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1. Dan's motion to suppress the photograph.

The sixth amendment:

The sixth amendment is applicable to the state through 14th amendment. The sixth amendment does not permit the state to limit the Constitutional rights for a suspect to have a counsel after the formal charges. To bring the constitutional argument, there must be state action which the state involve to limit the right to the counsel. Here, Office Pat showed the photos of six people to Tessa. Pat belong to the Police that is state function. Therefore there is state action.

Under the sixth amendment, a suspect is entitled to have a counsel for all substantial stages of investigation including photo identification by a witness, but the right is effective after the formal charges. Here, the photo identification occurred after the formal charge because Dan was charged with robbing Bank in January 15, 2023, and officer Pat showed Tessa the photos in April 2023. Moreover, the identification is a substantial part of the investigation because if the witness identified Dan as a robbery, police has strong case to litigate. Therefore, police is violated Dan's 6th amendment rights, rights to have a counsel for all substantial part of investigation.

Is the photo substantially suggestive?

For the photo identification, photos should not be substantially suggestive, such as only one race or same style. Here, the photo identification was suggestive because all of the six men on the photos were the same race, approximate age, and had blond hair and a mustache like Dan. Thus, the photo identification is violated the constitution.

Suppression is Illegal Evidence

Any evidence that is taken from police illegally, it cannot be admissible. Also, any evidence is taken from the illegal evidence is also cannot be admissible as fruit of poisonous tree rule. Here, Police showed Tessa the photos without Dan's counsel. Therefore, the photograph is not admissible.

2a. Tessa's testimony

California Prop 8:

California prop 8 is Bill of Rights for Victim. In criminal cases, all evidences are admissible subject to some specific exceptions.

Here, Dan was charged for robbery, therefore, California Prop 8 may apply.

Hearsay

Any out of court statement, oral or written, that offers to prove the matter of the facts as asserted is inadmissible. Here, her statement "He was the robber." is hearsay because it was made outside of the court and it is trying to prove He (Dan) was the person who robbed.

Hearsay Exception Prior Inconsistent Statement

Prior Inconsistent Statement is the current statement is different from the statement the same person made previously. Here, there is inconsistency because in the past, Tessa admitted that she made the statement that the robber had black hair and no mustache, but in the court, she is saying it was incorrect and the robber had blond hair and a mustache. When the statements are inconsistent, the court looks at the circumstances of the prior statement. If it was made under the oath and there were opportunities for the opponent side to interrogate, it might be admissible for substantial and impeachment purposes. Here, the facts do not say when she made the previous statement, but it was not in the litigation. Moreover, there were no opportunities for defense to interrogate her. Thus, her previous testimony was inadmissible.

As to the current statement, Tessa was under the oath (all witnesses must give an oath in the court) and the defendant has an opportunity to cross. Therefore, her current testimony is admissible.

California Prop 8 also makes Tessa's testimony admissible.

2b. The photograph with Tessa's signature

All tangible evidence must be authenticated from a supporting witness or the chain of custody to prove the evidence is the evidence the party is claiming to be. Here, the photo is shown by Police. After Pat showed the photo, most likely, Police kept it. Moreover, Tessa signed her name on it, which establishes distinctive characteristics of the item. Therefore, the photo was properly authenticated.

Secondary Evidence Rule

For any document, photos, X-rays, the original must be submitted. Here, it is the original as Pat showed to Tessa in the past, because Tessa's signature was there. Therefore, it is the original photo and the secondary evidence rule was met.

2c. The ATM records

Hearsay

Any out of court statement, oral or written, that offers to prove the matter of the facts as asserted is inadmissible. Here, it is out of court statement because the ATM machine is not in the courtroom. However, the ATM is not trying to show Dan's financial situation. Dan has a different purpose as Dan is trying to show he was at the ATM at a certain time. Also,

he is trying to show Dan used his PIN numbers that usually only the person who has the account knows unless it is shared.

However, Police may argue, Dan is using the ATM as his alibi and it is Police (prosecutor)'s responsible to proof he did or did not have alibi. Thus, police or the court may not admit it. California Prop 8 does not admit hearsay.

Business Records Exception

Business records includes any business related documents made by the person who usually make the document and the document is made immediately after the event. Here, the ATM records was made immediately after Dan used the ATM machine; however, the machine is not a person, who make the document regularly.

Although Dan might argue that the ATM machine is accurate and printed out time/location property, which suggests the ATM records should be admissible as hearsay exception; business records. However, this argument is not persuasive because the ATM is a machine and no one can put responsible for the machine. Also, the business records exception clearly states, the record is make a person. Therefore, business records exception does not work and the ATM records are not admissible.

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