

EXAMINERS' ANALYSIS OF QUESTION NO. 4

The search incident to arrest exception will justify the seizure of the phone but not the search of its contents.

The search incident to arrest exception to the warrant requirement allows the arresting officer to search the arrestee. While typically the justification for such a search is officer safety and/or to prevent the destruction of evidence, the searching officer need not have the specific belief the one arrested is intending to harm the officer or is about to destroy evidence. *United States v Robinson*, 414 U.S. 218 (1973). However, the exception limits the search of the person as well as those areas within the person's "wingspan." See *Arizona v Gant*, 556 US 332 (2012); *Chimel v California*, 395 US 752 (1969).

Here Officer Meadows could legitimately search Paul without a warrant. Paul had been arrested for the misdemeanor offenses, but was not completely secured. The pat down was appropriate, as was Officer Meadow's removal of the hard object -- the phone -- from Paul's jacket. No "wingspan" issues are presented, given the search was of Paul's person and was for personal property immediately associated with Paul. See *United States v Chadwick*, 433 US 1, 151 97 S Ct. 2476, 53 L Ed 2d 538 (1977), abrogated on other grounds by *California v Acevedo*, 500 US 565 (1991).

The search of the cellphone's contents, however, is another matter. In *Riley v California*, U.S. ___, 134 S Ct 2473, 189 L Ed 2d 430 (2014), the Supreme Court disallowed the search of the contents of a cellphone taken at the arrest of the cellphone's possessor under the search incident to arrest exception to the warrant requirement. The Court considered the purposes of the exception - to prevent harm to the officer and/or destruction of the evidence by the arrestee. The Court concluded that, even given the broad justification of the exception described in *Robinson* (i.e. the risks identified in *Chimel* are present in all custodial arrests even without a specific concern about the loss of evidence or threat to officers), a search of the contents of the cellphone could not be countenanced.

The facts here do not lend themselves in any way to the use of the search incident to arrest exception. Paul is secured and

the phone is not within his wingspan- when Officer Meadows is searching it. Destruction of the contents of the cellphone from the backseat of the cruiser is unlikely, as is the use of the cellphone to harm the officer. *Robinson's* teaching that all custodial arrests carry with them general concerns about loss of evidence or harm to the officers does not extend the exception to cellphone contents. As *Riley* explained, Paul would have an expectation of privacy in the contents of his phone protected by the Fourth Amendment, and *Riley* concluded the police should simply get a warrant in order to search a cellphone.