

QUESTION 3

At approximately 2:00 p.m. on July 2, Jean Hodes, a dispatcher with the Emergency 911 Communications Center in Erewhon, received a call from an unidentified male who sounded panic stricken. The caller reported that Nancy Sotwin was driving erratically on Milkweed Lane at a high rate of speed and had struck a young child riding a bicycle. The caller also related that Sotwin did not stop but drove to a house at the end of the lane, pulled into the attached garage, and closed the garage door.

Erewhon police officers responded to the call. They summoned medical assistance for the child, and several officers approached the residence at the end of the lane and knocked on the front door. When Nancy's adult brother, Andy, answered the door, the officers explained that a vehicular assault had occurred, and the officers asked Andy for permission to search the garage. Andy responded, "Whatever," stepped aside, and pointed to the door leading into the garage. Nancy walked out of the guest bathroom just as one of the officers reached the door, and she shouted to the officers to leave her house. The officer at the door ignored Nancy's protest; he opened the door and walked into the garage where he discovered a Saturn VUE with blood spattered over the right corner of the front bumper. Officers applied for a search warrant to seize the vehicle, and later forensic analysis identified the blood as that of the injured child.

The day following the hit and run, officers canvassed the neighborhood for witnesses. Officers interviewed Doug Wilson, who told them that he was having a late lunch the previous day at the Erewhon Grill and Bar, where he saw Nancy drink five martinis over a 30-minute period. Doug reported that when Nancy left the bar at approximately 1:45 p.m., she was very unsteady on her feet. Soon after the interview, Doug was called to active duty in Iraq for 48 months.

A grand jury indicted Nancy for vehicular assault by intoxication. Pretrial, the defense has moved to suppress the results of the blood analysis as the fruit of an illegal warrantless search of Nancy's garage. Also, anticipating that the prosecution would offer a tape recording of the 911 call and Doug's hearsay statements, the defense challenged admissibility as violating Nancy's constitutional confrontation rights. The state has responded that Nancy's brother, who lived at the residence, provided effective consent to a search of the garage and that the hearsay evidence is nontestimonial and, therefore, not subject to Confrontation Clause scrutiny.

Based on the foregoing, determine:

- (1) Whether the warrantless search of the Sotwin garage violated the Fourth Amendment to the United States Constitution.
- (2) Whether the federal Confrontation Clause bars admission of the 911 tape recording.
- (3) Whether the federal Confrontation Clause bars admission of Doug's statements to the officers.