



**LEGAL BULLETIN #2001-05
OFFICE OF LEGAL AFFAIRS**

**WARRANTLESS SEIZURES
PLAIN VIEW**



Legal Flag: The ‘Plain View’ exception to the search warrant requirement exists when: (1) the officer is in a place where he has a legal right to be; (2) it is immediately apparent that the property is subject to seizure; and, (3) the officer has lawful access to the property.

The Fourth Amendment to the U.S. Constitution guarantees, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” The Fourth Amendment generally prohibits police from seizing property without a warrant.

In Katz v. United States,¹ the United States Supreme Court held that a person has no Fourth Amendment expectation of privacy in those acts or items that he places within the public’s plain view.

“Plain View” provides an exception to the warrant requirement. Officers may seize immediately apparent evidence when it is observed from a position in which an officer has a legal right to be and retrieved from a location to which the officer has a lawful right of access.

Test One: Is the officer in a place where he has a legal right to be?

In Washington v. Chrisman,² a police officer placed a student under arrest for underage drinking. The officer accompanied the student into a dormitory room in order for the student to obtain his identification. While in the

¹Katz v. United States, 496 U.S. 128 (1967).

²Washington v. Chrisman, 102 S.Ct. 812 (1982).

dormitory with the student, the officer observed marijuana and a smoking pipe on a desk. The officer seized the items. The United States Supreme Court found the officers actions were appropriate because the police officer’s observations were made from a place where the officer had a legal right to be. The Court also ruled that the officer acted appropriately in accompanying the student into his dormitory after the student asked that he be permitted to retrieve his identification.

The point is that if an officer is legally on the premises, such as during a service call or emergency situation, and observes immediately apparent contraband or some other illegal item, the officer may seize that evidence. This plain view seizure does not give the officer the legal authority to search the rest of the premises, but, the officer may secure the premises in order to obtain a search warrant. The officer may also continue to search if given consent.

Test Two: Is the criminality of the object immediately apparent?

In People v. Hilt,³ an Aurora police officer observed a vehicle at 3:00 a.m. leaving an apartment complex known for drug trafficking. A license plate check revealed that the plates

³People v. Hilt, 698 N.E. 2d 233 (1998).

did not match the car. The officer stopped the vehicle and directed his flashlight beam into the passenger compartment. He observed a knotted piece of baggie on the car's rear floorboard. The officer testified that based upon his experience, he knew that drug dealers often package cocaine by tying a knot in a corner of a plastic bag, then tearing off the rest of the bag to make a very small package. He testified that he believed that the baggie was a container for crack cocaine. The Court upheld the seizure. The Court found that when the officer made the seizure, he had probable cause to believe that the object was contraband. In order for plain view to apply it must be immediately apparent to the officer that the property is contraband or evidence subject to seizure.

Test Three: Does the officer have legal access to the items observed?

In People v. Pakula,⁴ Bolingbrook police officers received a tip that the Pakula's were growing cannabis in their backyard. The next day the police went to the yard, which was completely enclosed by a chain-link fence and not accessible to the public. The officers looked through the fence and observed cannabis growing. The officers knocked on the Pakula's front door and asked permission to enter their yard to seize the plants. Despite Mrs. Pakula's refusal, the officers entered the yard and seized the plants. The Court ruled the search was unconstitutional because the officers did not have lawful access to the contraband. The officers needed either consent or a search warrant. A better course of action would have been for the officers to establish a surveillance over the contraband to prevent its destruction while simultaneously pursuing a search warrant.

The lesson from this case is that even where the requirements for plain view are satisfied, in the absence of "exigent circumstances" the police

may not make a warrantless entry to seize the item in question. For a review of "exigent circumstances" see LEGAL BULLETIN 2001-04.

An officer may make observations into a private area (e.g. through a window or fence) provided the officer is viewing the area from a lawful vantage point. The officer may not, however, go onto the private property in order to make those observations. Further, the observations do not provide the police officers with the right of entry to make a seizure. Rather, the officer will have to convey the observations to a judge who can determine whether to issue a search warrant.

Because vehicles differ from dwellings in that they are mobile and are operated on the public way, the Supreme Court has made it easier to conduct searches of vehicles during stops. Thus, if the property is in a vehicle, under current case law the "plain view" observation will provide sufficient probable cause to enter the vehicle and seize the item. However, if the observations are directed toward a non-mobile private area such as a fenced in land area or the interior of a building, the officer must obtain a search warrant before entering the location.

SUMMARY

1. The officer must be in a place where the officer has a lawful right to be.
2. The illegality of the item must be immediately apparent, thus providing the officer with probable cause.
3. The officer must have lawful access to the property. The observation of the evidence does not automatically provide the officer with the legal right to retrieve the item or search further.

This Bulletin was prepared by Ms. Sandy Brode, a staff attorney with the Office of Legal Affairs.
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⁴*People v. Pakula*, 411 N.E. 2d 1385 (1980).