

QUESTION

Acting with probable cause, but without a warrant, police forcibly entered Bob's mobile home, a licensed motorized vehicle which was parked in a motor park and connected to utilities. They seized a quantity of cocaine found in the mobile home. Although Bob lived in the mobile home, he was not present at the time the police entered. Bob has been charged with violating Section 52 of the State X Criminal Code which makes it a felony to: "knowingly possess cocaine."

Bob made a timely pretrial motion to suppress the cocaine under the Fourth Amendment. The court denied the motion.

Bob, who is indigent, made a timely pretrial motion for leave to represent himself at trial and for court appointed "stand-by" counsel who would be available to assist if Bob desired help. The court denied Bob's motion for standby counsel. The court advised Bob that he could either proceed pro se, or have counsel appointed to conduct the entire defense. Bob competently waived the appointment of counsel. He then defended himself at trial.

At trial the cocaine was admitted in evidence over Bob's renewed objection. Bob testified that he did not realize the substance was cocaine and that he had believed it was a legally possessable cocaine-like substance which he intended to give to his friends as a joke.

The court instructed the jury: "If you find beyond a reasonable doubt that the defendant possessed cocaine, you should find him guilty unless you also find that he has proved by a preponderance of the evidence that he reasonably mistook the cocaine for a legally possessable substance."

Did the court err in:

1. Admitting the cocaine as evidence? Discuss.
2. Denying stand-by counsel? Discuss.
3. Giving the above jury instruction? Discuss.

ANSWER A

1. Admitting the cocaine as evidence

The Fourth Amendment to the U.S. Constitution protects individuals from unreasonable searches and seizures of their persons and property by the government. The basic protection against unreasonable searches is effectuated by the requirement that government act pursuant to a warrant issued upon probable cause to believe that evidence or instrumentalities of crime will be found in the place to be searched. While the Fourth Amendment is a protection against conduct by the federal government, as a fundamental right secured by the Bill of Rights, it has been incorporated into the Due Process Clause of the Fourteenth Amendment to protect individuals from unreasonable searches by state and local government officials. Where the requirements of the Fourth Amendment's warrant clause or one of its exceptions are not satisfied, any evidence obtained in, or as a result of, the unlawful search is excluded and may not be used by the state in its case in chief against the defendant whose rights have been violated.

The initial question that must be answered here is whether the search of Bob's mobile home gives rise to any Fourth Amendment rights. Here it clearly does. The search here was conducted by the police, so we have the requisite government action. Also, Bob has standing to complain about the search, because, as the person in possession of the mobile home (and who lived there), he had a reasonable expectation of privacy concerning its contents. The fact that Bob was not present at the time of the search is irrelevant since it was his mobile home. Therefore, since there was government action, and the defendant (Bob) had a reasonable expectation of privacy, the Fourth Amendment is implicated.

As noted above, the Fourth Amendment's principal protection is its warrant requirement. However, the police here searched Bob's mobile home without a warrant. Therefore, unless the search comes within one of the exceptions to the warrant requirement, the cocaine should not have been admitted into evidence. This was not a search incident to a lawful arrest as Bob was not arrested. This was not a search incident to a lawful arrest as Bob was not arrested. There is no indication in the facts that the police were in hot pursuit or that the evidence, i.e., the cocaine, was perishable. As Bob was not present, it is obvious that he did not consent and that the search did not follow a lawful stop and frisk. Additionally, there is no indication that the cocaine was in the plain view of the police while they were lawfully on the premises. The only exception that could potentially save the search and therefore the admissibility of the cocaine is the automobile exception.

Under the automobile exception to the warrant requirement, the police may search upon probable cause, without a warrant, any car, boat, train, plane or motor home that they have lawfully stopped. Probable cause must exist before the search. The exception is justified by the exigency created by the mobility of the vehicle in that if the police must first get a warrant, the evidence may be driven, flown, etc. away. Additionally, the Supreme Court has held that individuals have less expectation of privacy in their vehicles than in their homes. If the police have probable cause to believe the vehicle contains evidence of crime, they may search the whole vehicle and anything in it.

The crucial question is whether Bob's mobile home is a vehicle under the automobile exception. While the fact that Bob lived in the mobile home as his home, and the fact that it was connected to utilities seem to suggest that it was neither mobile, in danger of being driven away, nor a place of diminished privacy expectations, as it was his home. However, since utilities may be disconnected and the home may be driven on the roads, it does appear much less permanent than a house and capable of being driven away with its evidence. Especially telling is the fact that it is a licensed motorized vehicle under state law. Therefore, since the police had probable cause to search, and Bob's mobile home is a vehicle within the automobile exception to the warrant requirement, the search was lawful, and the court did not err in admitting the cocaine as evidence.

2. Denying stand-by counsel

The Due Process Clause of the Fourteenth Amendment has been interpreted to give criminal defendants the absolute right to defend themselves pro se. While a court is free, in its discretion, to caution the defendant against such self representation and may provide stand-by counsel to a defendant appearing pro se, it is under no obligation to do so. Therefore, when Bob chose to defend himself pro se, he had no right to appointed stand-by counsel.

Under the Sixth Amendment, incorporated into the Fourteenth Amendment's Due Process Clause, an indigent criminal defendant charged with a felony has a right to have counsel appointed for him. However, where the defendant chooses, as is his right, to defend himself, he thereby waives his right to appointed counsel. Therefore, the court did not err in denying Bob stand-by counsel.

3. Giving the jury instruction

However, the court clearly erred in giving the jury instruction. A criminal defendant has a right to have the state prove each and every element of the criminal offense beyond a reasonable doubt. Here, the offense charged was the "knowing" possession of cocaine. Therefore, one of the elements of the crime was Bob's mental state. Since the jury instruction allowed the jury to convict without finding that the defendant knew he possessed cocaine beyond a reasonable doubt, it is in error. The Constitution requires that each element of a crime be proven beyond a reasonable doubt. Here, the mental state of knowing was an element of the crime, and Bob was denied his constitutional rights when the burden of proof was shifted to him.

ANSWER B

I. Exclusion of Cocaine

A. Fourth Amendment

Bob has made a motion to exclude the cocaine seized in his mobile home. The trial court denied Bob's motion. To prevail, Bob must show that the police (the state) invaded Bob's reasonable expectation of privacy, that a warrant was required, and that no exceptions to the warrant requirement apply.

(1) Reasonable Expectation of Privacy

The facts state that Bob lived in his mobile home. Certainly a person has a reasonable expectation of privacy where they live. The police invaded this privacy by entering the mobile home and seizing the cocaine. Bob would have standing to contest this search by his possession of the premises.

(2) Search Requirements: Probable Cause and Warrant

As a general rule, a search requires probable cause and a warrant. The facts state that probable cause for the search existed, and there are no facts to indicate that the facts leading to probable cause were not legally obtained.

However, the search was not accompanied by a warrant. Unless the search falls within an exception, the cocaine should be excluded as a violation of Bob's Fourth Amendment rights.

One possible exception is the "moving vehicle" exception. So long as the police have probable cause, they do not need a warrant to search a moving vehicle. The rationale is that the police may not have time to get a warrant because the vehicle may be removed from the jurisdiction and because of a lesser expectation of privacy in one's vehicle.

The mobile home would fall within the classification of a moving vehicle. Even though the mobile home was parked in a motor home park and connected to utilities, the Supreme Court held that a motor home in a parking lot is subject to the warrant exception. However, by parking the home in a mobile home park, this indicates that Bob may have a higher expectation of privacy in the home. The facts indicate that Bob may use the mobile home as his residence because "he lived" in the home.

In my opinion, the police violated Bob's Fourth Amendment rights by not getting a warrant. The mobile home could not easily have been removed because it was hooked up to utilities. However, this argument did not persuade the Supreme Court in a similar factual situation. The emphasis appears to be more on the lesser expectation of privacy than on the mobility of the vehicle. Bob does have a higher expectation of privacy if he is using the mobile home predominantly as a home rather than as transportation.

(a) Other Possible Exceptions

Bob was not present at the time of the search, so there is no basis for consent or that the police were in hot pursuit. There are also no facts to indicate that this search would come within any emergency exceptions.

(b) Admission and Authentication

To admit the cocaine, the police must also lay a foundation for the cocaine. They must show the "chain of custody" that no one has tampered with the substance since it was seized at Bob's home.

(c) Conclusion

In my opinion, the police violated Bob's rights by not getting a warrant. Had the search fallen within the "moving vehicle" exception, the scope of the search would have depended on the type of probable cause. If the police had probable cause to believe that cocaine was in the home, then the police could search within drawers, containers, etc. However, because Bob had a greater expectation of privacy in the mobile home (because the equivalent of a residence), I don't believe the search falls within the exception.

II. Denial of Stand-by Counsel

Bob is indigent and sought a motion for stand-by counsel to assist him in his defense. The denial of a defendant's Sixth Amendment right to counsel is one of the few areas where a violation will result in automatic reversal rather than the application of the "harmless error" standard.

The trial court has discretion to grant Bob's motion to proceed pro se. The trial court may deny the request. The trial court must be assured that the defendant fully understands the valuable right that the defendant is waiving. The trial court imposed a choice on the defendant to either proceed pro se without assistance or to have counsel defend the entire case. This may have violated Bob's Sixth Amendment right to counsel.

However, the trial court probably has the discretion to impose this choice on Bob, so long as Bob realizes and understands what he is giving up. However, this choice does not seem fair to Bob. It would not have been difficult to appoint counsel to be available to Bob. Also, the trial court should be weary of allowing a defendant to proceed pro se. This creates a risk not only to the defendant by depriving him of counsel to assist in the adversary process, but also threatens the integrity of the court. The judicial system depends upon the effectiveness of the adversarial system. If one party is ill-equipped, particularly when Bob's adversary is the state, the adversarial system may fail.

Therefore, in my opinion, the trial court did not violate Bob's Sixth Amendment right by the denial because Bob "competently" waived the appointment of counsel. However, the trial court may have abused its discretion.

III. Jury Instruction

Bob is charged with the knowing possession of cocaine. Bob testified that he did not realize the substance was cocaine. The jury instruction placed the burden of proof on Bob to prove that he did not have the specific intent knowingly.

I believe that the trial court's instruction was erroneous. The prosecution has the burden of proof (beyond a reasonable doubt) as to each element of the crime. One element of §52 is that Bob knowingly possessed the cocaine. Therefore, the instruction should have stated that the prosecution must prove beyond a reasonable doubt that Bob knew the substance was cocaine.

The trial court may have mistaken Bob's testimony as an affirmative defense. A good faith mistake of fact will negate a specific intent crime. Bob may be required to produce evidence on this defense, but the prosecution retains the burden of proof: the prosecution must prove that Bob knew the substance was cocaine.

Therefore, the instruction was erroneous.