

Two police officers in uniform were on foot patrol in a neighborhood frequented by drug sellers. They noticed a woman walking toward them. As the officers passed the woman, one of them stopped and asked her if she had anything illegal on her. The woman ignored the officer and continued walking. The officer turned around and shouted, "Stop and don't take another step, lady!" The woman turned, looked at the police, and stopped. She put her arms up in the air. As the police approached, she threw a small object into nearby bushes. An officer retrieved the object, which turned out to be a small bag of cocaine, and then arrested the woman.

The woman is charged with possession of the cocaine. She moves pretrial to suppress its use as evidence on the ground that it was obtained as the result of an illegal search and seizure.

Should the court grant the woman's motion?

- A. No, because the police had probable cause to seize the package.
- B. No, because the woman voluntarily discarded the contraband.
- C. Yes, because the police acquired the cocaine as the result of an unlawful seizure.
- D. Yes, because the police did not know the item was cocaine until after they had seized it.

Explanation:

Police-citizen encounters

Type	Characteristics
Consensual encounter	No suspicion required Officer may approach citizen/engage in conversation Citizen may: respond to officer <i>or</i> walk away
Terry stop (stop & frisk)	Reasonable suspicion required Officer may: briefly question to confirm/dispel suspicion frisk if reasonably believes person armed Investigative in nature
Arrest	Probable cause required Officer may: search incident to arrest interrogate after Mirandizing Initiates criminal prosecution

A **Fourth Amendment seizure** occurs when **police use their authority** or physical force to **restrict** a person's **freedom of movement** and the person submits to the restriction. To be reasonable, the seizure must be supported by at least **reasonable suspicion**—ie, specific and articulable facts that would lead an officer to suspect that the person is, or will be, involved in a crime. If police lack such suspicion, the seizure is unlawful and any evidence obtained as a result of that seizure should be suppressed.

Here, an officer asked the woman if she had anything illegal on her while she was walking in a neighborhood frequented by drug sellers. When the woman ignored the question and walked away, the officer ordered her to stop (use of authority to restrict movement). But the woman's mere presence in the high-crime neighborhood did not create reasonable suspicion to seize her (as recognized in *Brown v. Texas*), so the stop was unlawful. And since the cocaine was discarded and then retrieved as a result of that stop, the cocaine should be suppressed.

(Choice A) The exclusionary rule requires the suppression of any evidence obtained as a result of police misconduct. Therefore, though police may have had probable cause to seize the cocaine, it still must be suppressed since it stemmed from an unlawful seizure of the woman.

(Choice B) Police may freely seize property that has been voluntarily abandoned. But here, the cocaine was not voluntarily abandoned since it was discarded in response to police misconduct (unlawful seizure).

(Choice D) Had the seizure of the woman been supported by reasonable suspicion, the cocaine could have been lawfully seized—even if the police did not know it was cocaine at that time.

Educational objective:

To be reasonable, a seizure of a person must be supported by at least reasonable suspicion—ie, specific and articulable facts that would lead an officer to suspect that the person is, or will be, involved in a crime. And a person's mere presence in a high-crime area does not establish such suspicion.

References

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

Brown v. Texas, 443 U.S. 47, 52 (1979) (recognizing that a person's mere presence in a high-crime area does not establish a basis to detain the person).

United States v. Morin, 665 F.2d 765, 770 (5th Cir. 1982) (explaining that abandonment of property prompted by police misconduct is not voluntary).

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