

3)

1. DELIA'S MOTION TO SUPPRESS AND PROSECUTION'S ARGUMENTS AGAINST

Fourth Amendment

The Fourth Amendment prevents unreasonable searches and seizures without a warrant.

Government Action

The Fourth Amendment applies to the states through the 14th Amendment. The Fourth Amendment only protects against actions by the government.

Assuming Detective Fong is a police officer and not a private detective, there is government action and the Fourth Amendment applies.

Standing

A defendant must have standing to challenge warrantless searches and seizures. A person has standing if they have a reasonable expectation of privacy in the things and places to be searched. This is both an objective and subjective test that asks whether the defendant himself had a reasonable expectation of privacy and whether that expectation is one society as a whole is prepared to recognize. The expectation of privacy applies to one's home, personal property, person, and places where he is an overnight guest. A person does not have a reasonable expectation of privacy in anything he holds out to the public, such as his voice, smells coming from luggage, outdoor spaces, etc.

Exclusionary Rule

Evidence seized in violation of the 4th, 5th, and 6th amendment is inadmissible at trial. Depending on the evidence, it may still be used for impeachment purposes only.

Fruit of the Poisonous Tree

Evidence derived from illegally seized evidence is also inadmissible at trial.

Warrant Requirement

Warrants are typically not required for arrests unless the arrest takes place in the arrestee's home. Warrants are required for searches unless an exception applies.

A warrant must be based on probable cause, must be issued by a neutral and detached

magistrate, and must state with particularity the things to be searched and items to be seized.

Warrant Exceptions

A warrant is not required for searches incident to arrest, automobile searches, if the defendant consents, if there are exigent circumstances, and for a stop and frisk.

With this framework in mind, each issue will be discussed in turn.

A. Delia's Statement "I have a set of 'hot' Roman coins for sale that need to go to a discreet collector. I will call you back at 9:00pm tonight"

Informant's Tip

Here, Delia will argue that Detective Fong unjustifiably relied on an anonymous informant's tip.

An officer may rely on a known informant's tip so long as there is an indicia of reliability on the information provided.

Here, the facts indicate that the police received an anonymous tip via email. Assuming Detective Fong is a member of the police squad in that receive the tip, he was not justified in relying on it since the informant was not anonymous and the tip could have been sent from a fake email.

Detective Fong, however will correctly argue that Delia does not have a reasonable expectation of privacy in her voice or in conversations she has out in public. After the informant's tip, Detective Fong had reasonable suspicion to follow Delia into the alleyway and listen to her conversation. Delia had no reasonable expectation of privacy in her conversation because she had it in public, on a pay phone. Though Delia might argue that the pay phone was secluded in an alley and she lowered her voice, the fact that the pay phone was not enclosed by a phone booth and the alley was public will negate any reasonable expectation of privacy to be had. Additionally, Detective Fong was able to walk right past her and overhear her conversation, meaning anyone could have overheard it, even though she used a low voice.

As such, the court should deny Delia's motion to suppress her statements made in the alley.

B. Delia's Statement "Fine, call your buyer and let me know if we have a deal for the hot coins"

Sensory Enhancing Technology

Detective Fong use of the "Bird Song Microphone" constitutes use of sensory enhancing technology. Use of sensory enhancing technology is prohibited without a warrant if the technology is unavailable to the public, such as infrared scanners or thermomaging tools.

Sensory enhancing technology available to the public (such as binoculars), however, is acceptable.

Here, the facts indicate that Dr. Fong purchased the "Bird Song Microphone" from a pet store, which means it was readily available to the public. Dr. Fong will argue that its use was acceptable because the bird song microphone was widely available to the public and using it was akin to putting an ear against a wall and eavesdropping. Delia, however will argue that because Detective Fong used the microphone for a furtive purpose, he violated her reasonable expectation of privacy, which was heightened because she was in an alley at 9pm at night. She will also argue that though the microphone was available to the public, it was an impermissible use of sensory enhancing technology because it allowed Detective Fong to hear communications from 150 feet away. As discussed above, this argument will likely not hold up in court because she returned to the public payphone located in a public alley and used it to conduct illicit activity. Because Delia does not have a reasonable expectation of privacy in conversations she has in public, she will likely lose her motion.

C. The Roman Coins

Validity of Warrant

A valid warrant must accompany a search. For a warrant to be valid, it must be based on probable cause, it must be executed by a neutral and detached magistrate, and it must state with particularity the places to be searched and things to be seized. A warrant must not be based on false or fraudulently obtained information.

Here, Delia will argue that Detective Fong's warrant is based in part on illegally obtained information. Though he used publicly available sensory enhancing technology, he lied to Nell in order to obtain permission to use her deck to observe Delia. Detective Fong used his position of power to lie about investigating a terrorist plot and that "lives were at stake." Additionally, it is unclear why Detective Fong felt the need to use the Bird Song Microphone to eavesdrop on Delia, as he was able to overhear her conversation without any enhancement the time before. Detective Fong, however, will argue that because Delia had no reasonable expectation of privacy in her voice, public phone call, or in Nell's home, that he was free to use any means to obtain the basis for a valid warrant.

Additionally Delia will argue that though the warrant was issued by a judge, it is unclear whether it stated with particularity the places to be searched and things to be seized. However, because Detective Fong knew exactly what he was searching for, it is assumed he included that information in the warrant. If he did not include in the warrant that he wished to search the house for the Roman coins, then the warrant would be defective.

The court will likely find that this is a close call, but will side with Detective Fong.

Good Faith Exception

Detective Fong might argue that even if the warrant was invalid, he relied on it in good faith in searching Delia's home. A court will likely find that the good faith exception applies and will uphold the warrant.

Should the warrant be found to be defective the harmless error rule would apply and the coins might still be admissible.

Exclusionary Rule

Evidence seized in violation of the 4th, 5th, and 6th amendment is inadmissible at trial. Depending on the evidence, it may still be used for impeachment purposes only.

Fruit of the Poisonous Tree

Evidence derived from illegally seized evidence is also inadmissible at trial.

Here, Delia will argue that the search of her home was illegal because the warrant was not based on probable cause and did not include the places to be searched or things to be seized, and thus, the coins are inadmissible. However, if Detective Fong reasonably relied on the defective warrant in good faith, the evidence will still be admissible.

Conclusion

In sum, Delia's motions to suppress both statements and the Roman coins should be denied.

2. IS DELIA GUILTY OF ROBBERY?

Robbery is the unlawful taking of personal property from a person by use or threat of force with the intent to permanently deprive person of said property.

Here, Delia committed robbery because she used a toy gun that looked real as a threat to induce Oscar to give her the valuable Roman coins. While Delia will argue that the gun was not real, and thus, there was no real threat, because the gun looked real and because fear of the gun is what likely induced Oscar to hand over the coins, a court is unlikely to buy Delia's argument. Delia might also argue that she did not take the coins forcefully from Oscar's person, rather, he just handed them to her. This argument is also unlikely to hold up in court as reasonable apprehension of serious bodily harm is likely what induced Oscar to hand over the coins. The use of the toy gun that looked real might also mean that Delia will be charged with

aggravated robbery. Additionally, the facts indicate that no one said a word, which is irrelevant in this scenario, as mere words are insufficient to establish robbery unless accompanied by a threat of imminent harm.

In sum, Delia should be found guilty of robbery.

Question #3 Final Word Count = 1551

END OF EXAM