

3)

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

a. D's statement "I have a set of hot Roman coins for sale that need to go to a discrete collector. I will call you back at 9pm tonight"

4th amendment

Under the 4th amendment, an individual has a right to be protected from unreasonable searches and seizures from the government where there is an reasonable expectation of privacy ("REP"). REP is based on the totality of the circumstances. An individual typical does not have a REP where there are open fields, public places like the curtail of you house, sidewalk, and dogs sniffing luggage at the airport.

D's statement heard by Detective Fond ("DF"), a government employee, a police detective, was while D was speaking on a pay phone in a pubic alley. Based on the totality of the circumstances, the prosecutor will aruge being it was in public, where many people can walk by and overhear her and on a pay phone; and a payphone, where someone could also hear her as they could be waiting in line to use the phone, likely D had no REP.

D will argue she was speaking softly and therefore had a REP. Though she spoke softly DF did not use any sensory enhancing equipment to overhear D's statement. DF only heard D through his own ears while walking by. Therefore no REP for D.

The court should admit D's statement as it was not heard in violation of the 4th amendment.

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

4th amendment

Under the 4th amendment, an individual has a right to be protected from unreasonable searches and seizures from the government where there is an reasonable expectation of privacy ("REP"). As stated above an individual does not have an REP in those circumstances listed, however, an individual does have REP when sensory enhancing equipment like inferred binoculars are used or where an individual is at home.

D will argue DF used sensory enhancing equipment, a microphone that can hear a distance of 150 feet to overhear her statement, thereby violating her REP and 4th amendment.

Prosecutor will counter that though the microphone did enhance DF's hearing of D's statement, it was one that could be purchased by anyone. DF purchased the Bird song microphone from a pet store, which anyone in the public had access too. Further, the statement was made from the same payphone in the same public alley which anyone who walked by was likely able to hear her statement.

Likely no violation of REP

Exclusionary rule

Evidence obtained in violation of the 4th, 5th, and 6th amendment will be excluded under the fruit of the poisonous tree doctrine.

If the court found D's statement heard by DF while using the microphone was indeed a violation of her REP, as he used enhancing sensory technology, which would be excluded under the exclusionary. The prosecution may still be able to use that evidence under one of the exceptions. Evidence that was obtained in violation of the exclusionary rule can still be admitted if the evidence taint can be purged and evidence had another source to which it could be obtained.

As D was speaking on the same pay phone in the same public alley, had DF walked by he likely would have heard D make the statement thereby making the evidence obtainable through another source or even purging its taint.

D's statemnt will

c. The Roman coins

Warrant

A valid warrant requires that there be (1) probable cause; (2) signed by an independent magistrate; (3) provides a description of the place where incriminating evidence will be found; and (4) knock and announce by the police before entering.

2. Is Delia guilty of robbery?

Robbery

Robbery is defined as theft through force or threat of force with the owner present.

D entered the coin shop and pulled a toy gun and pointed it at the store owner, Oscar ("O"). Oscar with the toy gun pointed at him must have felt threaten as the toy gun appeared to look real. With the threat of force, that being shot at, O handed D the Roman coins and D fled. D did take take the Roman coins by threatening O with a realistic looking toy gun, therefore she is guilty of robbery.

Yes D is guilty of robbery.

Question #3 Final Word Count = 758

END OF EXAM