

The police suspected a woman of growing marijuana in her private residence. Narcotics officers went to her neighborhood in the middle of the night. Nothing unlawful could be seen from the street, so the officers walked into her neighbors' yard and looked in through the woman's kitchen window, which had neither drapes nor shades. The officers observed what appeared to be marijuana plants being cultivated under grow lights in the kitchen. Using this information, the officers obtained a search warrant. The execution of the warrant netted numerous marijuana plants.

The woman was charged with possession of marijuana. She has moved to suppress the marijuana plants recovered when the warrant was executed, claiming that the evidence supporting the warrant was obtained through a search that violated the Fourth Amendment.

Should the marijuana plants be suppressed?

- A. No, because regardless of the lawfulness of the police conduct beforehand, they did obtain a warrant to search the woman's home.
- B. No, because the woman could have no reasonable expectation of privacy concerning activities that she exposed to the view of her neighbors.
- C. Yes, because no unlawful activities could be observed by the officers from any public vantage point.
- D. Yes, because the officers' clandestine observation of the plants violated the woman's reasonable expectation of privacy concerning activities occurring in her home.

Explanation:

The woman argued that the recovered marijuana plants should be suppressed because the evidence supporting the search warrant for those plants was obtained through an unlawful Fourth Amendment search. A **Fourth Amendment search** occurs when one of the following tests is met:

Physical trespass test – the government physically intruded upon a [constitutionally protected area](#), like a person's yard, to obtain information.

Reasonable expectation of privacy test – the government invaded (1) a person's subjective expectation of privacy (2) that society would find objectively reasonable.

A search is unlawful if it was conducted without a warrant and no [exception](#) to the warrant requirement applies. However, a court will only suppress evidence obtained from an unlawful search if the defendant has **standing** to challenge it—ie, a **legitimate expectation of privacy** (or an ownership or possessory interest) in the area or item searched. Therefore, a defendant cannot challenge an unlawful search of a third party's premises since it infringed on the third party's right to privacy—not the defendant's.

Here, a search occurred under the *physical trespass test* when the officers intruded upon the neighbors' yard. But the woman lacks standing to challenge that search because she has no legitimate privacy expectation in that yard. And though the officers looked through her uncovered window and saw marijuana plants in her kitchen, she had no objectively reasonable expectation of privacy in what she knowingly exposed to others—including her neighbors. Therefore, no search occurred under the *reasonable expectation of privacy test*, and her motion should be denied.

(Choice A) A court must always determine if a search warrant is supported by valid probable cause—ie, that probable cause stemmed from lawful police conduct. Therefore, the lawfulness of the police conduct before they obtained a search warrant must be considered even after the warrant was issued.

(Choice C) Persons have no reasonable expectation of privacy in activities knowingly exposed to others (eg, neighbors). Here, although no unlawful activities could be seen from a public vantage point (eg, the street), the woman's activities could be seen—through an *uncovered* window—from her neighbors' yard (knowingly exposed to others). As a result, the police did not violate her right to privacy, and her motion will not be granted on this basis.

(Choice D) The officers' clandestine (ie, secret) observation of the marijuana plants did *not* violate the woman's reasonable expectation of privacy since privacy expectations in activities exposed to one's neighbors (or the public) are objectively unreasonable.

Educational objective:

A Fourth Amendment search occurs when the government (1) physically intrudes upon a constitutionally protected area to obtain information or (2) invades a person's subjective

and objectively reasonable expectation of privacy. But when police search a third party's premises, a defendant has no standing to challenge that search.

References

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

Katz v. United States, 389 U.S. 347, 351 (1967) ("What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection").

Rakas v. Illinois, 439 U.S. 128, 134 (1978) (explaining that a defendant only has standing to contest a search that violated his/her own Fourth Amendment rights).

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Standing to challenge 4th Amendment search (legitimate expectation of privacy required)



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