

After a liquor store was robbed, the police received an anonymous telephone call naming a store employee as the perpetrator of the robbery. Honestly believing that their actions were permitted by the U.S. Constitution, the police talked one of the employee's neighbors into going to the employee's home with a hidden recording device to engage him in a conversation about the crime. The neighbor went to the employee's home and was invited inside. During the conversation in the employee's home, the employee admitted having committed the robbery.

The employee was charged with the robbery in state court. He has moved to suppress the recording on the grounds that the method of obtaining it violated both his federal and his state constitutional rights.

Assume that a clear precedent from the state's highest court would result in a finding that the conduct of the police in making the recording violated the employee's rights under the state constitution, and that excluding the recording is the proper remedy.

Should the court grant the employee's motion?

- A. No, because the employee's federal constitutional rights were not violated, and this circumstance overrides any state constitutional provisions.
- B. No, because the police were acting in the good-faith belief that the federal Constitution permitted their actions.
- C. Yes, because the making of the recording violated the employee's federal constitutional rights.
- D. Yes, because the making of the recording violated the state constitution.

Explanation:

Although the federal Constitution sets a "floor" for personal liberties, **state constitutions may offer protections that exceed the minimum federal constitutional requirements**. And when a state's highest court sets clear precedent regarding a state constitutional right, **lower state courts** (trial and intermediate courts) **must follow that precedent** when resolving a similar legal issue.

Here, the employee moved to suppress (ie, exclude) the recording from evidence on the grounds that it was obtained in violation of his state and federal constitutional rights. The state's highest court has set a clear precedent establishing that the recording violated the employee's state constitutional rights and should be excluded from evidence. Therefore, the state court must follow this precedent and suppress the recording on this ground.

(Choices A & C) A defendant's Fourth Amendment rights are not violated when a government informant speaks with the defendant and secretly records their conversation (as seen here). However, compliance with the federal Constitution does not excuse a violation of a defendant's broader state constitutional protections. Therefore, the motion to suppress the recording should be granted on state constitutional grounds.

(Choice B) Under the good-faith exception, evidence obtained in violation of a defendant's federal constitutional rights is admissible if the police reasonably believed that they were acting lawfully (eg, that their actions were permitted by a prior court ruling). But here, the police's good-faith belief that the federal Constitution permitted the recording is irrelevant since this state's clear precedent holds that their actions violated the state constitution.

Educational objective:

State constitutions may offer greater protections than the federal Constitution—eg, a state exclusionary rule can suppress more evidence than the federal exclusionary rule. And lower state courts must comply with precedents from the state's highest court that interpreted those protections.

References

Ker v. California, 374 U.S. 23, 34 (1963) (explaining that states can grant broader rights than the U.S. Constitution).

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Constitutional protections

