

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

1. HOW SHOULD THE TRIAL COURT RULE ON:

Suppressing the cocaine under the Fourth Amendment

State Action

The Fourth Amendment only applies in situations where the action is performed by a state actor, or a private citizen acting on behalf of the state's request.

Here, Bob (B) is an undercover police officer, therefore, he is an actor of the state and the fourth amendment applies.

Reasonable Expectation of Privacy

The Fourth Amendment only protects places and locations where the defendant has a reasonable expectation of privacy. This includes their dwelling and body, but does not extend to the curtilage of their property - which may include the front porch, side yard, non-fenced in areas, etc. Automobiles have been deemed to have a lower expectation of privacy by the court.

Here, B found the vial of cocaine in Debbie's (D) front pocket. This is considered to be on her person, and therefore, she has a reasonable expectation of privacy.

Valid Warrant

A valid warrant is one that is 1) enacted with probable cause, 2) by a neutral and detached magistrate, 3) reasonably detailing the person to arrest, place to be searched, or items to be found. The facts seem to indicate that the warrant was issued by a neutral and detached magistrate and detailing D's arrest - so the main issue we will look at is whether or not there was probable cause for the issue of this arrest warrant.

Here, probable cause means that it is more likely than not for a crime to happen. In past cases, the court has ruled that a reliable informant is sufficient for

probable cause. However, this is not the case here for the facts state the Ivan, the informant, has often been proven to be unreliable. Therefore, because the informant was unreliable, there was no probable cause.

In conclusion, this was not a valid arrest warrant.

Warrant Exception

There are several warrant exceptions. The first main one being that a warrant is valid if it was executed in good faith by the arresting police officer. Here, after receiving the unreliable informant's tip, the arrest warrant was obtained by Alan (a detective). However, Alan ended up giving the arrest warrant to B. If further facts show that B acted in good faith in executing the warrant, and if he was unaware of the circumstances as to how the warrant came about, it will be held as a valid warrant.

Therefore, the warrant will probably valid if further facts show that it was executed in good faith.

Exceptions to a Search Warrant

Here, the facts do not state that there was Warrant for a search, however there are many Warrant Exceptions which include: Exigent Circumstances, Search Incident to Arrest, Consent, Automobiles, Plain view, Evidence from Administrative Searches, and a Terry Stop and Frisk.

In this situation, D was searched by B after she was arrested. This falls under the Search Incident to Arrest Exception. Under such an exception, the arresting police officer can do a pat down of the person under arrest, including their wing-span area (anywhere they can conceivably reach), nearby containers, pockets, purses, etc. D found the clear vial of cocaine when performing such a search, which makes it valid under the exception.

In conclusion, the vial of cocaine will be found valid since it was discovered during a valid search incident to arrest, which is an exception to a search warrant.

Debbie's Post-Arrest Statement under *Miranda*

Under the Fifth Amendment, police officers are required to notify the defendant of their *Miranda* rights (right to remain silent, right to speak to an attorney, and anything that the defendant says may and can be used against them) when they are under police custody.

Police Custody

A person is under police custody when a reasonable person does not feel free to leave. When one is under arrest, and handcuffed, this is certainly the case. Other situations include when the defendant is placed under questioning, during booking, etc. Here, D was handcuffed and placed under arrest without B giving her any *Miranda* statements.

Therefore, B was in the wrong for not doing so and he violated D's 5th Amendment Rights.

Voluntarily Offered Statements

An exception under *Miranda* is if the defendant voluntarily offered the statements despite hearing the warnings or before any warnings can be made.

Here, B will likely claim that D made the confession voluntarily and that his question was not posed in an attempt to illicit a response from her. However, this is unlikely to be the case since the court will view that as being a question, and a reasonable person under the circumstances would feel pressured to answer.

Therefore, D's statement was not voluntarily offered.

Exclusionary Rule

The law states that any evidence obtained in violation of the defendant's constitutional rights will be excluded, unless an exception exists. These exceptions include: if the evidence would have been discovered eventually during investigation, or if other legally obtained evidence refers to the excluded evidence, then it is still admissible.

Here, because D's statement was obtained in violation of her 5th Amendment rights, her statement can be excluded under the exclusionary rule. However, because the vial was obtained under a legal search - and testing would eventually reveal that the contents are cocaine, her statements might still be admissible under the exclusionary rule exception. While her confession might be struck from evidence, the fact that the vial contents are cocaine are not inadmissible.

Therefore, in conclusion, D's post-arrest statement might be inadmissible under the Exclusionary rule, but the fact that the vial contents are cocaine will still be admissible.

2. DEBBIE'S DEFENSE OF ENTRAPMENT

Entrapment is a valid defense in very limited circumstances. One, the crime must be coerced by the state; two, the defendant must not have the propensity to commit the crime; and three, if not for the actions of the state, the defendant would not have attempted to commit the crime.

Here, B was an undercover police officer posing as a hitman, trying to induce D to hire him to murder her husband. As mentioned above, B is a police officer acting on behalf of the state. He tried to coerce her by arranging a meeting where he laid out the details and payment arrangement. Therefore, the first element is met.

The second element is the hardest to meet. D must not be predisposed to commit the crime in any fashion. Here, the facts indicated the D had been looking for someone to kill her husband for a period of time, and even though she indicated that she changed her mind, the predisposition to commit the crime still exists because: she only decided not to because it was too risky - not because she was suffering from insanity before; and second, because she already tried to seek out hitmen.

Third, while D would argue that she wouldn't have agreed to the crime if not for the actions of the state, but this is not the case here. If it was not B who approached her, but an actual hitman, she probably would have agreed if the hitman made the same reassurances to her as B did. The state did not induce her into doing anything that she wouldn't do already if she met the right person. Therefore, the third element is not met.

Entrapment is a very narrow defense. A circumstance where it would be valid is if a state actor, posing as an undercover officer, befriended the defendant (lets say she's a pharmacist) for a period of time. After establishing trust, the officer asked the defendant to please write her some medication for her painkiller addiction. The defendant may refuse at first, but the officer keeps on asking her until finally threatening her with suicide or some other form of blackmail. Resigned, the defendant writes the officer a false prescription, and then the officer arrests her for doing so. This would be a valid entrapment defense since: 1) it was coerced by the state, 2) the defendant did not have any propensity to do so; 3) and she wouldn't have done so if not for the state's coercion.

Therefore, because D had the propensity to commit the crime and would have done so even without the actions of the state, D will not prevail on her defense of entrapment.

(Question 6 continued)

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