

EXAMINERS' ANALYSIS OF QUESTION NO. 9

The 4th Amendment protects against unreasonable searches and seizures. Generally, a search without a warrant is per se unreasonable unless justified by an exception to warrant requirement. *People v Beuschlein*, 245 Mich App 744, 749 (2001). A number of those exceptions apply to the scenarios involved.

Entry into the House

Officer Jenkins' entry into the home, without a warrant, was justified by the emergency aid exception. As stated in *Beuschlein*, citing *People v Davis*, 442 Mich 1, 25, 26 (1999), this exception allows police to enter a home "without a warrant when they reasonably believe that a person within is in need of immediate aid. They must possess specific and articulable facts that lead them to this conclusion." The extent of the entry must be limited to the purpose of the exception. In the instant case, Officer Jenkins heard glass breaking and a woman scream, "Stop it! Stop it!" Officer Jenkins heard a male voice say, "Shut up or take a bullet." The woman screamed for help from ostensibly her child. More tussling and screaming was heard, as well as a cry for help and glass breaking. Indeed after Officer Jenkins yelled "police," he heard the woman yell for help. The combination of these facts clearly supports the necessary rudiments for a warrantless entry into the house. See Michigan Criminal Law Deskbook, Second Edition, §19.190, pages 941-942, 2013. Police need only an objectively reasonable belief that an occupant is seriously injured or immediately threatened. Police may act to prevent injury, not simply to treat it.

Cocaine on Coffee Table

The plain view exception justifies the seizure of the cocaine. Police may seize evidence in plain view if they have a right to be at the point of observation and it is immediately apparent the seized item is fruits, instrumentalities or contraband, or mere evidence; or stated differently, the items' incriminating character is immediately apparent. *People v Champion*, 452 Mich 92, 101 (1999), citing *Horton v California*, 496 US 128 (1990).

The facts show the substance seized was immediately apparent to be cocaine. The substance appeared to be cocaine, and the scales and packing material suggested that as well. Moreover, Officer Jenkins called on his training to draw his conclusion.

The cocaine was able to be seized under the plain view exception.

Entry into the Basement Bedroom

The justification for entry into the house does not extend to entry into the basement because entry into the house was justified to promote aid. Police had Brown secured; the victim was being treated.

However, a protective search or protective sweep of the premises is allowed for officer safety or the safety of other persons. The woman at one point, screamed for "Johnny to help mommy." This strongly suggests a third person in the house and that the person was a child. The 4th Amendment permits a properly limited protective sweep in connection with an in-home arrest if the police reasonably believe the area in question harbors an individual who poses a danger to them or others. *Maryland v Buie*, 494 US 325 (1990). *People v Cartwright*, 454 Mich 550 (1997). (A quick limited search for the sole purpose of ensuring safety is tolerated.) Here, the police were aware a child could be present. The police did not find a gun on the main floor. Due to the nature of Brown's threat, "Shut up or take a bullet" overhead by the police, they were also aware a gun could be present. Searching in the basement for both the child and/or the guns was reasonable and not a violation of the 4th Amendment.

The Pictures

None of the previous justifications - emergency aid, plain view, or protective sweep - justify opening the nightstand drawer. Indeed, none of the exceptions to the warrant requirement seem to apply. See *Slaughter*, 489 Mich 302, 311-312 (2011), for a list of those exceptions. The surrounding circumstances do not suggest anything of connection to those circumstances would be found. The pictures should be suppressed from admission into evidence.