

EXAMINERS' ANALYSIS OF QUESTION NO. 14

1. Challenge under the 4th Amendment (standing)

The 4th Amendment and Art 1 Sec 11 of the 1963 Michigan Constitution protects against unreasonable searches and seizures. *People v Slaughter*, 489 Mich 302, 310-311 (2011). In order to invoke the protection of the 4th Amendment (Art 1), a defendant must have a legitimate expectation of privacy in the area searched ('standing'). *People v Smith*, 420 Mich 1, 20-28 (1984). An expectation of privacy is "one society is prepared to recognize as reasonable." *Smith*, 420 Mich at 28. A court must consider the totality of the circumstances to determine if a defendant has a legitimate expectation of privacy in the area searched. *Smith*, 420 Mich at 28.

As a general rule, a passenger in an automobile does not have a legitimate expectation of privacy in a car belonging to another person. *Rakas v Illinois*, 439 US 128, 148-149 (1978). But a person may challenge a potential 4th Amendment violation if, under the totality of the circumstances, a person has a legitimate expectation of privacy in the area searched. *Smith*, 420 Mich at 28.

Donald had no legitimate expectation of privacy in James' car. *Rakas*, 439 US at 148-149; *Smith*, 420 Mich at 28. However, Donald has an expectation of privacy in his own iPad case. Donald had possession of the case in the car and had the right to exclude others from it. It is an "effect" under the 4th Amendment. *People v Norwood*, 312 Mich 266, 272 (1945); *Byrd v US*, 584 US ____ (2018); *Rakas*, 439 US at 150, n17. Donald can challenge the search of his case.

2. Consent

A search performed pursuant to consent is considered reasonable and valid. *Florida v Jimeno*, 500 US 248, 250-251 (1991); *Schenkloth v Bustamonte*, 412 US 218, 222 (1973). The prosecutor has the burden to demonstrate that consent was freely and voluntarily given. *Bumper v North Carolina*, 391 US 543, 548 (1968).

A search by consent is unreasonable if the consent given is not voluntary, given without authority, or the search is beyond the scope of the consent. *Bumper*, 391 US at 548. The scope of the consent is defined by the consenting party and is measured by objective reasonableness. *Jimeno*, 500 US at 251.

The test is whether the facts available to the officer at the time would allow a person of reasonable caution to believe the consenting party had authority over the area. *Terry v Ohio*, 392 US 1, 21-22 (1968); *Illinois v Rodriguez*, 497 US 177, 188-189 (1990).

James' consent was voluntary and valid as to the car only. Consent to search Donald's case must be given by one with actual or apparent authority. *People v Mead*, 503 Mich _____ (2019) (Docket No. 156376); slip op at 11. The iPad case was in Donald's physical possession, not in the trunk of James' car. There was no connection between James and the iPad. There is no evidence that Donald and James shared the case. It would not be objectively reasonable to conclude James' consent to search the car extended to Donald's iPad case. Nor would it be reasonable to conclude that James had the authority (apparent) to consent to search the case. James lacked the actual and apparent authority to consent to search of Donald's case. Moreover, Donald did not expressly consent to the search of the case. Since there is no valid consent, the search is unreasonable and invalid.