

Police received information from an undercover police officer that she had just seen two men (whom she described) in a red pickup truck selling marijuana to schoolchildren near the city's largest high school. A few minutes later, two police officers saw a pickup truck fitting the description a half block from the high school. The driver of the truck matched the description of one of the men described by the undercover officer.

The only passenger was a young woman who was in the back of the truck. The police saw her get out and stand at a nearby bus stop. They stopped the truck and searched the driver. In the pocket of the driver's jacket, the police found a small bottle of pills that they recognized as narcotics. They then broke open a locked toolbox attached to the flatbed of the truck and found a small sealed envelope inside. They opened it and found marijuana. They also found a quantity of cocaine in the glove compartment.

After completing their search of the driver and the truck, the police went over to the young woman and searched her purse. In her purse, they found a small quantity of heroin. Both the driver and the young woman were arrested and charged with unlawful possession of narcotics.

If the young woman moves to suppress the use of the heroin as evidence, how should the court rule on her motion?

- A. Deny the motion, because she had been a passenger in the truck and the police had probable cause to search the truck.
- B. Deny the motion, because she was planning to leave the scene by bus and so exigent circumstances existed.
- C. Grant the motion, because she did not fit the description given by the undercover officer and her mere presence does not justify the search.
- D. Grant the motion, because the police should have seized her purse and then obtained a warrant to search it.

Explanation:

The exclusionary rule prevents the introduction of evidence found during an illegal Fourth Amendment search—ie, a search conducted without a warrant or an **exception** to the warrant requirement. Under the **search incident to lawful arrest** exception, police can conduct a **warrantless search** that is:

limited to a person's body and areas in his/her immediate reach *and* conducted immediately before or after a valid arrest.

An **arrest is valid** when it is based on **probable cause**, a reasonable belief (greater than mere suspicion) that the person arrested committed a crime. But a person's **mere presence with a criminal**—or **in a vehicle** believed to contain evidence of a crime—is **insufficient** to create such a belief.

Here, the police saw the young woman exit a truck that matched the officer's description. They approached the woman, searched her purse without a warrant, and arrested her. But her arrest was not supported by probable cause (ie, it was invalid) since: she did not fit the description of the suspected drug dealers *and*

her mere presence in the truck was insufficient grounds to believe that she had committed a crime **(Choice A)**.

And since the arrest was invalid, the warrantless search of the woman's purse conducted immediately before that arrest was also invalid **(Choice D)**. Therefore, the heroin found during that search should be suppressed.

(Choice B) Under the exigent circumstance exception, police can conduct a warrantless search if they reasonably believe that prompt action is necessary to prevent a suspect's escape or the destruction of evidence. Here, the woman's plan to leave the scene by bus did not create an exigent circumstance because police had no reason to believe that she was a suspect in, or had evidence of, a crime (since the undercover officer described two men).

Educational objective:

Police can conduct a warrantless search of a person's body or areas in his/her immediate reach if the search is conducted immediately before or after a lawful arrest. But a passenger's mere presence with a criminal or in a suspicious vehicle is not enough to establish probable cause.

References

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

United States v. Di Re, 332 U.S. 581, 587 (1948) (explaining that a person's mere presence in a suspected vehicle does not forfeit his/her right to be free from unreasonable searches).

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