing to object to the improper search and seizure of the iphone, because he has no reasonable expectation of privacy in someone else's phone. The condom, drugs, etc., could be used against him (if applicable), as well.

Any discussion regarding admissibility/exclusion of other evidence is discussed above.

9) Was the information obtained from Redbook headquarters lawfully obtained?

If the phone is D-Dog's, his defense would argue that the information obtained from the phone and leading the officer to Redbook headquarters was the 'fruit of the poisonous tree,' and should, as such, be excluded from evidence. The prosecution would argue several things in response, however:

In particular, regardless of whether the phone was D-Dog's, the information obtained from Redbook was that of a third-party and, thus, not protected under the 4th Amendment. Generally speaking, information provided to a third party is not considered protected under the 4th Amendment. In re Katz, the 4th

Amendment protects things which people subjectively expect to be private and that which society accepts as being private within reason. This doesn't include information given to third parties.

D-Dog may try to argue that Redbook was coerced into providing the information, however, D-Dog has no standing to assert a 4th Amendment violation of a third party. Even though such a threat would generally be considered coercion as to the voluntariness of Redbook providing the information—it simply doesn't matter to D-Dog because of standing. Thus, this is also a fruitless argument. Further, given that Redbook is a third-party, and it is not a government actor, the 4th Amendment is not implicated as to its records and what it has kept on file.

Does Redbook stand in the same position as Stanford Daily did?

Given the above, the information obtained from Redbook is likely admissible over a motion to suppress.

End of Answer #1

95 2)

=====**Start of Answer #2 (1869 words)**=====

1) Was the search and seizure relating to Max's locker lawful?

Under the 4th Amendment, persons are protected against unreasonable searches and seizures of their persons, homes, papers, and effects. Further, a warrant may only be issued by a neutral magistrate upon a showing of probable cause, and must specifically state the place(s) and person(s) to be searched and/or seized. In re *Katz*, the 4th Amendment protects things which people subjectively expect to be private and that which society accepts as being private within reason. This is known as a reasonable expectation of privacy (REP).

The Supreme Court has held that, because of public policy concerns and issues, students in public schools have a less expectation of privacy than those in their own homes, etc. Thus, based on Nancy's information provided to the principal, he/she was probably okay in requesting police assistance to investigate the allegations.

Does Max have standing in his locker

*Should he
some
discussion
on Nancy's
reliability as
a "narc"*

Generally speaking, a warrant is required (unless an exception exists) to search and/or seize property.

Despite the dogs pointing at the locker, Max's defense would argue that the opening and seizure of items within the locker violated his 4th Amendment's right against an unreasonable search and seizure.

Because the Supreme Court recognizes less privacy for students in public schools, this argument will likely fail, as the 4th Amendment is not necessarily implicated.

If, however, the Court determines such a privacy right in the locker exists, the prosecutor will need to prove an exception to the warrant requirement for the search of the locker and seizure of the contents. Because the dogs clearly indicated the presence of drugs, the prosecutor would argue 'plain smell.' *define elements* Similar to plain sight, plain smell would permit the officers to search the contents of the locker based upon the dogs indicating the presence of drugs. In other words, there is a lower REP where such a smell could be discovered by the dogs. Further, the Supreme Court has determined the presence of drug sniffing dogs doesn't violate the 4th Amendment rights of the accused--particular when facts already exist to suggest drugs are present.

Thus, the search of the locker is likely not in violation of the 4th Amendment, given the exception and given the lacking REP. Anything seen therein would then, likely, be covered by plain sight. It does say that the drugs were behind the books; although, this likely won't make the discovery of the drugs inadmissible in and of itself given the arguments above would all apply. *Why not? Didn't they need to move the books such that the mj. was not immediately apparent?*

See 4th Amendment, *Supra*.

The Supreme Court held in Hodari that abandoned property is not protected under the Fourth Amendment if abandoned prior to detention or arrest.

Here, ~~because~~ Max accidentally lost a wad of cash. Because it was accidentally, it's technically not discarded; however, there is little to no expectation to privacy for lost property (most because society places a burden on people to return lost property, and any expectation of privacy would nullify this legal burden). Thus, the Fourth Amendment likely doesn't protect the wad of cash as being admitted into evidence, and it was lawfully seized by the officer. *Under Hodari, this is really a seizure precedes detention.*

3) Was the detainment and arrest of Max lawful?

See 4th Amendment, *Supra*.

Terry v. Ohio

In re Terry, a lawful seizure of a person requires a reasonable articulable suspicion that criminal activity is afoot (RASCA). Further, the totality of the circumstances are considered in determining whether RASCA is

present. A detention/seizure, then, ^{occurs when a} a person submits to force or force has been applied to a person.

Additionally, generally speaking, a warrant is not necessary to arrest a person if an officer believes it is reasonably likely that a crime has been committed and that it is reasonably likely that the person arrested committed said crime; thereby, developing probable cause to make an arrest (i.e. that it is more than likely the arrestee committed a crime).

Good use of facts Here, the officer had like developed RASCA and likely probable cause, to arrest Max. There was indicia of him selling drugs in his locker, he dropped wadded cash which might indicate selling of drugs, he ran from officers, and he was accused by an informant of the same. This, in all likeliness, would permit a valid arrest, suggesting that probable cause existed to suggest Max was more than likely to have committed a crime.

Further, Max was also in ^{good} violation of the Court's order requiring him to go to school; thus, if the officer was aware of this, it adds to everything discussed herein above.

Because he was more than likely to have committed a crime given the above evidence, and based on the fact that he was fleeing the officer, the officer seems to enter the home in hot pursuit Max, the assailant.

Generally speaking, an officer may not enter a residence, even to make an arrest, without a warrant. There are, however, two major exceptions to this rule: Being in hot pursuit of an alleged criminal and exigency (in particular, a reasonable belief that evidence may be destroyed). Here, both exceptions seem to apply. Probable cause had already developed that Max had committed the crime of selling narcotics and the officer was in present pursuit of arresting him. Further, given the nature of the crime and the ease upon which Max could destroy drug related evidence, exigency also exists. Thus, the officer likely had a right to enter the home to place Max under arrest.

There are, however, concerns that the officer may have violated Max's 4th Amendment rights. The defense would argue that the officer hadn't yet acquired probable cause for an arrest and his search of the curtilage (being in Max' backyard) was a 4th Amendment violation for being an unlawful search which required a warrant to be on the property. The prosecutor might argue that probable cause was already established, and that the officer was determine the best place to enter for officer safety in light of the hot pursuit exception. The officer's delay could prove fatal, however. But, because it was only a 30 second wait, it is unlikely under the facts.

Thus, it is likely Max was properly arrested.

4) Is Max's confession to possessing drugs admissible?

Generally, Miranda warnings are required to be read if a person is in custody (i.e. reasonably believing they are *not* free to go) and if there is an interrogation (i.e. an officer saying something that he/she reasonably believes would elicit a response--taking into consideration the functional equivalency test). Any confession obtained in violation of a Miranda warning is inadmissible for the truth of the matter. (Further, the Fifth Amendment protects a person against self-incrimination, and any confession must be made voluntarily and without coercion.) *Separate issue*

Here, it is without question that Max is in custody based upon his lawful arrest (he is not free to go) and that he is being asked questions which are clearly expected to be responded to. However, the officer did not read Max his Miranda rights. Thus, the admission is likely inadmissible against Max for the truth of the matter. It could potentially be used against him to impeach, but only if he waives his 5th Amendment rights to self-incrimination at trial.

Any 6th A issue given he is already charged w/a crime?
5) Is seizure of the spray paint cans lawful? (*Okay, below*)

See 4th Amendment, *Supra*.

As stated above, generally speaking a warrant is required to seize property; however, there is a search incident to arrest exception to the rule, in which after a valid arrest, anything within reasonable reach and accessibility of the arrestee may be searched and seized. Here, the facts indicate that Max was arrested in his bedroom. Assuming he has an average size bedroom, it's reasonable and logical to assume that the spray cans were within his reach, and thus the search incident to arrest exception applies, and the spray cans may be seized following the search.

This would, of course, turn on more specific facts. But, in all likelihood, the spray cans are likely admissible over a motion to suppress.

6) Is Max' confession to ibid admissible?

See Miranda, *supra*.

While generally speaking while in custody and under an interrogation a Miranda warning is required to be read, the Supreme Court has held that secret agents placed in a cell with an individual is not, necessarily,

an interrogation, and that any conversations with a secret agent are likely voluntary—unless facts exist to suggest otherwise. *Why?*

Under *Massiah*, the Supreme Court held that the 6 Amendment right to counsel attaches in all adversarial proceedings. Thus, post-arraignment, and despite the carveout for secret agents, if a confession occurs post-arraignment, the right to counsel attaches and any such confession sans *Miranda* would violate the 6th Amendment.

Here, there are essentially 2 crimes in question.

Firstly, Max was already arraigned as to graffiti vandalism. Thus, when Max informs Ibid that the DA couldn't prove the vandalism, this confession likely requires a *Miranda* warning under *Massiah*, based on the secret agent's conversation with Max being post-arraignment. Thus, given the rule, the confession is likely inadmissible against Max for the graffiti vandalism charges. Assuming the confession/response is not considered coerced and is deemed voluntary (which is likely considering that statements made to secret informants are generally deemed voluntary, despite the "lie"), then the statement could still be used to impeach Max if he decides to testify and waive his 5th Amendment right to self-incrimination at trial.

Is this true?

Secondly, as to any charges of possession and/or selling of narcotics, Max has yet to be arraigned as to any such charges. Thus, under the rule, the admission/confession to Ibid will likely come in as to such charges because the right to counsel has yet to attach.

7) Was Max entitled to represent himself?

Generally speaking, a party may waive the right to counsel if they do so knowingly, voluntarily, etc. This is ultimately discretionary as to the Judge. Given that Max is a minor, in considering whether a waiver of counsel by Max would be a valid waiver, it's quite possible his denial of the request is proper. Even if the denial was improper, unless there was ineffectiveness of counsel on part of his attorney, this error is likely not fatal to the case and would not result in a new trial if deemed an improper denial on appeal.

Ultimately, given his age, the charges involved, etc., the Judge was within his discretion to deny the request to waive counsel.

8) Was Max entitled to a jury trial?

Generally speaking, the Constitution requires states to provide a jury trial with respect to certain

misdemeanors and felony charges. States can, of course, add more to this right, but not restrict it. With respect to juvenile proceedings, I believe states are not required to provide ^{Court} jury trials. Thus, at least as to the graffiti charges, the judge's denial of a request for a jury trial would be deemed proper.

The facts aren't clear whether he is being tried in adult court by a separate judge, etc., as to the various charges. Assuming he is as to the charges relating to drugs, the judge would likely have to abide by the Constitution and grant him a jury trial. This, however, doesn't seem to be the case, as it appears it is a single judge; although, it is slightly unclear.

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

END OF EXAM