

A man was convicted of possession of a controlled substance with the intent to distribute and sentenced to 20 years confinement in a state prison. Five years into the man's confinement, prison officials began to suspect that the man was distributing drugs inside the prison. One day, the man was removed from his cell and taken to the prison dentist for what the guards told him was a "routine checkup." After the man exited the cell, guards entered and told the man's cellmate that they were going to search the cell. The cellmate did not object. The guards searched the cell without a warrant and found several grams of heroin hidden in a locked box under the man's bed.

The man was charged with distribution of a controlled substance within a secure facility and, under the state's three-strikes rule, faces life in prison. The man has moved to suppress the heroin.

Should the man's motion to suppress be granted?

- A. No, because the cellmate impliedly consented to the search of the cell.
- B. No, because the man had no reasonable expectation of privacy in his cell or items therein.
- C. Yes, because the heroin was not in plain view when the guards searched the cell.
- D. Yes, because the locked box was a constitutionally protected area that required a warrant.

## Explanation:

### Common items & areas

#### with no reasonable expectation of privacy

Bank records

Things exposed to public view (eg, open fields, abandoned property)

Physical characteristics (eg, handwriting, vocal sound)

Conversations with undercover officers & informants

Pen registers (ie, records of dialed telephone numbers)

Smells emanating from cars & other items

Prison inmate's cell

Automobile's vehicle identification number (VIN)

The **Fourth Amendment** is violated when the government conducts an **unreasonable search or seizure**—ie, when police act without a warrant and no **exception** applies. A Fourth Amendment **search** occurs if one of the following tests is met:

**Physical trespass test** – the government physically intrudes upon a **constitutionally protected area** to obtain information

**Reasonable expectation of privacy test** – the government invades a person's **subjective expectation** of privacy that society would find **objectively reasonable**

In *Hudson v. Palmer*, the Supreme Court held that **inmates have no privacy interest in their cells** and **no possessory interest in their items therein** (eg, the locked box) that would entitle them to Fourth Amendment protections (**Choice D**). Therefore, the guards' search of the man's cell did not violate the Fourth Amendment, and the court should deny his motion to suppress.

**(Choice A)** Third parties (eg, a suspect's roommate) may **consent** to a warrantless search of property over which the third party had joint control and access. Here, the man's cellmate did not object to the search of the cell—ie, he impliedly consented. But since inmates have no reasonable expectation of privacy in their cells, the cellmate's consent was unnecessary.

**(Choice C)** Under the **plain-view exception** to the warrant requirement, officers may seize an item if (1) the item is in plain view, (2) it is immediately apparent that the item is contraband, and (3) the officer is lawfully in the area. But since prisoners have no reasonable expectation of privacy in their cells, reliance on the plain-view exception is unnecessary.

### Educational objective:

Inmates have no privacy interest in their prison cells or possessory interest in the items therein that would entitle them to Fourth Amendment protections. Therefore, officials may search an inmate's cell without implicating the Fourth Amendment.

### **References**

Hudson v. Palmer, 468 U.S. 517, 522–24 (1984) (holding that inmates hold no reasonable expectation of privacy in prison cells).

Wayne R. LaFare, 1 Search and Seizure 167; 2.4(d) (6th ed. 2020) (discussing privacy interests in detention facilities).

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