

3)

Fourth Amendment

The fourth amendment protects from unreasonable search and seizure from anywhere the citizen has a recognized right to privacy. This right requires an officer to have a specific, articulable reason to search depending on the type of search or seizure the officer intends to engage in.

Exclusionary Rule

The exclusionary rule mandates that all evidence obtained in violation of the fourth amendment be excluded from use in court, unless a limited number of exceptions applies. The purpose of the rule is to disincentivise officers from violating the fourth amendment or investigatory protocol to obtain evidence. The following will be evaluated with these rules in mind.

1) Dog reaction

Standards for search

The standards for a brief, or try search is "reasonable anticipation that crime is afoot" based on articulable facts beyond a "mere hunch." The standard for a full search requiring a warrant, or any search in a place where the citizen has a reasonable expectation of privacy is "probable cause" that it is more likely than not that a crime is occurring or that criminal evidence can be found in a specific location.

Here, Officer had only a "hunch" that Dora might be breaking bad from her house in the country. A mere hunch is insufficient to justify a search, but does not prevent the officer from learning more from a distance, or obtaining

information in public areas. The hunch prevents searches only in places where the citizen has a reasonable expectation of privacy. However, a citizen is not protected from information he or she holds out to the public, i.e.: loud phonecalls, plainly visible criminal acts,, etc. Therefore, Officer cannot use any information obtained from a point where he was violating a reasonable expectation of privacy because he did not have an articulable reason for suspecting Dora of meth dealing. However, information obtained from a vantage point where officer is constitutionally permitted will be admissible.

Reasonable expectation of privacy

The fourth amendment guarantees a right to privacy of one's person, home, and the curtilage around one's home unless one of the search standards above has been met. Places where the public is allowed are generally not protected from search.

Here, Officer did not meet either standard for a search. However, he had a drug dog jump on to D's porch and sniff the front door. He also had the dog walk around Dora's house in the country. While one's driveway, porch and front door are generally open to the public, solicitors, visitors, or anyone who comes to your house, it is less clear that walking the dog around the house was constitutional. Dora will argue that because she lives in the country, her front door and the curtilage around her house are less available to the public than say, a house in the suburbs. However, this argument will probably fail absent evidence that officer hopped a fence or crossed some barrier separating the house from the rest of the countryside. Dora's argument will be stronger regarding the walk around the house because people's backyards are typically fenced-off and not available to the public, however, this is less relevant because the dog alerted on the front porch.

As such, the Dora likely had a reasonable expectation of privacy in the back of her house, but not on the front porch.

Open fields doctrine.

The facts do not indicate that the house was in an open field, but if it were, there is no expectation of privacy in an open field, and the dogs reaction would be admissible.

Drug Dogs/Plain Smell

Heightening the officer's investigatory capabilities with a drug dog is not a search, as there is no expectation of privacy in the air surrounding ones vehicle or any other public place.

here, Dora may try to argue that the officer could not have detected the scent of meth without the dog, but this argument will fail because courts have reliably held that a dog alert is admissible so long as the dog is in a place where it is allowed to be (like a front porch or an airport, or any other public place.)

*Note- the dog alert would give the officer probable cause to get a warrant. and search further.

Conclusion

In conclusion, the dog alert is admissible, and would give officer the probable cause he needs to search further.

2) Small Box

Reasonable expectation of privacy

The rule for reasonable expectation of privacy is above.

Here, officer had to get a ladder to look into the bedroom window. This requires

going onto the house's curtilage and using tools to see what he otherwise would not be able to. Officer will argue that the window was open, and thus that the right to privacy would not apply. However, this will fail because he was not observing the open window from a place open to the public, he would have been on the ladder leaning against the side of the house.

Plain Sight

Anything in plain view of the officer is admissible so long as it is viewed from a vantage point where the officer has a right to be.

Here, officer had to use binoculars to observe inside the bedroom window from a ladder officer had propped against the house. Dora will argue that she has a reasonable expectation that strangers will not be using her ladder to peer into her room with binoculars. Officer will argue that the courts have allowed using cameras on aircraft to observe property from public airspace, but this argument will fail because officer was not in public airspace, he was using a ladder to peer into the room,

Therefore, while the binoculars do not violate plain sight, the ladder violates the reasonable expectation of privacy.

Warrant

a warrant is required before the officer can search Dora's house, or get a ladder to peer through her window. Officer had the probable cause required for a warrant, but would also need an impartial judge, specific items to search for, and specific places to be searched before a valid warrant can be obtained. Officer did not bother with getting a warrant, so the box must be excluded unless a warrant exception applies.

Warrant exception

No warrant is needed if there are exigent circumstances or a risk that the

evidence will disappear, the officer is in hot pursuit, or the officer is needs to enter a private home for public assistance. There is also an exception for faulty warrants that do not apply here because officer did not obtain a warrant.

Here, there were no exigent circumstances. Officer would have had ample time to call in a warrant. Dora did not know that officer was after her, and officer had no reason to expect that the evidence would disappear, so the exigent circumstances exception does not apply. Officer was also not in hot pursuit. Dora was not running from Officer, she was being followed unbeknownst to her. This is not hot pursuit. Hot pursuit allows a warrant exception in the course of a police chase, and there was no such chase here. Finally, Officer was not on a civic duty or public assistance call, he was following Dora on a hunch that she may be selling drugs.

Therefore, no warrant exceptions apply.

Fruit of the poisonous tree

requires that all evidence obtained as a result of a violation of the fourth amendment be excluded as a further disincentive to violate the constitution in order to obtain evidence. here, Officer would not have seen the box if not for illegally propping up the ladder in the curtilage of Dora's home, without a warrant. Therefore, the box should be excluded as fruit of the poisonous tree.

Conclusion

The box is not admissible.

3) Overheard Statement

Unanticipated/unintended Ear Doctrine

There is no expectation of privacy in a public statement, whether or not the speaker anticipated that the listener was present or that the listener could hear.

Here, officer was crouching under an open window when he heard Dora tell an unidentified caller that "I can sell you several ounces of cocaine." Dora will argue that officer was in the curtilage of her home by crouching under an open window. Officer will argue that he was not, and would have heard the statement anyway from the front yard and porch, places open to the public. Officer will probably win because Dora's house is in the country, and it would be easier to hear a telephone call from a public vantage (or hearing) point. While this is not quite inevitable discovery, officer has a strong argument that he did not need to be within the curtilage of the home to hear Dora's statement, but near an open window. By leaving the window open, Dora took this risk, as there is no expectation of privacy in what is seen or heard from public vantage points. It does not matter that Dora did not intend or anticipate that anyone but the other caller would hear her statement.

For these reasons, officer's crouching under the window would not preclude the statement from admission, assuming he was not within the curtilage of the home.

Conclusion

Therefore the statement will likely be admissible.

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