

A woman who is a computer expert decided to dedicate herself to exposing persons who trafficked in child pornography. She posted a number of sexually oriented photographs on her website. The file for each photograph contained an embedded Trojan horse program (a program that would allow the woman to enter the computer of anyone who downloaded the photograph). A man downloaded one of those photographs onto his personal computer. Using the embedded program, the woman entered the man's computer and found a file containing a pornographic photograph of a child. She copied the file and turned it over to a federal law enforcement agency. A federal agent told her that a successful prosecution would require more than one photograph and offered her a monetary reward for additional photographs leading to the man's conviction. The woman entered the man's computer again, and this time she found hundreds of child pornography photographs, which she turned over to the federal agency.

The man was charged with multiple counts of violating federal child pornography statutes. He has moved to suppress the photographs that the woman discovered on his computer. The motion is based on both the Fourth Amendment and a federal statute forbidding interception of electronic communication without permission. The parties have stipulated that the woman's conduct in downloading photographs from the man's computer violated the interception statute.

How should the court rule on the defendant's motion to suppress?

- A. Deny the motion as to all photographs.
- B. Grant the motion as to all photographs, because the woman acted without probable cause.
- C. Grant the motion as to all photographs, because the woman violated the federal interception statute.
- D. Grant the motion only as to the second set of photographs.

Explanation:

The **exclusionary rule** requires the suppression of evidence obtained in violation of the law or a defendant's constitutional rights (eg, from a warrantless search). Since this rule seeks to deter government misconduct, it only applies to the **actions of government agents** (eg, government employees, persons working on the government's behalf). Therefore, evidence is **admissible** if it was **obtained by a private individual** acting on his/her own behalf, **without the government's knowledge or participation** (eg, concerned citizens, vigilantes).

Here, the woman used an embedded Trojan horse program to conduct two searches of the man's computer. During the first search, the woman discovered a child pornography photograph. Since that search was motivated by her personal desire to expose persons who trafficked in child pornography, she was acting as a *private individual* without the government's knowledge or participation. Therefore, the exclusionary rule does not apply, and the court should deny the man's motion to suppress the first photograph.

Once the woman gave that photograph to the federal law enforcement agency, a federal agent offered her a monetary reward for additional photographs leading to the man's conviction. The woman then conducted a second search of the man's computer on the agency's behalf. Therefore, she was acting as a *government agent* during that search. And since the search violated the Fourth Amendment (no warrant) and the federal interception statute, the court should grant the man's motion to suppress the second set of photographs **(Choice A)**.

(Choice B) Government agents generally need a warrant based on probable cause to conduct a Fourth Amendment search, but private individuals do not. Therefore, the fact that the woman acted without probable cause would only support the suppression of photographs obtained during her second (government) search—not her first (private) search.

(Choice C) Although the parties stipulated that the woman's conduct violated the federal interception statute, that stipulation only supports the exclusion of the second set of photographs (government search).

Educational objective:

The exclusionary rule requires suppression of evidence that was illegally or unconstitutionally obtained by government agents—not private individuals acting without the government's knowledge or participation.

References

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

United States v. Jacobsen, 466 U.S. 109, 113 (1984) (finding that the Fourth Amendment applies to searches conducted by the government and individuals working on its behalf, but not private individuals).

Nardone v. United States, 308 U.S. 338, 340–41 (1939) (explaining that evidence obtained in violation of a federal statute is subject to the exclusionary rule).

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4th Amendment right to be free from unreasonable searches

