

## Question MEE 2 – February 2023 – Selected Answer 1

### **1. The officer's entry should not result in the exclusion of evidence.**

The officers entered Homeowner's house with a valid warrant to search the house for counterfeit \$100 bills.

The exclusionary rule exists to deter police misconduct, and states that evidence which is unconstitutionally obtained, in violation of the 4th, 5th, 6th, or 8th amendment (all of which are imputed onto the states by the Due Process clause of the 14th amendment) must be excluded. However, the exclusionary rule is subject to multiple exceptions.

One of the exceptions to the exclusionary rule is that it is not triggered by a violation of the requirement to knock-and-announce.

As such, the officers kicking open the door without knocking and waiting ~15 seconds for a response, while a violation of the knock and announce requirement, does not require that the evidence seized be excluded.

### **2. The marijuana seized from Driver should be excluded as evidence of a search that was beyond the scope permitted.**

A search is wherein the government intrudes, absent effective consent, into an area or item wherein the person has a reasonable expectation of privacy.

A search is unreasonable, and thus in violation of the fourth amendment, when the person has a reasonable expectation of privacy and where the government searches absent a warrant or some recognized exception to the warrant requirement.

A valid search warrant must be granted by a neutral and detached magistrate, supported by an affidavit showing probable cause and which pleads in particularity the place and persons to be searched and the items sought to be found.

The detention of Driver while the police executed the warrant was permissible in order to protect officer safety while they execute the search warrant. However, the ability to detain people at the scene of the search warrant does not afford officers the right to search those people if they are not named in the search warrant they are executing.

When, based on articulable facts, an officer has reasonable suspicion that a person might be armed and dangerous, they may perform a brief pat-down of the outside of their clothing in order to discover any weapons which may be concealed.

If, in the course of this pat-down, the officer discovers something they immediately recognize to be contraband, they may seize it under the "plain touch" doctrine. However, in order to use this, the officer must immediately recognize from experience or awareness, that the item in the clothing is contraband or evidence of a crime. They may not manipulate the item, or open any pockets or investigate further.

In the case at hand, the officer might have had reasonable suspicion that Driver was armed and dangerous, and the associated *Terry* search was valid. However, after failing to discover weapons or anything immediately recognized as contraband or evidence of a crime, the search had ended. The officer could not determine what the object was, but she knew that it was a soft non-weapon. She was not allowed to seize the lump by "plain touch."

By removing the lump from Driver's pants pocket in order to investigate, the officer performed an unreasonable search in violation of Driver's fourth amendment rights, and the exclusionary rule applies.

In order to deter police misconduct, the marijuana must be suppressed.

### **3. The seizure of the computer from Homeowner is valid under plain sight doctrine.**

When legally present in an area, an officer may seize anything which is in their plain sight and is immediately apparent to them as contraband or evidence of a crime. The officers cannot manipulate the item in any way.

The officers were lawfully present at the location of the search, and lawfully able to see, in plain sight, the serial number on the top of the computer. If the serial number was instead on the bottom, requiring manipulation of the computer in order to look at it, the officers would not be able to argue plain sight.

However, this is an arguable situation wherein, by plain sight, they had an immediate reasonable suspicion which, after a brief search using an app, developed into probable cause to believe that the computer was stolen. At that point, the officer could "immediately" behold the computer while lawfully present at the location of the search, and discern that it was contraband.

As such, the seized computer does not need to be excluded.

#### **4. The seizure of the narcotics from Homeowner must be excluded.**

In comparison to the seizure of the computer, the pills seized on the

In executing a valid search warrant, officers are permitted to search anywhere wherein the property to be seized may be found. They cannot search for a piano in a breadbox; nor can they search the files of a computer for a stolen watch. In the case of Homeowner, the search could include most areas of the house, as counterfeit money is particularly easy to conceal. However, there is no reasonable likelihood that the counterfeit money was able to be hid inside of pills in a transparent bottle.

As the pill bottle was not a valid target of the search for the counterfeit money, and in order to have the seizure be valid, there must be some exception to the warrant requirement.

The plain sight doctrine would also not allow for the search, as at no point during their presence at the scene would the police be able to recognize the pills as contraband without some manipulation, whether opening the pill container (in which they had no right to look, for inability to contain the contraband cash sought), or testing the pills (which requires manipulation and testing thereof).

A clear pill bottle with some pills inside is not immediately apparent as contraband or evidence of a crime.

Absent any justification for the seizure of the narcotics, the evidence of the pills must be excluded in order to deter police misconduct.

### **Question MEE 2 – February 2023 – Selected Answer 2**

1. The issue here is whether or not the officers' entry, though with a valid warrant, will nonetheless result in the exclusion of evidence because of the no-knock nature of the entry. Here, the evidence will be included.

The warrant is listed as valid, so that assumption is made here. Thus, the first issue is a no-knock entry. Officers are required, upon execution of a warrant for entry into one's home, to announce their presence and identity, as well as their purpose in executing the warrant. An officer is allowed to not observe this policy, however, if they reasonably believe, based on the totality of the circumstances, that knocking and

announcing would create a danger for the officers or inhibit their investigation (such as if a defendant heard them and began destroying evidence). Here, there is no indication whether the officers had such reasoning. However, given that the warrant is valid - and presumably in good faith - whether or not their no-knock entry was valid or not is irrelevant for the purposes of exclusion. Evidence seized from a no-knock entry is an exception to the exclusionary rule, which typically bars the admission of evidence obtained in constitutionally violative ways. Thus, as long as the warrant was in good faith (and here, the warrant is valid, so that is presumed), anything seized will not be excluded on the basis of the no-knock entry. If found invalid due to the officers not having a reasonable belief as to danger or inhibition of the investigation, then they will be able to proceed against them in a civil action, but not to exclude evidence relating to the criminal charges here.

2.

a) The first issue is whether or not the marijuana seized from the driver should be excluded. Here, this evidence should be excluded because it was not identified through "plain feel" of the officer's Terry search.

When a search warrant is executed, the police are not typically allowed to search parties not named in the warrant but on the premises - in this case, the pizza delivery driver. However, they can be detained. Both the homeowner and the driver have not raised an objection to their detentions, and thus this issue is waived.

More pressing is whether or not the first officer had a right to pat down the driver and take their marijuana, given that they did not have a warrant to do so. An exception to a warrantless search is a Terry stop - an investigative detention. In order to conduct a Terry stop, an officer must have a reasonable suspicion of criminal activity based on the totality of the circumstances. The officers must be diligent and reasonable in their confirmation or dispelling of their suspicions. If an officer reasonably believes that a suspect is armed and dangerous, they may conduct a pat-down of the suspect's clothing and - based on the plain feel of objects - take what they identify based on that plain feel as a weapon or contraband.

Here, the marijuana should be excluded. The officer had a reasonable suspicion based on the totality of the circumstances that the driver was armed - she saw a lump in the back pocket of his pants, which she thought might be a handgun. Thus, she had reason to conduct a Terry stop and patdown. However, she could not identify the object based on its plain feel - it was a soft object, not a gun - and so she should have stopped there when she could not identify it and her suspicions that it was a gun were dispelled. Nevertheless, the officer reached into the pants pocket and retrieved a bag

of marijuana. This obtaining of the evidence was not valid. The marijuana should be excluded.

b) The second issue is whether or not the officer's seizure of the computer was valid. Here, it is valid because its seizure was based on plain view.

When officers execute a valid warrant, they have authority to search within the scope of the warrant for what they are looking for - here, counterfeit bills. However, that does not preclude them from seizing any other evidence which they encounter during their valid search which is a fruit, instrumentality, or evidence of a crime in plain view. Plain view, an exception to a warrantless search, requires that the officers be legitimately on the premises, that they have probable cause to believe an item is contraband or the fruits, instrumentalities, or evidence of a crime (that is, the nature of the object is immediately and readily apparent), and that the item is in plain view. Here, the computer was sitting on the kitchen counter, and its serial number was in plain view on the top of the computer. The officers were legitimately on the premises, they saw the item in plain view, and after running a search, they determined that it was indeed stolen. There is a potential issue in that it was not immediately apparent that it was stolen, but the serial number itself was in plain view and it could be checked without any violation of the scope of the warrant. Thus, under these circumstances, the seizure of the computer was valid. It should not be excluded.

c) Last to consider is the issue of the seizure of the narcotics. Here, the seizure of the narcotics pills should be excluded, because it does not satisfy the plain view exception.

Similar to the above analysis, the issue here is the plain view exception to a warrantless search, and whether or not the item was obtained while the officers were legitimately on the premises, had probable cause to believe that an item is contraband or the fruits, instrumentalities, or evidence of a crime, and is in plain view. Here, however, while the officers were executing a valid warrant (and were on the premises legitimately) and the item was in plain view (the medicine bottle was transparent) there was no probable cause to believe the items were illegal, or the fruits, instrumentalities, or evidence of a crime. The bottle was a medicine bottle; the pills had no identifiable markings; and the purpose of the warrant was not for drugs, but counterfeit money. Thus, this fails the requirements of plain view as a warrantless search exception. The officers should not have seized it, and the narcotics pills should be excluded.