EXAMINERS' ANALYSIS OF QUESTION NO. 12

The 4th Amendment to the United States Constitution provides in pertinent part that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ." Clearly, the Amendment delineates with some precision the places and things protected: persons, houses, papers, and effects. *Oliver v United States*, 466 US 170, 176 (1984).

At issue initially in the factual scenario is whether Matheny's "house" was involved, given that police did not enter his home but that they remained on the lawn or, in the case of Collins, on the porch with Dante. This first issue is easily answered affirmatively.

While police did not physically enter the premises, nevertheless Collins and Dante were on the home's back porch. The home, under the 4th Amendment jurisprudence, is a first among equals. "At the Amendment's 'very core' stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Florida v Jardines*, 569 US 1, 6 (2013), citing *Silverman v United States*, 365 US 505, 511 (1961). The so-called curtilage of the home enjoys similar high level protection under the 4th Amendment. A porch at the back door of a home is "intimately linked to the home, both physically and psychologically, and is where privacy expectations are most heightened." *Jardines*, 569 US at 7 (internal citations omitted) citing *California v Ciraolo*, 476 US 207, 213 (1986).

Because Collins was on Metheny's side door porch, he intruded on the curtilage of Metheny's house. Having done so, Metheny's 4th Amendment protections were implicated, despite no entry into the home proper.

A further analytical step is necessary, however, to determine whether Metheny's 4th Amendment rights against unreasonable search and seizure are involved. Did the police activity amount to a "search?"

The People would contend no, that the police may do what is "no more than any private citizen might do" (*Kentucky v King*, 563 US 452, 469 [2011], and that, in the factual scenario, they did just that. Police are certainly free - as are most people - to walk up to the door of a house and knock on that door. No trespass occurs because an implicit license to do so exists because people of all walks - solicitors, peddlers, salespeople - may customarily seek the attention of the homeowner in this innocent fashion. *Beard v Alexandria*, 341 U.S. 622, 626 (1951).

However, Metheny would counter that, while such approaches to the door of a home are tolerable - by anyone - the surrounding circumstances here fall far away from those tolerable scenarios. The very reason officers were there was to follow up on a tip involving drug manufacturing at the house. Multiple drug unit officers came to the home with surveillance equipment and a drug detecting dog. The front door was eschewed for a side door through which a salient scent could emanate more easily. By all accounts, police were there to investigate and to gather evidence and information for the purpose of detecting the presence of drugs.

Florida v Jardines, supra, supports Metheny's position and calls for suppression. The facts as presented clearly establish this was no house call, where police wish to knock and talk. The use of a drug dog, the time of night, the possession of surveillance equipment, the preference for a side door - together - bespeak action significantly unfamiliar to the general citizen's approach of a neighborhood home. The facts do not indicate that police actually did knock on any door to talk to Metheny, further betraying the purpose of their visit and underscoring the action amounted to a search - and an unreasonable one at that.

Metheny's motion should be granted.