

# Encyclopedia of the Fourth Amendment

## Plain View Doctrine

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The plain view doctrine states that a police officer who is legally in a position to see an item may seize it without a search warrant, so long as the item is immediately recognizable as contraband or evidence subject to seizure. Plain view is a recognized exception to the warrant requirement of the Fourth Amendment, as there is no reasonable expectation of privacy in items left out in the open.

For the plain view doctrine to apply, the police must be “lawfully present.” This means the police must have a legal right to be where they are when they observe an item in plain view. This is sometimes referred to as a *valid prior intrusion*. Some examples of situations in which a law enforcement officer is lawfully present include a traffic stop or the pursuit of a fleeing suspect. Hot pursuit was the justification for the seizure in *Warden v. Hayden* (1967). Police chased an armed robbery suspect into a house. While searching for the suspect and the weapon he used in the robbery, an officer looked in a washing machine and found clothing of the type that the suspect was said to have worn. The Court held that the seizure of the clothing was lawful because the officer was looking in a place where the suspect's weapon could be hidden. Thus, the observation of the clothing occurred within the scope of the hot pursuit search.

The Court explained in *Coolidge v. New Hampshire* (1971) that under the plain view doctrine, police may seize an item only if it is “immediately apparent” that the item is subject to seizure. This means that before an item may be seized, the police must have probable cause that the item is subject to seizure without conducting any further examination of the object. A police officer cannot move or otherwise manipulate an item to determine if it is seizable. How much an officer could handle an item under the plain view doctrine was at issue in *Arizona v. Hicks* (1987). Police investigating a shooting entered Hicks's apartment to search for the shooter, possible victims, and weapons. One officer noticed several boxes of expensive stereo components and, suspecting they were stolen, moved the boxes to obtain a view of their obscured serial numbers. After checking with headquarters and learning that the stereo equipment was stolen, the officer seized it. The Supreme Court held that the moving of the stereo equipment constituted a search beyond the scope permissible under the plain view doctrine.

Justice Potter Stewart's opinion in *Coolidge v. New Hampshire* (1971) suggested that the discovery of evidence in plain view must be “inadvertent” to satisfy the immediately

apparent requirement. The Court has since made clear that inadvertence [p. 507 ↓ ] is not necessary, however. In *Horton v. California* (1990), a police officer sought a search warrant for stolen property and weapons used in an armed robbery. The search warrant issued by the judge authorized only a search for the stolen property. In executing the warrant, the officer did not find the stolen property but did find (and seize) the weapons. The officer admitted that, while he knew he was authorized to search only for the stolen property, he hoped to find the weapons. Thus, he did not discover the weapons “inadvertently.” The Court nonetheless upheld the seizure of the weapons, noting that there is no reason to exclude items in plain view just because a police officer has reason to believe he will see them before he actually observes them.

Some courts have expanded the plain view doctrine to the senses of smell and touch. These courts frequently cite *United States v. Johns* (1985), where the Court suggested, in dicta, that it was “debatable” whether there existed a privacy interest in a package “reeking of marijuana.” It is unclear in 2012 whether the Supreme Court endorses this expansion of the plain view doctrine, but in *Minnesota v. Dickerson* (1993), the Court applied the principles of the plain view doctrine to a situation in which a police officer discovered contraband through the sense of touch. It did so on the grounds that just as there is no reasonable expectation of privacy in an item left in plain view and observed by an officer with a right to be where he or she sees the item, there is no reasonable expectation of privacy in an item which an officer determines is contraband during a lawful frisk.

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See also

- [Arizona v. Hicks \(1987\)](#)
- [Coolidge v. New Hampshire \(1971\)](#)
- [Exclusionary Rule](#)
- [Harris v. United States \(1968\)](#)
- [Horton v. California \(1990\)](#)
- [Hot Pursuit](#)
- [Minnesota v. Dickerson \(1993\)](#)

- [Plain Smell Doctrine](#)
- [United States v. Johns \(1985\)](#)
- [Warden v. Hayden \(1967\)](#).

#### Further Reading

del Carmen, Rolando. *Criminal Procedure: Law and Practice* . 8th ed. Belmont, CA: Wadsworth/Thomson, 2009.

Hemmens, Craig, JohnWorrall, and AlanThompson. *Criminal Justice Case Briefs: Significant Cases in Criminal Procedure* . New York: Oxford University Press, 2004.