

A department store had experienced a growing incidence of shoplifting. At the store's request, the police concealed a detective at a vantage point above the women's apparel fitting rooms where she could see into these rooms, where customers tried on clothes. The detective saw a teenager enter a fitting room, shut the door, stuff a dress into her purse, leave the fitting room, and start for the street door. By prearranged signal, the detective notified another police officer near the door, who detained the teenager as she started to go out into the street. The teenager was placed under arrest, and the dress was retrieved from her purse.

The teenager is charged with shoplifting. At trial, she moves to suppress the introduction of the dress into evidence.

How will the court likely rule on her motion?

- A. Deny the motion, because the detective could see into the room and thus the teenager's activities were legitimately in plain view.
- B. Deny the motion, because the search and seizure were made incident to a valid arrest based on probable cause.
- C. Grant the motion, because an individual has a reasonable expectation of privacy while using a department store fitting room.
- D. Grant the motion, because the police should have secured a search warrant to search her purse.

## Explanation:

The Fourth Amendment protects persons from unreasonable government searches and [seizures](#). 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**—a person's body, home, papers, or effects—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 Fourth Amendment search is **presumptively unreasonable** if it is conducted **without a warrant**. And under the [fruit of the poisonous tree doctrine](#), any evidence that stems from an unreasonable search should be suppressed at trial.

Here, the *physical trespass test* is not met since a department store fitting room is not a constitutionally protected area. However, the *reasonable expectation of privacy test* is met since society would find the teenager's subjective expectation of privacy in the fitting room objectively reasonable. And since the detective did not have a warrant to search the fitting room, the search was unreasonable and violated the Fourth Amendment.

Due to the unreasonable search, the detective was able to see the teenager stuff a dress into her purse. The detective then notified another police officer, who arrested the teenager and retrieved the stolen dress. And since the seizure of the dress (fruit) stemmed from the unreasonable search (poisonous tree), the court should grant the teenager's motion to suppress the introduction of the dress into evidence.

**(Choice A)** Under the plain view doctrine, police may seize an item without a warrant if (1) it is in plain view, (2) they immediately recognize it as contraband, and (3) they are *lawfully* in the area—eg, they have a warrant to search the premises for another item. Here, the detective could plainly see into the fitting room and immediately recognized the dress as evidence of the crime. But since she was there unlawfully (eg, without a warrant), this doctrine does not apply.

**(Choice B)** After making a valid arrest based on *untainted* probable cause, police may (1) conduct a warrantless search of a person's body and the area within his/her immediate control and (2) seize any evidence discovered in that search. But here, the teenager's arrest was based on *tainted* probable cause (the warrantless search of the fitting room), so the search of her purse and seizure of the dress were incident to an invalid arrest.

**(Choice D)** The police should have secured a search warrant based on *untainted* probable cause to search the teenager's purse. However, the police could not do so since they only had *tainted* probable cause supplied by the detective's unreasonable search of the dressing room. Therefore, the court will likely grant the motion to suppress because the detective violated the teenager's reasonable expectation of privacy.

## Educational objective:

A Fourth Amendment search occurs when the government (1) physically intrudes upon a constitutionally protected area or (2) invades a person's subjective and objectively reasonable expectation of privacy. A warrantless Fourth Amendment search is presumptively unreasonable, and any evidence that stems from the search should be suppressed.

## References

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

Katz v. United States, 389 U.S. 347, 361 (1967) (establishing the reasonable expectation of privacy test).

United States v. Jones, 565 U.S. 400, 407 (2012) (explaining the physical trespass test).

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