

3)

1. What arguments may Delia (D) reasonably raise in support of her suppression motion, what arguments may the prosecution raise and what should the court rule:

a) D's statement "I have a set of "hot" Roman coins for sale"

Fourth Amendment

The fourth amendment protects individuals from unreasonable search and seizures by the state. Any statement by the government (state) that was obtained in violation of the 4th amendment search and seizure will be excluded under the fruit of the Poissoness Tree Doctrine and will be inadmissible under the exclusionary rule.

Probable Cause (PC)

In order for the police to admit evidence or any statement, it must first be shown that they were conducted a legal search and that any statements derived were therefore legally obtained unless the defendant waives their right. Here, Detective Fong received an anonymous email that "your coin robber is D, and that she is trying to sell the stolen coins." Informants that are reliable under the totality of the circumstances may ensure that PC has been established. However, D will counter that this call was anonymous and because no evidence exists showing that the call indeed reliable PC to stake out and further investigate is illegal as not being based on lack of PC. Based on lack of PC Fong was not permitted to continue to suspect D as a suspect. As such, any statements made by D based on lack of PC should be inadmissible as a result of the poisoness fruit doctrine and the exclusion doctrine.

Reasonable Expectation of Privacy

When a person has a reasonable expectation of privacy, the police was have PC in order to listen in on a phone call. However, when there is no, or a diminished expectation of privacy, the police may listen in on a conversation for a short period of time that will then establsih PC. Here, D was outdoors on a payphone that was not in a booth which does not raise itself to a reasonable expectation of privacy because the D's voice could be heard by others, and talking without any barriers of sound does not lend itself to D believing that she was speaking in private. Although, D's conversation may have intended to be private, given the fact that she was discussing the "hot" Roman coins in her possession that need to be sold to a discreet collector" since she gave little consideration for the privacy the expectation would be minimal and any statement heard by Fong would be admissible.

Therefore, D's statement is admissible.

b) D's statement, "Fine, call your buyer and let me know if we have a deal."

Probable Cause

Since PC had been established by Fong through his overhearing in plain public place about D's crime, PC that a crime was committed was established and based upon this, Fong could pursue D.

Listening Devices

The 4th Amendment allows listening devices when a warrant is given by Magistrate based upon PC and in good faith. A police may use a listening device when they are legally on the premises. Here D will argue that Fong must have a warrant in order to listen in on D. In addition, Fong was not legally on the premises because he lied to Nell as to his intentions telling her that he was investigating a terrorist plot. As such, Nell did not give proper consent to Fong to enter onto her property in order to listen to D.

Therefore, the statement is inadmissible.

c) Roman Coins

As mentioned above, these coins will be inadmissible under the 4th amendment due to the fruit of the poisonous tree doctrine and will be excluded from trial.

2. Is D guilty of robbery

Robbery is the taking and carrying away of personal property of another by force or threat of force with intent to permanently deprive the owner. Here, D entered a coin shop pulled out a toy gun that appeared to be real and pointed it at Oscar. Since O gave her the coins he believed the gun to be real and a threat to his safety. Since D had possession of the coin and carried them from the store and deprived O of the property permanently, she is guilty of robbery.

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