District 12
Quick Tip No. 16

Plain View

When an officer is in position to lawfully view and access an object, and the officer has probable cause to believe that object constitutes evidence, the officer can seize that object.

Legal Supplement

Generally: *Coolidge v. New Hampshire*, 403 U.S. 443 (1971)("It is well established that under certain circumstances the police may seize evidence in plain view without a warrant."), *Minnesota v. Dickerson, 508 U.S. 3636, 378 (1993)(*"[P]robable cause to believe that the equipment was stolen arose only as a result of a further search – the moving of the equipment- that was not authorized by the search warrant . . .[citing *Arizona v. Hicks]), Note: Courts generally find that the manipulating of items to obtain the immediately apparent nature (i.e., probable cause) to be a search., Illinois v. Andreas*,463 U.S. 765 (1983)("[The plain view doctrine] authorizes seizure of illegal or evidentiary items visible to a police officer [only if the] access to the object [has a] Fourth Amendment justification*."), U.S. v. Le*, 173 F.3d 12528, 1268 (10th Cir. 1999)("In 1990, a majority of the Court . . . held that inadvertence is not a necessary condition of legitimate plain-view seizures . . ."), **Digital Evidence:** *U.S. v. Mann*, 592 F.3d 779 (7th Cir. 2010)("There is nothing in the Supreme Court's case law counseling the complete abandonment of the plain view doctrine in digital evidence cases . . . Instead, we simply counsel officers and others involved in searches of digital media to exercise caution to ensure that warrants describe with particularity the things to be seized and that searches are narrowly tailored to uncover only those things described. "), **Plain Smell**: *U.S. v. Angelos*, 433 U.S. 739 (10th Cir. 2006)("The 'plain smell' doctrine . . . is simply a logical extension of the 'plain view' doctrine."), **Plain Feel:** *Minnesota v. Dickerson*, 508 U.S. 366 (1993)(""If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain view context."), **Visual Aids:** *U.S. v. Lee*, 274 U.S. 559(1927)("Such use of a searchlight is comparable to the use of a maritime glass or filed glasses. It is not prohibited by the Constitution."), *State v. Denton*, 387 So. 2d 578 (La. 1980)("[T]here is no significant difference between binoculars that magnify and a 'night scope' that clarifies the observations made by the naked eye."), *People v. Whalen*, 213 N.W. 2d. 116 (Mich. 1973)("[T]he plain view rule does not slink away at sunset to emerge again at the break of day . . ."), *Note: Courts have often looked at whether the visual enhancement used by the police is widely available to the public, and have found searches when very powerful telescopes have been used.* **Other Technology:** *U.S. v. Epperson*, 454 F.2d 769 (4th Cir. 1972)("We agree that the use of a magnetometer in these circumstances was a 'search' within the meaning of the Fourth Amendment."), *Kyllo v. U.S.*, 533 U.S. 27 (2001)(The use of a thermal imager constituted a search even though done from a vantage point where the police had a right to be.).

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