

Police officers received a tip that illegal drugs were being sold at a certain ground-floor apartment. They decided to stake out the apartment. The stakeout revealed that a significant number of people visited the apartment for short periods of time and then left. A man exited the apartment and started to walk briskly away. The officers grabbed the man and, when he struggled, wrestled him to the ground. They searched him and found a bag of heroin in one of his pockets. After discovering the heroin on the man, the officers decided to enter the apartment. They knocked on the door, which was opened by the woman who lived there. The officers asked if they could come inside, and the woman gave them permission to do so. Once inside, the officers observed several bags of heroin on the living room table.

The woman has been charged with possession of the heroin found on the living room table. She has filed a pretrial motion to suppress the heroin on the ground that it was obtained by an illegal search and seizure.

Should the woman's motion be granted?

- A. No, because the tip together with the heroin found in the man's pocket provided probable cause for the search.
- B. No, because the woman consented to the officers' entry.
- C. Yes, because the officers' decision to enter the apartment was the fruit of an illegal search of the man.
- D. Yes, because the officers did not inform the woman that she could refuse consent.

Explanation:

A court should suppress evidence that was obtained during an unreasonable Fourth Amendment search or seizure. A search or seizure is unreasonable when it is conducted without a warrant and no **exception** to the warrant requirement applies. The **plain view doctrine** is an exception that allows an officer to seize an item without a warrant if:

the item is in the officer's **plain view**
it is **immediately recognized as contraband** *and*
the officer is **lawfully in the area**.

An officer can lawfully enter a private area without a warrant if the officer obtains the owner's consent. **Consent** is a valid basis for entering an area if (1) the owner's consent is given **voluntarily** (ie, without police coercion) and (2) any search is limited to the **scope** of the consent.

Here, the officers saw several bags on the woman's living room table (item in plain view) that contained heroin (immediately recognizable contraband) after they entered her apartment. And since the woman voluntarily consented to their entry and the officers limited their actions to the scope of her consent, the officers were lawfully in the area. Therefore, the plain view doctrine allowed the officers to seize the heroin without a warrant, and the court should deny the woman's motion to suppress that evidence.

(Choice A) The tip and the heroin found in the man's pocket may have given the officers probable cause to obtain a search warrant—but did not justify their warrantless search of the woman's apartment. Instead, that search was justified because the woman consented to their entry.

(Choice C) Under the **fruit of the poisonous tree doctrine**, a court should suppress evidence that stems from an unreasonable police search. However, that search must have violated the defendant's Fourth Amendment rights—not the rights of another. Therefore, the illegal search of the *man* is not a legitimate basis to grant the *woman's* motion.

(Choice D) Consent is valid when it is given voluntarily—informed consent is not required. Therefore, the officers did not need to inform the woman that she had the right to refuse consent to enter her home.

Educational objective:

The plain view doctrine allows police to legally seize an item without a warrant if they (1) see the item in plain view, (2) immediately recognize it as contraband, and (3) are in the area lawfully (eg, consent).

References

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

Coolidge v. New Hampshire, 403 U.S. 443, 465 (1971) (discussing the plain view doctrine).

Plain view doctrine

