

FBI agents, without a warrant and without the permission of foreign law enforcement or judicial officers, entered a foreign country, kidnapped a businessman—a U.S. citizen wanted in the United States for drug-smuggling violations—on the street, and forcibly drove him back to State A. Thereafter, the agents, again without a warrant, broke into the State A home of the businessman's girlfriend and arrested her.

The businessman and his girlfriend were both indicted for narcotics violations. Both moved to dismiss the indictment on the ground that their arrests violated the Fourth Amendment.

How should the court rule on their motions to dismiss?

- A. Deny both motions.
- B. Grant the businessman's motion but deny the girlfriend's motion.
- C. Grant the girlfriend's motion but deny the businessman's motion.
- D. Grant both motions.

## Explanation:

### Grounds for dismissing indictment

#### Deficient indictment

- Fails to charge actual crime
- Omits elements of crime
- Statute of limitations has run
- Improper venue or jurisdiction

#### Defective grand jury proceedings

- Admission of unqualified grand juror
- Exclusion of grand juror based on race/gender
- Prosecutorial misconduct

#### Constitutional violation

- Fifth Amendment double jeopardy clause
- Sixth Amendment right to speedy trial
- Fifth/Fourteenth Amendment due process clauses

An **indictment** is a written statement by a grand jury that formally charges a person with a criminal offense after a finding of probable cause. It can be **dismissed for** (1) defective grand jury proceedings, (2) deficiencies in the indictment, or (3) **violations of certain constitutional rights**. Here, both defendants moved to dismiss the indictment on the ground that their arrests violated the **Fourth Amendment**. But since a Fourth Amendment violation is **not a proper basis to dismiss an indictment**, both motions should be denied (**Choices B, C, & D**).

And even if an indictment could be dismissed based on a Fourth Amendment violation, the businessman's arrest was proper. Police can lawfully arrest persons:

- outside their home if police have probable cause to believe that they committed a felony *or*
- inside their home if police have a valid warrant authorizing their arrest.

Here, FBI agents kidnapped the businessman in a foreign country and drove him back to State A to face charges for narcotics violations. This arrest was valid since (1) it occurred on the street (outside his home) and (2) the police had probable cause to believe that he had committed a felony (drug smuggling). And under the *Ker/Frisbie* doctrine, a defendant can be prosecuted in the United States even if he/she was forcibly abducted from another country without a warrant or the other country's permission. Therefore, the businessman was properly indicted.

In contrast, the girlfriend's arrest was invalid since (1) it occurred inside her State A home but (2) the police had no arrest warrant. And though the court will not dismiss the indictment on this basis, she can move to suppress any evidence discovered from that illegal arrest at trial.

## Educational objective:

An illegal Fourth Amendment arrest is not a valid basis to dismiss an indictment, but evidence obtained from an illegal arrest can be suppressed at trial.

### **References**

U.S. Const. amend. IV (prohibition against unreasonable searches and seizures).

United States v. Crews, 445 U.S. 463, 474 (1980) ("An illegal arrest, without more, has never been viewed as a bar to subsequent prosecution . . .").

Ker v. Illinois, 119 U.S. 436, 444 (1886); Frisbie v. Collins, 342 U.S. 519, 522 (1952) (holding that a forcible abduction does not preclude prosecution).

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