

3)

1. What arguments may D reasonably raise in support of her suppression motion? What may P raise in response? How should the court rule on the following statements?

4th AMMENDMENT

The 4th protect against unreasonable searches and seizure by the government and it's agents. Any derivative evidence from a violation (known as a fruit of the poisonous tree) will not be valid, unless an exception applies. To have standing one must show that they have a reasonable expectation to privacy. A reasonable expectation of privacy requires a possessory or ownership right. No one has a REP in public places. Statements made in Violation of a constitutional right are not admissible in court unless an exceptions applies

a) "I have a set of hot Roman Coins...."

DELIA

Here she can raise the argument that calls on the telephone are private. She was in a dark alley off a main street. She was in possession of the phone at the time the detective walked by her and she was whispering softly and NOT talking loudly. She was exercising a possessory right over her voice by reasonably accommodating the fact that there was no phone booth.

Prosecution

Here, the P will argue that Delia was making a call on a public phone. That public phone was NOT in a phone booth. Had it been in a phone-booth, with the door closed D may have had a REP. However, the facts are otherwise. Regardless of whispering or speaking softly she was talking publicly. The Court has long held that statements made in public regardless of whispering or soft voice have no REP.

COURT RULING

Here, the P has a very strong case because Delia was out in public. It has been held by the Court that Statements made in public have no REP.

Thus, the court should allow the statement.

b) "Fine, call your buyer..."

DELIA

Here she can argue that the officer lied to Nell and used an electronic device to listen in on her phone calls. D may have been in plain view, however the use of the device accounts to a wire-tap.

Prosecution

Here, the P will argue the same analysis as above. D was in a public alley and had no REP, regardless of the level of her voice. Also, the use of the long distance microphone should be permissible because she was in public. D was in a phone booth and the device was used, it would have penetrated the walls and entered a zone where D would have had a reasonable expectation of privacy.

COURT RULING

Here, the P has a very strong case because Delia was out in public. It has been held by the Court that statements made in public have no REP. The listening device did not penetrate any walls because there was no phone booth.

Thus, the court should allow the statement.

c) How should the Court rule on the Roman Coins?

4th AMMENDMENT

SEE ABOVE

D has a reasonable expectation of privacy in her own home. The exception to this is a valid search warrant. However, D may argue that the search warrant was not valid because the second conversation was in violation of her rights because it was obtained illegally when P lied about the terrorist plot and stated to Nell that "lives are at stake." Here, the police may have violated Nell's REP and invalidly obtained Nell's consent to access the deck to listen in on the second call. However, Nell's REP is NOT D's. Therefore, if and when police violated Nell's REP it has NO bearing on D's REP. Any evidence obtained against D will be valid because the REP of Nell and of D were mutually exclusive.

Thus, a warrant will be a valid exception to Delia's REP.

SEARCH WARRANT

A valid search warrant requires 1. A neutral, detached judge, 2. Probable cause, 3. Described with particularity.

NEUTRAL JUDGE

The judge MUST be neutral, not biased, NOR may they act outside the interest of justice.

Here there are no facts that would indicate that the judge was impartial or attached/biased.

Thus, the judge was neutral

PROBABLE CAUSE

Probably cause is the likelihood that a reasonable person would find a piece of evidence on someone or at a place.

Here, rational inferences can be made that D has the coins because she made two calls attempting to sell them to a buyer. A reasonable person would likely believe that they were either on her person, or at her home under her care.

Thus, there is probably cause.

DESCRIBED WITH PARTICULARITY

Here, we are not given the facts directly, but may infer that P told the judge about the two phone calls that D made. If the warrant was a search warrant for her house it must be described that the "entire house, its contents and Delia herself" it would be particular. We should assume that this is the case based on our inferences and facts.

Thus, it was described with particularity.

CONCLUSION

Therefore, there was a valid search warrant for D's house. Thus the Roman Coins will be admissible in court.

2. Is D Guilty of Robbery?

ROBBERY

Robbery is defined as the trespassory taking away with intent to deprive by physical force of threat. Aggravated Robbery is found if a Dangerous weapon is used.

TRESSPASSORY TAKING

Tresspassory taking is a taking such that one does not have the owners consent.

Here, D took the coins when they were handed over to her by Oscar.

Thus, there was a tresspassory taking.

INTENT TO DEPRIVE

Intent is the mental aspect. Robbery requires a specific intent.

Here, D entered a coin shop. She did not enter to buy coins, rather she had a toy gun, pointed it at Oscar and he handed over coins. Here the intent does not require one to know that they would be taking coins. Rather the intent is to deprive the victim of any material (tangible or intangible) property.

Thus, D had the specific intent to deprive.

BY PHYSICAL FORCE OR THEAT

The act must be done by physically forcing oneself on another or by actual threat. Threat does not have to be verbal. It may be implied by conduct and/or actions.

Here, D walked in with a toy gun. The fact that the gun was a toy is irrelevant because the victim would have had a sincere belief that the gun was real. Here, O's conduct implies the apprehension of a threat because while the gun was pointed at him, he handed over a set of "valuable Roman Coins." Any reasonable person would have done so under the same circumstances.

Thus, there was a threat.

DANGEROUS WEAPON

For aggravated Robbery, one must use a dangerous weapon such as a sharp knife or gun.

Here, D used a toy gun. A court will likely not charge her will aggravated robbery because the gun was a toy.

Thus, the weapon used was not dangerous.

CONCLUSION

Delia will likely be guilty of Robbery because she intentionally took the coins without the owners

consent by threat. She will not be guilty of aggravated robbery because the weapon was not dangerous.

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END OF EXAM