

## Question MEE 4 – July 2021 – Selected Answer 1

**Warrantless Arrest & Seizure:** It is unlikely that the warrantless arrest and seizure violated the man's constitutional rights. The issue is whether a fourth amendment exception applied to the officer's warrantless entry into the house.

The **Fourth Amendment**, as incorporated the states by the **Fourteenth Amendment**, disallows **unreasonable search & seizures**. This has been further interpreted that to enter the property of another or to take (seizure) the property of another, or make an arrest in the home of another, that the officer must have a warrant. A warrant must provide for probable cause and particularity (what is being searched and for what purpose, i.e., what or who the officers are looking for). One must have standing, however, to make a Fourth Amendment objection. A person who owns the home or lives there (or an overnight guest) have **standing** under the Fourth Amendment because they have **reasonable expectation of privacy**. However, the warrantless seizure of the purse and the man's home do not infringe upon his Fourth Amendment rights because they fit within some exceptions.

**Warrantless Seizure of the Man's Home:** A person has a reasonable expectation of privacy in their own home. Thus, they have Fourth Amendment standing in that home, and an officer must have a warrant in order to enter (or to enter to make an arrest). However, an officer without a warrant can still make a search without violating the Fourth Amendment if it fits into one of the many Fourth Amendment exceptions. One such exception, that is on point here, is the exception for an officer in **hot pursuit**. An officer in hot pursuit need not a warrant if they are pursuing a criminal after a recently committed crime. While courts differ on how much time must elapse between the intrusion into the home and the chase, even so long as 15 minutes has been upheld as a proper hot pursuit entry.

In the case at hand, the officer was clearly in hot pursuit of the man. He chased him throughout the backyards of homes and throughout the neighborhood before just barely missing him at the house. Based off the man having the keys, it was likely the man's house in which he had an expectation of privacy. But, the officer was still in hot pursuit. I find it unlikely that the short period of discussion between the two men on opposite sides of the door nullifies that Fourth Amendment exception. While the robber would likely argue that, it is very likely that the officer's entry into the home fits under the exception under the Fourth Amendment for a warrantless seizure in hot pursuit, and the man's rights were not violated in such an intrusion.

**Warrantless Seizure of the Purse:** The officer's seizure of the purse also likely is allowed under the Fourth Amendment, because the man had no reasonable

expectation of privacy in a purse he stole. A person has a reasonable expectation of privacy in not only their home/abode, but also their possessions (that they do not hold out to the public). A reasonable expectation of privacy need both be objective and subjective, meaning it is what most would consider private and the party subjectively believed it to be private (did not hold it out to public). However, the purse was stolen and the officer had reasonable belief of such. The man did not own the purse and he could not have an expectation of privacy in something he just stole from a woman. The man would have **no fourth amendment standing** in regards to the purse.

Additionally, even if he somehow did, the **plain view exception** to a Fourth Amendment seizure might also fit into these facts. An officer may make a warrantless seizure if: (1) he is **legitimately** on the premises; (2) sees **fruits, instrumentalities, or contraband/evidence of a crime**; (3) sees such things in **plain view**; and (4) has **probable cause** to believe the items are fruits, instrumentalities, or contraband/evidence of a crime. Here, the man was legitimately on the premises because he was in **hot pursuit**. He would have had probable cause to think the purse was stolen and contraband because of his conversations with the stressed victims before the pursuit, and he saw the purse in plain view in the hands of the man he knew to be the robber (or had probable cause of). Thus, even if the man somehow did have Fourth Amendment standing as to the purse, the warrantless seizure of the purse would have still been allowed under the plain view doctrine.

In sum, the man's Fourth Amendment claims for both the warrantless entry of his home and the warrantless seizure of the purse would likely fail as they both fit neatly under Fourth Amendment exceptions.

**Identification and Due Process:** The identification on the scene of the robber was likely unconstitutional, but it might still be allowed in court if the woman has independent means of indemnification. The issue is whether the woman's identification at the scene was tainted by the suggestiveness of the situation.

On-scene identifications of defendants can unconstitutionally infringe on a defendant's rights if they are overly **suggestive**. Courts will have to look at all the surrounding circumstances in the identification, but an over coercive/suggestive prompt causing an identification of a defendant can constitutionally infringe on the defendant's rights. However, courts will sometimes allow the identification to remain in court if the state can show **individual/separate means for the identification**.

Here, the girl's identification of the man as the robber was highly suggestive. She only saw him handcuffed in the back of the car, and she admittedly said that it was dark

and it happened so fast. However, upon seeing the man she had some sort of revelation that it was the robber. While this is not as suggestive as some photo IDs at police stations that are often thrown out for suggestivity, the facts clearly show a lack of assurance by the woman until she saw the man in the police car. Additionally, the girl's age and the fact that she did not see the man's face also lean towards this identification as being suggestive. If the court finds that this identification then infringed on the defendant's rights, it won't allow it in court unless the state can prove the girl had an **independent source of identification** for the man. Sometimes, even showing up to court and re-identifying him can be enough. Thus, this is not an absolute bar to the identification getting into court. If the girl comes to court and re-identifies the man based on independent knowledge, the identification will likely be allowed.

It's worth noting that in this identification, the man's Sixth Amendment rights (as incorporated through the 14th Am.) were not infringed upon. A defendant is entitled to counsel in all critical stages after formal proceedings have begun. This is usually after indictment and does encompass identifications often at that time. However, formal proceedings have not yet begun and he has no 6th Amendment claim at this time.

### Question MEE 4 – July 2021 – Selected Answer 2

1. The man's Fourth Amendment rights.

**The first issue** is whether the officer's warrantless seizure of the man violated the man's 4th Amendment ("4th Am") rights. The rule is that an officer must have probable cause that a crime was committed in order to arrest someone without a warrant. Further, a warrantless arrest is allowed only if either (a) the officer witnessed a misdemeanor being committed in his or her presence, or (b) the officer has probable cause to believe that a person committed a felony. An officer is allowed to pursue someone into his home without a warrant if there are exigent circumstances (e.g. in hot pursuit) to justify doing so. Finally, note that the elements of robbery are (1) an unlawful taking of the property of another, (2) with intent to permanently deprive her of it, and (3) by force or threat thereof from the person's presence.

Here, the officer had probable cause to believe the man committed the felony of robbery, so the arrest was likely permissible. The officer heard a witness say that the man "knocked this woman down and took her purse," which is a classic case of robbery by force. The officer thus had probable cause to make an arrest for a felony. At this point, he gave chase, and he had an exigent-circumstances justification for

knocking down the door to make the arrest (he was in hot pursuit of a felon). Therefore, the warrantless arrest of the man was permissible under the 4th Amendment.

**The second issue** is whether the officer's warrantless seizure of the purse was permissible under the 4th Amendment. The rule is that, as with seizure of a person, an officer may seize someone's belongings only if s/he has probable cause to believe a felony has been committed. The other relevant rule is that an officer may search someone's belongings only if s/he has either (a) a warrant or (b) an exception to the exclusionary rule applies, including the "plain sight" exception, which allows searches to occur in any situation where the fruits or instrumentalities of a crime are in plain view. Also, an officer may make a search incident to arrest, but only to protect his or her own safety and prevent the destruction of evidence, within the defendant's "wingspan."

Here, the officer had probable cause to believe that there was a felony committed and that this purse did not belong to the defendant. So under the seizure analysis, the seizure of the purse was likely permissible. In any case, the officer likely would have been justified in actually searching the bag itself (and *a fortiori* was therefore justified in seizing it): This is because the officer, as discussed above, had justification to be in the house, and the purse was "on the floor next to [the man's] feet." This falls under the plain view exception to the exclusionary rule, and thus it was a justified search. (It also may have been a valid search incident to arrest, given its proximity to the defendant's "wingspan" at the time of the arrest). Therefore, the seizure did not violate the 4th Amendment.

## 2. The man's Due Process ("DP") rights.

**The first issue** is whether admitting testimony regarding the girl's on-scene identification of the man would violate the man's DP rights. The rule is that a statement of identification may be admitted under the DP clause unless it was made in "unduly suggestive" circumstances--circumstances where the facts indicate the identifying person was unfairly swayed by some cue that suggested to him or her that the defendant was the guilty individual.

Here, the identification was in unduly suggestive circumstances. The girl stated that "it happened really fast" and that she "saw some big guy running past me with a purse," but this seems to have been all the detail she could remember until she saw the defendant under arrest. After seeing him in the police car, *critically*, she inferred that he was the culprit because "wow...He's right there in the car." This is a classic case of unduly suggestive circumstances, and therefore the statement should not be admitted.

**The second issue** is whether, assuming the statement is inadmissible, the man's DP rights would be violated if the girl were allowed to identify him in court. The rule is that, even after a statement of identification has been decided to be unconstitutional to admit, a witness may still identify the defendant in court if and only if the totality of the circumstances suggest that the witness's identification has an independent basis besides the undue suggestion. The government bears the burden of showing that this threshold has been met.

In this case, the facts seem to suggest that the woman's entire identification of the man was based, not on what she saw before she saw him in the patrol car, but primarily on her seeing him in the car. Again, she stated that "it happened really fast" and that she "saw some big guy running past me with a purse," but no more. Further, the victim "never saw anything," so that cannot help the prosecution's case. The man did have the victim's purse, but that does not go to the girl's identification of him; it is merely alternative evidence of his guilt. Therefore, the prosecution likely cannot show that the circumstances support the reliability of the girl's identification, aside from seeing the man in the car; thus, the girl probably should not be allowed to identify the man in the car.