

6) Please type the answer to Question 6 below. (Essay)

===== Start of Answer #6 (1366 words) =====

1a. SUPPRESION OF THE COCAINEFourth Amendemnt -- Rights Against Illegal Search and Seizure

The fourth amendment to the Constitution protects against illegal search and seizure of a person or property. It applies to the States throught the Fourteenth Amendment. For a search and seizure to be legal, it requires a valid arrest or search warrant.

Arrest Warrant -- Probable Cause

In order to be valid, an arrest warrant must show probable cause based on reliable information, must be issued by an impartial magistrate, and set out the basis for making the arrest with particularity. Probable cause exists when officers can articulate a resonable suspicion that there exists the fruits or instrumentalities of criminal activity.

Here, the facts tell us that an informant indicated Debbie's intent to offer money for the killing of her husband. On the basis of that info, Alan obtained a warrant. Under normal circumstances, this would constitute good probable cause, but we know Detective Alan knew Ivan to be an unrelaiable informant, and yet still set forth in his affidavit that Ivan was reliable. While valid on it's face, the underlying facts in support of the warrant have been misrepresented by the affiant detective. Accordingly, the warrant may be found to be defective unless the officer can show there was some reason to believe that Ivan was reliable in this instance, or some other information corroborates the reliability of the information setting forth probably cause for the arrest warrant.

Harmless Error

The harmless error exception sets out that even if a warrant is defective, a

search may still be found legal if the result of the error is ultimately harmless. Here, again, Alan has set forth a false assertion that Ivan is reliable when he is said to often be unreliable. However, if the detective can show that there was reason to believe Ivan was reliable as to this information in this instance, this would likely constitute a harmless error. Thus, the warrant would not be defective and arrest would be legal.

Eventual Discovery

Another exception states that a defective warrant may be overcome if it can be shown that the information would eventually have been discovered regardless of obtaining the warrant. Here, while the police did go to the effort of obtaining a warrant before arresting Debbie, they easily could have waited until after the phone call to do so. In that case, the phone call with Bob alone would have provided the necessary probable cause to arrest Debbie based on her indication that she was soliciting to kill her husband. At that point, Bob could have proceeded with a warrantless arrest (in public at the bar), or obtained a warrant and arrested her at her home. In fact, given that Debbie was in a public place when Bob arrested her, the warrant was likely unnecessary given Bob probably had adequate probable cause independent of the arrest warrant. Therefore, considering the information about Debbie's solicitation would have come to police even without the pre-arrest warrant, it is likely the warrant will be found legal.

Exclusionary Rule

As a rule, evidence obtained illegally is inadmissible against a defendant. Here, if the warrant is found to be ineffective, the arrest will not be legal and will violate the fourth amendment. This would also invalidate the search incident to arrest. However, here we know we likely have a legal search based on the arrest warrant.

Fruit of the Poisonous Tree

Furthermore, even evidence unrelated to the crime itself discovered as a result of an illegal search will be found inadmissible if obtained through an illegal search. Thus, if the cocaine evidence is discovered as a result of an illegal arrest or search, it must be excluded. However, the search warrant's likely legality probably makes the search legal, and thus the discovery of the cocaine, provided the search itself was legal.

Search Incident to Lawful Arrest

When an officer takes custody of a suspect, they are permitted to conduct of lawful search of the person's wingspan for the presence of weapons or contraband. If circumstances dictate, they may also be able to search the immediate area for accomplices. If an arrest is lawful vis-a-vis a valid search warrant, the only question is whether the search itself is valid. Here, Debbie was arrested with probable cause for solicitation and incident to what appears to be a valid search warrant. Debbie was placed in handcuffs, and Bob search her immediate person discovering the clear vial of powdery substance. While the statement indicating whether it was cocaine's admissibility is discussed below, the contraband itself was likely legally obtained through the search, and whether it was cocaine could be established at trial through other means. Thus, the search incident to arrest makes the seizure of the cocaine legal.

Conclusion

Accordingly, since the warrant was legal and the cocaine was seized incident to a lawful arrest, the court should deny Debbie's motion to suppress the cocaine.

1b. SUPPRESSION OF POST-ARREST STATEMENT UNDER MIRANDA

Fifth Amendment -- Right Against Self Incrimination

The first amendment to the Constitution protects the right not to incriminate oneself. It applies to the States through the Fourteenth Amendment. The fifth amendment requires officers to provide Miranda warnings whenever a suspect is

custodially interrogated. Miranda warnings include the right to remain silent and the right to obtain an attorney, even if indigent.

Custodial Interrogation

Custodial interrogation exists where a person has been detained against their will, or where a reasonable person would not believe that they are free to leave (i.e., at a police station). Custodial interrogation necessarily includes situations where police handcuff a person or place someone under arrest. Here, Debbie was clearly under arrest per the facts. She was searched incident to that arrest. Thus, custodial interrogation would take place if Bob questioned her under the circumstances, and Bob was legally obligated to provide Debbie with Miranda warnings.

Miranda Warning

The Miranda warning must be given immediately upon arrest, and if not within a reasonable time of arrest and search. The warning must include, among other things, the suspects right to remain silent and not incriminate themselves. Here, Bob clearly did not give Miranda warnings at all. He conducted a search of Debbie, and immediately asked Debbie a question about the vial discovered during his search prior to issuing Miranda. Thus, Debbie's reply is a statement made during custodial interrogation and without a Miranda warning and thus violates her Fifth Amendment rights.

Conclusion

Accordingly, Debbie's motion to suppress her post arrest statement should be granted by the court.

2. DEFENSE OF ENTRAPMENT

Entrapment

Entrapment occurs when government officials (i.e., police officers) cause a

suspect to engage in criminal activity as a result of a criminal scheme devised by the officials themselves. Accordingly, in order to qualify as entrapment, the criminal scheme must be entirely created by government and cannot simply result from an officer impersonating a criminal actor in a criminal plot initiated by the defendant.

Here, the officers had information from an informant that Debbie was offering to him seeking his help in killing her husband. Bob, the undercover police officer, used this information when he made initial contact with Debbie, pretending that he was a hit man and mentioning that he understood she was looking for someone to kill her husband. Debbie admits that she was seeking to kill her husband, but decided it was too risky and that she changed her mind. At this point, Debbie has admitted the crime to the officer. While parts of the conversation might constitute entrapment, as Bob goes on to try to entice Debbie to change her mind, she has already admitted the requisit intent to commit the crime. Moreover, Debbie still does not disclaim wanting to commit the crime during their conversation, and offers Bob a \$200 deposit in furtherance of her "thinking more about it." While the prosecution may have trouble ultimately proving Debbie actually solicited Bob to for murder, her entrapment defense is weak. Bob did not create the scheme, here merely stepped into the shoes of the criminal element, and Debbie immediately admitted she has previously had an intent to engage in solicitation. Thus, Debbie's entrapment defense is unlikely to be successful.

Question #3 Final Word Count = 1366

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END OF EXAM