

Federal agents had a hunch that a local man was engaged in illegal gambling activities. An agent decided to enter the man's house while he was not at home and see what he could find. The agent discovered an envelope containing \$5,000 in cash and an executive's business card. Returning the envelope to its place, the agent located and interviewed the executive, who admitted that he had paid the man \$5,000 to settle a gambling debt; the executive also disclosed that the man regularly took illegal bets from the executive and several of his acquaintances. The agent then interviewed the acquaintances, who confirmed what the executive had told him. The agent then arranged to be introduced to the man at a local bar. After a few drinks, the man, unaware of the agent's identity, boasted that he was one of the biggest bookmakers in the state.

The agent testified to all of his investigation's discoveries before a grand jury, which returned an indictment against the man for illegal gambling activities, based solely on the agent's testimony. The man's attorney then filed a motion to dismiss the indictment, claiming that it rested on violations of the man's constitutional rights.

Should the court grant the motion?

- A. No, because dismissal of the indictment is not the appropriate remedy.
- B. Yes, because much of the agent's testimony before the grand jury was inadmissible hearsay.
- C. Yes, because of the agent's unlawful search of the man's home.
- D. Yes, because of the agent's violation of the man's right to counsel.

Explanation:

Grounds for dismissing indictment

Deficient indictment

- Fails to charge actual crime
- Omits elements of crime
- Statute of limitations has run
- Improper venue or jurisdiction

Defective grand jury proceedings

- Admission of unqualified grand juror
- Exclusion of grand juror based on race/gender
- Prosecutorial misconduct

Constitutional violation

- Fifth Amendment double jeopardy clause
- Sixth Amendment right to speedy trial
- Fifth/Fourteenth Amendment due process clauses

Grand jury proceedings are investigatory in nature since they are used to determine whether probable cause exists to bring a criminal charge (ie, issue an indictment) against an individual. To help the grand jury in its investigation, the prosecutor can **present any evidence that may be relevant** to the grand jury's decision—even if that evidence was obtained in violation of the Fourth Amendment. And since these are not traditional judicial proceedings, the **exclusionary rule** (used to suppress illegally obtained evidence at trial) does not apply.

Here, the man filed a motion to dismiss the indictment, claiming that it was based on violations of his constitutional rights. Although the man's Fourth Amendment rights *were* violated when the agent conducted a warrantless search of the man's home, the agent's testimony regarding that search was relevant to the man's illegal gambling charge. Therefore, that testimony was properly presented to the grand jury, so the indictment should not be dismissed. Instead, the appropriate remedy will be to suppress any evidence obtained from the unlawful search at trial.

(Choice B) Hearsay is an out-of-court statement offered into evidence to prove the truth of the matter asserted. Although hearsay is generally inadmissible at trial, it can be presented at a grand jury proceeding where the rules of evidence do not apply. Therefore, though much of the agent's testimony would be inadmissible hearsay if offered at trial, it was properly considered by the grand jury.

(Choice C) A Fourth Amendment search is unlawful when it is conducted without a warrant and no **exception** to the warrant requirement applies (as seen here). But the exclusionary rule only prohibits the use of illegally obtained evidence at trial—not at a grand jury proceeding. Therefore, since the evidence from the unlawful search was relevant

to the grand jury's probable cause determination, it was properly presented to the grand jury.

(Choice D) The Fifth Amendment right to counsel is not triggered unless the defendant is subjected to a [custodial interrogation](#). And the Sixth Amendment right to counsel does not attach until judicial proceedings have commenced (eg, indictment issued). But neither right was violated here because the man met with the agent voluntarily (no custody) and was interviewed *before* judicial proceedings began.

Educational objective:

The exclusionary rule prohibits the use of illegally obtained evidence at trial—not grand jury proceedings. Therefore, evidence from an unlawful Fourth Amendment search can be presented to the grand jury if that evidence may be relevant to the grand jury's probable cause determination.

References

U.S. Const. amend. IV (prohibition against unreasonable searches and seizures).

United States v. Calandra, 414 U.S. 338, 351–52 (1974) (explaining that the exclusionary rule does not apply to grand jury proceedings).

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