

The police suspected a woman of dealing in stolen credit cards. An undercover police officer knocked on the woman's door and told her that he was willing to pay for usable credit cards. When the woman asked if he was a police officer, the officer replied, "No," giving her a false name and saying, "You can call your girlfriend—she'll vouch for me." The woman then admitted him into her house. After she left the room to call her girlfriend, the officer lifted some papers off a desk and underneath discovered three credit cards bearing different names. He seized the cards, and when the woman returned, he arrested her.

The woman has moved to suppress the evidence seized on the ground that her Fourth Amendment rights were violated.

Should the court grant the motion to suppress?

- A. No, because it was immediately apparent that the cards were stolen.
- B. No, because the woman assumed the risk that the officer would seize items in plain sight.
- C. Yes, because the woman's rights were violated when the officer lifted the papers.
- D. Yes, because the woman's rights were violated when the officer obtained entry by deceit.

Explanation:

A Fourth Amendment search is reasonable when it is conducted pursuant to a warrant or an **exception** to the warrant requirement. **Consent** is an exception that makes a **warrantless search reasonable** if (1) the consent is given voluntarily and (2) the search is limited to the scope of consent. And when an officer is conducting a reasonable search, the **plain view doctrine** allows the officer to **seize an item without a warrant** if:

the item is in the officer's **plain view**

it is **immediately recognizable as contraband** *and*

the officer is **lawfully in the area** (eg, owner consented to the entry).

However, this exception does **not allow an officer to move items** to uncover contraband. If the officer does so without a warrant and no other exception justifies his/her actions, the uncovered evidence should be suppressed.

Here, the officer could conduct a warrantless search—and seize items in plain view—when the woman admitted him into her house (consent). And though he then discovered three credit cards with different names (immediately recognizable contraband), he had to lift papers off a desk to do so. Therefore, the credit cards were not in plain view and were seized in violation of the woman's Fourth Amendment rights. As a result, the court should grant her motion to suppress the cards.

(Choice A) It was immediately apparent that the credit cards were stolen since they had different names. But since the officer had to lift papers from the desk to see the cards (ie, they were not in plain view), his conduct violated the Fourth Amendment. Therefore, the court should grant the woman's motion to suppress the cards.

(Choice B) All persons assume the risk that police will seize illegal items in plain sight. But since the credit cards were underneath papers—not in plain sight—the woman did not assume the risk that they would be seized.

(Choice D) Police cannot coerce a homeowner's consent to their entry—eg, by falsely stating that they have a warrant. But they can obtain entry by deceit—eg, by lying about their identity or purpose—so the officer's entry did not violate the woman's rights. But since her rights were later violated when the officer lifted the papers from her desk, her motion to suppress should be granted.

Educational objective:

Under the plain view doctrine, police can seize an item without a warrant during a reasonable search when (1) the item is in plain view, (2) it is immediately recognizable as contraband, and (3) police are lawfully in the area (eg, with consent). But an item is not in plain view if police must move other items to uncover it.

References

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

Arizona v. Hicks, 480 U.S. 321, 324–25 (1987) (explaining that police may not move items to obtain plain view).

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Plain-view doctrine
(permits warrantless seizure of contraband in plain view)



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