

QUESTION

Police officers believed that Deft had assaulted Bart because Bart failed to pay Deft for cocaine Deft sold to Bart. The officers obtained a valid warrant for the arrest of Deft on an assault charge. They went to Deft's apartment and arrested Deft at the front door when he responded to their knock. The officers then walked through the apartment and, in a rear bedroom, saw drug paraphernalia which they left in place.

A police officer advised Deft of his *Miranda* rights. Deft immediately stated: "I do not want to talk to you." Deft was booked and placed in a cell with Snitch, an inmate who was known by the jailers to be an informant. Snitch asked Deft why he had been arrested and engaged Deft in a conversation about drug sales during which Deft made statements incriminating himself concerning drug trafficking. Snitch promptly related Deft's statements to jail personnel.

Police then obtained a warrant authorizing a search of Deft's apartment for cocaine and drug paraphernalia. The affidavit in support of the warrant recited that Deft had sold cocaine to Bart. The affidavit also recited that a police officer had seen drug paraphernalia in Deft's apartment. The affidavit did not disclose Deft's statements to Snitch or the circumstances in which police observed the drug paraphernalia. Officers who executed the search warrant seized the drug paraphernalia and cocaine which they also found in the apartment.

Deft has been charged with possession of cocaine and drug paraphernalia under applicable state laws.

1. Deft has moved to exclude from evidence his statements to Snitch. Deft claims his statements were involuntary, were elicited after he invoked his *Miranda* rights, and were obtained in the absence of counsel. He argues that admission of the evidence would violate his rights under the Fifth and Sixth Amendments to the United States Constitution. What arguments should the prosecutor make in opposition to the motion, and how should the court rule on the motion? Discuss.

2. Deft has also moved to exclude any testimony regarding the police officers' initial observations of drug paraphernalia in Deft's home and to exclude the items seized in the search made pursuant to the search warrant. What arguments based on the Fourth Amendment to the United States Constitution should Deft make in support of this motion, what arguments should the prosecutor make in opposition to the motion, and how should the court rule on the motion? Discuss.

ANSWER A

I. Exclusion of Statements to Snitch

Deft seeks to exclude incriminating statements he made to Snitch in a jail cell after his arrest. He claims they were obtained in violation of his right to counsel, Miranda Rights and/or Due Process. Note Deft's arrest was a lawful one since it was based on a warrant.

A. Right to Counsel

The Sixth Amendment Right to Counsel attaches after formal charges have been brought against a criminal defendant.

Deft has only been arrested and booked. The facts don't support a claim that he has been arraigned or that formal charges have been instituted against him. Thus, there would be no Sixth Amendment Right to Counsel which would forbid any interrogation by the police in the absence of counsel.

B. Miranda Violation

Miranda protects any person from custodial interrogation by the police. It is required that all arrestees be given their Miranda warnings and if they are invoked they must be scrupulously honored.

Here, the facts say that Deft was given his Miranda warnings which he invoked, the right to remain silent. At this point, the officers must scrupulously honor that request which it appears they did because no questions were asked of him. He was just booked and placed in a cell. While in the cell he was questioned and talked to Snitch who turned out to be a jailhouse informant.

C. Custodial Interrogation

Clearly, Deft was in custody, he was in jail and wasn't free to leave. The problem is that there was no "interrogation" that is protected by Miranda. Interrogation is defined as "statements or conduct designed or likely to elicit incriminating information."

Here, all the police did was put Deft in a cell with a person who engaged him in conversation. This situation presents none of the coercive situations Miranda was designed to protect, coercive questioning by police officers. As Deft could decide to talk to Snitch or not, once he did, he bore the risk Snitch would do just that. The fact that the police knew Snitch was an informant and put Deft in there after he invoked his right doesn't result in any violation of Miranda. Again, the coercive pressures were not present. His statement was voluntary and not the subject of custodial interrogation.

D. Due Process

The Due Process claim of the Fifth prevents the use of involuntary statements a defendant makes. To be involuntary under the Fifth Amendment there must be some police action that results in coercion. Here, as discussed above, the police did nothing that would shock the conscience of the court. He wasn't beaten, threatened or anything; he was only placed in a cell with an informant.

Thus, there was no coercion that would make the statement involuntary.

E. Conclusion

Since there was no Sixth Amendment Right to Counsel and the police scrupulously honored Deft's invocation of Miranda, the statements should be admitted.

II. Testimony Re: Initial Observations

The testimony regarding the initial observations of drug paraphernalia in Deft's apartment is relevant in that it provides a basis for the secret warrant police acquired. The problem is that this may have been obtained pursuant to a violation of Deft's Fourth Amendment rights.

A. Fourth Amendment

The Fourth Amendment protects persons and their property from unreasonable searches and seizures.

Here, the police went into Deft's room and "searched" and as a result saw drug paraphernalia. This amounted to a search because Deft had a "Reasonable Expectation of Privacy" in his bedroom. The police violated that expectation by entering it. Thus, there was a search of Deft's bedroom.

Fourth Amendment violations may be excused by one of several exceptions. Here, the police can argue:

1. Consent. Though the facts don't support it, if Deft gave the officers permission to look in the back bedroom, then the Fourth Amendment would be satisfied.

2. Plain View. Evidence that is observed from a place the police have a legal right to be is deemed to be in plain view and can be observed without resulting in a search.

Here, the police may argue that pursuant to a lawful arrest warrant they were arresting Deft and had a right to be in the back bedroom. Generally, an arrest warrant only allows the cops to arrest a person and not make any searches other than a protective sweep or search incident to a lawful arrest.

a. Protective Sweep. In arresting a person, the police may make a cursory look of area where they believe compatriots may be hiding for the safety of the police.

Here, there is no evidence Deft had accomplices, further, he answered the front door so the police wouldn't be threatened by any compatriots in the back room. Deft was charged with committing a battery, not a crime involving co-conspiracy. Thus, a protective sweep does not appear justified in this situation because of the absence of a threat to the police as well in the scope of the sweep, the back bedroom.

b. Search Incident to a Lawful Arrest. If the police observed the drug paraphernalia pursuant to a search incident to a lawful arrest, then it would have been a proper action, in fact, they could have seized it.

However, a search incident to a lawful arrest must be limited to the person arrested and the area within his immediate control where evidence or a weapon could be grabbed.

Here, the police went back into the back bedroom after Deft answered the door, thus, it does not appear to be within his immediate control and any search of it would be outside the scope. However, it may be possible they went back there with Deft so he could change clothes or something. In this case, then they would be warranted to be there and be entitled to search a limited area for weapon.

Plain View. In this instance, they would be in a place they have a lawful right to be and though they couldn't search, anything observed is there would be in Plain View.

B. Conclusion

The testimony should be excluded because it was obtained as a result of an unlawful search.

However, if one of the above exceptions (plain view, search incident to lawful arrests applies it would be admissible. But given the fact the area involved is the back bedroom and Deft answered the door, this doesn't appear likely.

III. Exclusion of Evidence

Deft seeks to exclude evidence obtained pursuant to the search warrant from his home. Under the Exclusionary Rule, any evidence obtained in violation of the Fourth Amendment is excluded from the prosecutions case in chief.

The Fourth Amendment generally requires a warrant in order to justify the search and seizure of a person or their property.

A. Validity of the Warrant - Probable Cause?

The warrant here was issued in reliance of testimony that was obtained pursuant to a Fourth Amendment violation (testimony of drug paraphernalia) and because of a recitement of fact that Deft sold drugs to Bart.

Conclusory affidavits aren't sufficient to create probable cause. Thus, absent any showing as to the basis for the belief that Deft sold drugs and a showing of reliability, this is an insufficient affidavit. Likewise, the testimony obtained pursuant to an illegal search is insufficient to create probable cause. Thus, the warrant may be held invalid.

B. Good Faith Exception

The prosecutor may argue that under the good faith exception, if the police officers believed in good faith the warrant was valid then the evidence is admissible.

However, this exception doesn't apply when the basis for probable cause is a conclusory affidavit, as the one regarding Deft's sale of drugs to Bart may be. However, it would still protect the information regarding drug paraphernalia which may be enough to create probable cause even though it was obtained pursuant to a Fourth Amendment violation, so long as the executing officers were in good faith.

C. Conclusion

Evidence is admissible even with invalid warrant if police were in good faith and the testimony regarding drug paraphernalia was sufficient probable cause.

ANSWER B

1. Motion to Exclude Deft's Statements to Snitch

A. Fifth Amendment

The Fifth Amendment guarantees that the state will not involuntarily elicit self incriminating testimony. This protection applies when a defendant is in police custody, and applies to police interrogation. An interrogation is any act by the police which should reasonably be expected to elicit a response from the defendant.

When a defendant invokes his right to remain silent under the Fifth Amendment, the police must immediately cease all interrogation. The police may later reinitiate interrogation only after a break, a fresh warning of the defendant's right to remain silent, and about a different crime.

Here, Deft (D) was arrested by the police. He was therefore in police custody. D invoked his right to remain silent. The police therefore were required to cease all interrogation of D.

When the police placed D in the cell with Snitch (S), they knew that S was an informant, and would likely relay any statements made by D. D's Fifth Amendment rights, however, were not violated by this action because D's statements to S were not in response to police interrogation.

Although D's statements were in response to S's questions, S had not been instructed by the police to question D. Therefore, S was not a state agent. Further, D did not know that S was an informant, so that his statements were not involuntarily made in response to police intimidation.

Therefore, D's motion to exclude S's testimony should not be granted under the Fifth Amendment.

B. Sixth Amendment

The Sixth Amendment guarantees criminal defendants the right to counsel in all adversarial proceedings. Thus, after a defendant has been charged, the police may not question him outside of the presence of his counsel. The Sixth Amendment right to counsel may only be waived by the defendant when he voluntarily reinitiates questioning. However, the Sixth Amendment right to counsel is offense specific, so that while the police may not question the defendant after he has been charged about the crime charged, the defendant may be questioned about other crimes.

Here, D will argue that his Sixth Amendment rights were violated when the police intentionally placed him in the cell with S, a known informant.

The prosecutor will argue that there was no violation of D's Sixth Amendment rights because D had not yet been charged. D had merely been booked, so no adversarial proceedings had occurred.

Further, the prosecutor will argue that S questioned D about drug possession. D had been charged with assault. These are different crimes. Therefore, the Sixth Amendment would not apply.

Finally, the prosecution will argue that S was not a government agent. Although the police knew that S was an informant, they did not instruct him to question D. Therefore, there was no state action.

These are strong arguments by the prosecution, and the court should not grant D's motion under the Sixth Amendment.

Therefore, since D's motion is not supported by either the Fifth or Sixth Amendments, his motion should be denied, and S should be allowed to testify.

2. Motion to Exclude Evidence

The Fourth Amendment guarantees that the state will not conduct any unreasonable search and seizure. A defendant has standing to invoke the Fourth Amendment when he has a reasonable expectation of privacy in the area searched or items seized. A search is valid under the Fourth Amendment only if the police have probable cause and a valid warrant. If the police lack a valid warrant, the search may still be legal if one of the exceptions to the warrant requirement applies.

Here, the challenged evidence comes from D's apartment. A defendant has a reasonable expectation of privacy in his home, so D has standing to challenge the evidence. Further, the searches were by the police, so that state action exists, and the Fourth Amendment applies.

A. The Drug Paraphernalia was Illegally Observed

D will argue that police officers were illegally searching his apartment when they observed the drug paraphernalia, so that testimony of this observation must be excluded. Although the police had a valid warrant for D's arrest, they did not have a search warrant. Therefore, this evidence must be excluded unless an exception to the warrant requirement applies.

1. Search Incident to Arrest

When police lawfully arrest a defendant, they may legally search the immediate area (the defendant's "wingspan"). This exception to the warrant requirement is for the officers' safety, so that the defendant cannot reach for a weapon or destroy evidence.

Here, the police had a warrant to arrest D, so that the arrest is lawful. Their entry into D's apartment, however, extended far beyond D's "wingspan." The drug paraphernalia was seen in the back bedroom. Therefore, this exception would not apply.

The prosecutor could argue that the police were conducting a protective sweep, to be sure that no other persons who would be potentially dangerous were hiding in the apartment.

However, the police would need to show that they had some reasonable suspicion of the presence of others.

2. Plain View

If the police were lawfully in D's apartment, the prosecutor will argue that testimony regarding the drug paraphernalia is admissible under the plain view exception. However, this exception will apply only if the police were lawfully in D's apartment.

3. Exigent Circumstances

The prosecutor will argue that the police were lawfully in D's apartment because of exigent circumstances. Exigent circumstances exist if the police have reason to fear that evidence is being destroyed or that harm is occurring.

Here, there is no evidence of exigent circumstances. D surrendered himself at the door. The police did not hear sounds from the interior of the apartment. Therefore, this exception will not apply.

Therefore, the court should grant D's motion to exclude testimony of the officers' observation of the drug paraphernalia.

B. The Drug Paraphernalia and Cocaine Were Seized Under an Illegal Warrant

D will argue that the warrant used by the police to seize the drug paraphernalia and cocaine was illegal. In order to be legal, a warrant must be based on probable cause and must definitely identify the area to be searched and items to be seized.

Here, D will argue that the information in the affidavit that the police had seen drug paraphernalia was illegal. Therefore, other evidence found as a result of this illegal evidence must be excluded as fruit of the poisonous tree. Further, D will argue that there was no probable cause to support the allegation that D had sold cocaine to Bart. The affidavit failed to state the source of this allegation.

The prosecutor will argue that a warrant must be judged according to the totality of the circumstances in order to judge whether probable cause existed. Here, the prosecutor will argue that probable cause did exist when all the information in the affidavit is judged.

If, however, the warrant is found to be faulty, the prosecutor will argue that the search was still legal since it was based on the officers' good faith belief that they had a valid warrant. The officers' good faith will be invalidated only if the warrant was facially invalid, if the affidavit obviously lacked probable cause, or if the police misled the judge by falsifying the affidavit. While the police excluded information from the affidavit, this would not constitute misrepresentation. Therefore, the search would be legal under this exception.

Finally, the prosecutor would also argue that the evidence should not be excluded, even if the warrant was illegal, because the police's suspicions of D would have led to the inevitable discovery of the evidence.

Therefore, D's motion to exclude the items seized under the warrant should be denied.