

If your last name begins with A-L argue the facts for why the evidence should be admissible as a Prosecutor. If your last name begins M-Z argue the facts for why the evidence should be excluded as a Defense attorney. Do this using our discussions in class about Reasonable Expectations of Privacy. What level of justification did the officer have at each stage he acted and was he in a place where he was legally allowed to be?

FACTS:

On August 2, 2005, at approximately 8:39 p.m., Roseville Police Officer Aaron Leahy was dispatched to a motel to talk to defendant's girlfriend regarding a disturbance. She reported that around 12:00 noon that day, she was leaving for work in her Jeep when defendant stopped her, ordered her out of the driver {Slip Opn. Page 2} seat, and took the keys to the vehicle. Defendant drove her to work and then left with the Jeep, stating that he would never give it back to her.

She asked the officer to go to the residence she shared with defendant and their seven-year-old son to find out if the vehicle was there. She asked the officer to attempt to contact defendant to ask for the keys for her. She stated that she did not want to ask defendant herself because she feared he was still angry with her, and he had been violent in the past. When asked if defendant had access to any weapons, she stated that she had seen a gun in the residence six months earlier. The officer did not know where the child was at the time.

At approximately 9:40 p.m., following his interview of defendant's girlfriend, Officer Leahy and Roseville Police Officer Jeremy Screeton went to the duplex. The Jeep was parked in the driveway. The front grill of the Jeep was warm to the touch indicating that it had been recently driven. The officer could see light coming from the crack between the garage door and the house. He did not see any lights on through the front window.

Officer Leahy went to the front door, knocked several times, rang the doorbell, and announced that he needed to speak to defendant. There was no response. The officer then walked along a concrete walkway in front of the residence that led a few feet over to a wooden fence flush with the front of the duplex and with no setback. The fence was approximately six feet high and the officer could see the top of a sliding glass {Slip Opn. Page 3} door on the side of the residence. The officer then raised himself approximately three inches onto his tip toes and shined his light into the sliding glass door. There were no lights on in the house. The officer then called for defendant again.

At that point the officer noticed something shiny on the ground on the other side of the fence near the sliding door. He shined his flashlight down on the object and saw what appeared to be a cocked revolver. The officer could not determine whether it was loaded.

Officer Leahy testified that he believed it was his duty to retrieve the revolver because it was a safety hazard at a residence with a seven-year-old child. He attempted to open the gate, but it was locked, so he climbed over the fence and determined that the gun was unloaded. The officer then put the revolver in his pocket and climbed back over the fence. The officer attempted to knock at the door one more time. He then returned to his patrol car to run the firearm by its serial number.