Plain View

"The seizure of property in plain view involves no invasion of privacy and is presumptively reasonable." [1]

Finding evidence of a crime often requires a lot of work and a little luck. But sometimes it just takes luck, like winning the lottery. For example, in *People* v. *Bagwell*[2] an officer in Alameda County had just arrested a murder suspect in her home when he happened to notice a trail of blood leading into the hallway. So he followed it and discovered the murder weapon—a butcher knife—still covered in blood.

Granted, this example was rather melodramatic. But it often happens that officers find garden-variety evidence in plain view, especially drugs, illegal weapons, and stolen property. It is especially likely to occur in situations when the suspect did not anticipate the officers' arrival and, thus, did not have time to hide it. Thus, plain-view discoveries are fairly common during contacts, detentions, and traffic stops; while officers are conducting pat searches, searches incident to arrest, protective sweeps, and vehicle inventory searches; while they are executing search and arrest warrants; and sometimes while they are just walking past an open door or window.

Although most of this evidence will be admissible in court, some of it will be suppressed. Why? Because "plain view" is not as simple as it sounds. While the logical basis of the rule can be stated easily—"What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection"[3]—evidence is not useful just because an officer has seen it. What matters is whether he took possession of it; and that he did so lawfully so that prosecutors can use it in court.[4]

The question, then, is what are the legal requirements for seizing evidence in plain view. As we will discuss in this article, there are three:

(1) **Lawful discovery**: The officers must have had a legal right to be at the location from which they initially saw, felt, or smelled the evidence.

(2) **Probable cause**: Upon discovering it, they must have had probable cause to believe it was, in fact, evidence of a crime.

(3) **Lawful access**: If officers could not seize the evidence without entering a place in which the suspect reasonably expected privacy, they must have had a legal right to enter.[5]

Lawful Discovery

It is a basic rule of criminal law that an officer's observation of evidence in plain view is not a "search."[6] But it is also settled that evidence is not "in plain view" if it was discovered in the course of an unlawful search or seizure. Thus, the first requirement for a seizure of evidence in plain view is that officers must have had a legal right to be at the spot from which they initially detected it.[7] As the Supreme Court pointed out in *Horton* v. *California:*

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[1] *Texas* v. *Brown* (1983) 460 U.S. 730, 738.

[2] (1974) 38 Cal.App.3d 127.

[3] *Katz* v. *United States* (1967) 389 U.S. 347, 351.

[4] See *People* v. *Albritton* (1982) 138 Cal.App.3d 79, 85, fn.1 ["The 'plain view doctrine' is intended to provide a basis for making a *seizure* without a warrant. . . . By comparison, 'in plain view' is descriptive of a situation in which there has been *no search* at all."].

[5] See *U.S.* v. *Jones* (1st Cir. 1999) 187 F.3d 210, 219-21; *U.S.* v. *Carter* (6th Cir. 2004) 378 F.3d 584, 590. **NOTE**: In the past, there was a fourth requirement: the officer's discovery of the evidence must have been "inadvertent." This requirement was abrogated by the United States Supreme Court in *Horton* v. *California* (1990) 496 U.S. 128, 141.

[6] See *Arizona* v. *Hicks* (1987) 480 U.S. 321, 328 ["[A] truly cursory inspection—one that involves merely looking at what is already exposed to view, without disturbing it—is not a 'search'"]; *Minnesota* v. *Dickerson* (1993) 508 US 366, 375 ["The rationale of the plain-view doctrine is that if contraband is left in open view and is observed by a police officer from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and thus no 'search'"]; *People* v. *Miranda* (1993) 17 Cal.App.4th 917, 927 ["[I]t is settled that a plain view observation is not itself an invasion of privacy, that is, a search."].

[7] See *Texas* v. *Brown* (1983) 460 U.S. 730, 737 ["The question whether property in plain view of the police may be seized therefore must turn on the legality of the intrusion that enables them to perceive . . . the property in question."]; *Washington* v. *Chrisman* (1982) 455 U.S. 1, 5-6 [the evidence must have been discovered "in a place where the officer has a right to be."]; *People* v. *Bradford* (1997) 15 Cal.4th 1229, 1295 ["The officers lawfully must be in a position from which they can view a particular area"].

> It is, of course, an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed.[8]

It should be noted that an item can be in plain view even though it was not conspicuous. For example, it is immaterial that officers needed a flashlight or spotlight to see it.[9] As the Court of Appeal explained, "Observation of that which is in view is lawful, whether the illumination is daylight, moonlight, lights with the vehicle, lights from street lamps, neon signs, or lamps, or the flash of lights from adjacent vehicles."[10]

Nor does it matter that an officer had to bend down or elevate himself to see the evidence. Thus, in *People* v. *Chavez* the Court of Appeal ruled that an officer's observation of a handgun in the defendant's backyard was lawful even though the officer had to stand on tiptoes to see over the fence.[11]

As we will now discuss, the legality of the officer's discovery frequently becomes an issue when the evidence was found during detentions, or while the officers were inside the suspect's home pursuant to a warrant or consent, or while they were walking on the suspect's property.

DISCOVERY DURING DETENTIONS: If the evidence was observed during a detention or arrest, the discovery is lawful if, (1) officers had grounds to detain or arrest the suspect, and (2) the discovery occurred while they were carrying out their lawful duties.[12] Thus, in *United States* v. *Hensley* the Supreme Court noted, "Having stopped Henley, the Covington police were entitled to seize evidence revealed in plain view in the course of the lawful stop."[13]

DISCOVERY DURING PAT SEARCH: When officers find evidence while pat searching a suspect, the "lawful discovery" requirement will be satisfied if, (1) the officers had sufficient grounds to search, and (2) they discovered the evidence while searching places and things in which a weapon might reasonably be found.[14] Discussing the second requirement, the Third Circuit pointed out that the "proper question" is whether the officer detected the evidence "in a manner consistent with a routine frisk."[15]

DISCOVERY DURING CONTACTS: An officer's view of evidence in the suspect's possession is necessarily lawful if it occurred during a contact. This is because officers do not need a legal basis for contacting a suspect.[16]

For example, in *People* v. *Sandoval*[17] a Modesto police officer decided to check out the occupants of a parked car because it was 1 A.M. and he had seen them "alternately leaning forward in their seats, out of sight." As he looked through the window, he saw the driver, Sandoval, "holding a rolled up $20 bill in his right hand and balancing an upside-down frisbee on his lap with his left hand." Any question as to the purpose of this peculiar activity was eliminated when the officer noticed that the frisbee contained a four-inch long straw, a razor blade, and some white powder. The officer then arrested the occupants and seized the drugs and paraphernalia. On appeal, the court rejected Sandoval's argument that the evidence was discovered unlawfully, pointing out that "[t]he objects were in plain view and the officer clearly had a right to be in the position to have that view."

DISCOVERY WHILE EXECUTING SEARCH WARRANTS: Officers who are executing search warrants often find evidence that was not listed in the warrant. If so,

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[8] (1990) 496 U.S. 128, 136.
[9] See *On Lee* v. *United States* (1952) 343 U.S. 747, 754; *Texas* v. *Brown* (1983) 460 U.S. 730, 740; *People* v. *Clark* (1989) 212 Cal.App.3d 1233, 1238.
[10] *People* v. *Superior Court (Mata)* (1970) 3 Cal.App.3d 636, 639.
[11] (2008) 161 Cal.App.4th 1493, 1501. ALSO SEE *People* v. *Superior Court (Stroud)* (1974) 37 Cal.App.3d 836, 839; *U.S.* v. *Elkins* (6th Cir. 2002) 300 F.3d 638, 654 ["Any contortions [the officer] made to peer through the opening did not change the 'plain view' character of his observation"].
[12] See *Texas* v. *Brown* (1983) 460 U.S. 730, 737, 739; *People* v. *DeCosse* (1986) 183 Cal.App.3d 404, 410 ["Standing where he had a right to be, the officer was lawfully entitled to observe, in plain sight, the opened alcoholic beverage container."].
[13] (1985) 469 U.S. 221, 235.
[14] See *Minnesota* v. *Dickerson* (1993) 508 U.S. 366, 378; *People v. Thurman* (1989) 209 Cal.App.3d 817, 826.
[15] *U.S.* v. *Yamba* (3rd Cir. 2007) 506 F.3d 251, 259.
[16] See *Florida* v. *Royer* (1983) 460 U.S. 491, 498; *People v. Rivera* (2007) 41 Cal.4th 304, 309.
[17] (1985) 164 Cal.App.3d 958.

the discovery is lawful under the plain view rule if they found it while looking in places or things in which any of the listed evidence might have been found. For example, in *Skelton* v. *Superior Court*[18] officers in La Palma were searching for a stolen wedding ring and carving set when they happened to find five stolen watches, five stolen rings, two sets of stolen silverware, and illegal drugs. On appeal, the California Supreme Court ruled the unlisted evidence was lawfully discovered because "the warrant mandated a search for and seizure of several small and easily secreted items," and thus "the officers had the authority to conduct an intensive search of the entire house."

Similarly, in *United States* v. *Smith*[19] officers in Tampa obtained a warrant to search the home of Smith's mother for drugs and indicia of ownership, including "photographs that would be probative to establish residency." In the course of the search, they opened Smith's lockbox and found several hundred photos, many of which contained images of child pornography. In ruling that the photos were discovered lawfully, the court said, "Here, the officers were lawfully at the Smith residence pursuant to an unchallenged search warrant authorizing the officers to search for and seize evidence of illicit drug activity. . . . It was through the lawful execution of the warrant that the officers came across the photographs at issue here."

In contrast, in *People* v. *Albritton*[20] narcotics officers in Bakersfield obtained a warrant to search the defendant's home for drugs and indicia. A detective assigned to the auto theft detail learned about the warrant and decided to "go along for the ride" because the defendant was also a suspected car thief. When the officers arrived, the detective "immediately separated himself from the vice officers and went to the garage" where he checked the VIN numbers on several vehicles and discovered that four of them were stolen. On appeal, prosecutors argued that the VIN numbers were in plain view, but the court disagreed because none of the listed evidence could reasonably have been found in the areas in which the VIN numbers were located.

DISCOVERY WHILE OTHERWISE IN THE SUSPECT'S HOME: In the absence of a warrant, a seizure of evidence inside the suspect's home is lawful if, (1) the officers were lawfully on the premises (e.g., to make an arrest, conduct a protective sweep; defuse an exigent circumstance), and (2) they discovered the evidence while they were carrying out their lawful duties.[21]

A good illustration of how this second requirement can cause problems is found in *Arizona* v. *Hicks*.[22] Here, officers had entered Hicks' apartment without a warrant because someone inside had fired a shot through the floor, injuring an occupant of the apartment below. Although the entry was lawful, one of the officers noticed an expensive stereo system which he thought might have been stolen because the apartment was otherwise "squalid." He confirmed his suspicion by picking up the turntable, writing down the serial number, and running it.

On appeal to the Supreme Court, Hicks argued that the serial number was not discovered lawfully because the officer had no legitimate reason for picking up the turntable. The Court agreed, pointing out that the officer's act of moving it to locate the serial number constituted a "search separate and apart from the search for the shooter, victims, and weapons that was the lawful objective of his entry into the apartment."

DISCOVERY FROM SUSPECT'S LAND: If officers were standing on the suspect's property when they saw the evidence, the discovery will ordinarily be lawful if they were on or near a normal access route. In the words of the California Supreme Court, "A sidewalk, pathway, common entrance or similar passageway offers an implied permission to the public to enter which necessarily negates any reasonable expectation of privacy in regard to observations made there."[23]

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[18] (1969) 1 Cal.3d 144. ALSO SEE *Horton* v. *California* (1990) 496 U.S. 128, 142.
[19] (11th Cir. 2006) 459 F.3d 1276.
[20] (1982) 138 Cal.App.3d 79.
[21] See *Mincey* v. *Arizona* (1978) 437 US 385, 393 ["[A] warrantless search must be strictly circumscribed by the exigencies which justify its initiation."]; *Thompson* v. *Louisiana* (1984) 469 U.S. 17, 22 [a call for emergency medical assistance "would have justified the authorities in seizing evidence under the plain-view doctrine while they were in petitioner's house"]; *Washington* v. *Chrisman* (1982) 455 U.S. 1, 5-6; *People v. Bradford* (1997) 15 Cal.4th 1229, 1293; *People* v. *Superior Court (Quinn)* (1978) 83 Cal.App.3d 609.
[22] (1987) 480 U.S. 321.
[23] *Lorenzana* v. *Superior Court* (1973) 9 Cal.3d 626, 629.

For example, in *People* v. *Edelbacher*[24] the defendant shot and killed his estranged wife in Fresno County, then drove back to Madera where he and his parents lived. A sheriff's deputy who was investigating the murder drove to Madera and, while standing on Edelbacher's driveway, saw shoeprints that looked just like the shoeprints that had been found at the murder scene. So he requested that a criminalist take photographs of the prints, and these photos were used against Edelbacher at his trial.

On appeal, he argued that the discovery of the shoeprints was unlawful because the deputy had been standing on private property. It didn't matter, said the California Supreme Court, because the prints "were apparently visible on the normal route used by visitors approaching the front doors of the residences and there is no indication of solid fencing or visible efforts to establish a zone of privacy."

Similarly, an officer's observation of evidence through a window or open door of a house is lawful if the officer was standing on a normal access route.[25] As the court pointed out in *United States* v. *Hatfield,* "Although privacy in the interior of a home and its curtilage are at the core of what the Fourth Amendment protects, there is no reasonable expectation that a home and its curtilage will be free from ordinary visual surveillance."[26]

DISCOVERY DURING COMPUTER SEARCH: Officers who are executing a warrant to search a computer will often discover unlisted data or graphics that constitute evidence in the crime under investigation or some other crime. If so, the discovery will be deemed lawful if the file in which the evidence was found could have contained any of the data or graphics listed in the warrant.[27]

Probable Cause to Seize

The second requirement for a plain view seizure is that the officers must have had probable cause to believe the item was, in fact, evidence of a crime.[28] This type of probable cause—probable cause *to seize*—exists when "the facts available to the officer would warrant a man of reasonable caution in the belief that certain items may be contraband or stolen property or useful as evidence of a crime."[29]

In discussing this level of proof, the United States Supreme Court has said "it does not demand any showing that such a belief be correct or more likely true than false. A practical, nontechnical probability that incriminating evidence is involved is all that is required."[30]

Such a probability is often based on direct observation, as when officers see an illegal weapon,[31] readily-identifiable drugs or drug paraphernalia,[32] an instrumentality of a crime,[33] or property that had been reported stolen.[34] But it may also be based on circumstantial evidence and reasonable inference. As the Court of Appeal explained in *People* v. *Stokes*, "In the context of the plain view doctrine, probable cause is a flexible, commonsense standard, which requires

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[24] (1989) 47 Cal.3d 983.

[25] See *People* v. *Walker* (1969) 276 Cal.App.2d 39, 43 ["there was an unobstructed view into the kitchen"]; *People* v. *Zabelle* (1996) 50 Cal.App.4th 1282, 1287 ["the door was 'wide open'"].

[26] (10th Cir. 2003) 333 F.3d 1189, 1196.

[27] See *Andresen* v. *Maryland* (1976) 427 U.S. 463, 482, fn.11 ["In searches of papers, it is certain that some innocuous documents will be examined, at least cursorily, in order to determine whether they are, in fact, among those papers authorized to be seized."]; *U.S.* v. *Adjani* (9th Cir. 2006) 452 F.3d 1140, 1149-50 ["Computer files are easy to disguise or rename"]; *U.S.* v. *Wong* (9th Cir. 2003) 334 F.3d 831, 838 ["While searching the graphics files for evidence of murder, as allowed by the warrant, [the officer] discovered [child pornography]."].

[28] See *Minnesota* v. *Dickerson* (1993) 508 US 366, 376; *Arizona* v. *Hicks* (1987) 480 U.S. 321, 326.

[29] *Texas* v. *Brown* (1983) 460 U.S. 730, 742.

[30] *Texas* v. *Brown* (1983) 460 U.S. 730, 742.

[31] See *U.S.* v. *Banks* (8th Cir. 2008) 514 F.3d 769, 776 [gun possessed by a felon]; *People* v. *McNeal* (1979) 90 Cal.App.3d 830, 841 [nunchucks].

[32] See *People* v. *Nickles* (1970) 9 Cal.App.3d 986, 994; *People* v. *LeBlank* (1997) 60 Cal.App.4th 157, 165 [two cocaine pipes].

[33] See *Horton* v. *California* (1990) 496 U.S. 128, 131 [stun gun used in robbery]; *People* v. *Bradford* (1997) 15 Cal.4th 1229, 1296 [murder weapon]. ALSO SEE *People* v. *Duncan* (1981) 115 Cal.App.3d 418, 426 [OK to seize poetry from a rape suspect's home because the rapist had read poetry to the victim].

[34] *See Colorado* v. *Bannister* (1980) 449 U.S. 1, 2; *People* v. *Bright* (1970) 4 Cal.App.3d 926, 930; *Christians* v. *Chester* (1990) 218 Cal.App.3d 273, 275 ["[The ring] had been identified as stolen by its owner."].

only that the facts available to the officer would warrant a person of reasonable caution in believing that the item may be contraband or stolen property or evidence of a crime."[35]

STOLEN PROPERTY: Circumstantial evidence that property was stolen may consist of the condition of the property, such as obliterated serial numbers, clipped wires, and pry marks. For example, in *People* v. *Gorak*[36] the court ruled that officers had probable cause to seize an air compressor in the back seat of the defendant's car mainly because "the electrical lines and air lines appeared to have been broken off" and water was leaking out of a broken line.

Other relevant circumstances include the presence of store merchandise tags or anti-shoplifting devices that are usually removed when retail goods are sold; or the presence of an inordinate amount of property, especially if it's the type of property that is frequently stolen, such as television sets, CD players, PDAs, tools, firearms, and jewelry. It would also be significant that the suspect possessed burglar tools, or that he provided officers with a conflicting or dubious explanation as to how he happened to possess the property.[37]

For example, in *People* v. *Stokes*[38] two Hayward police officers in an unmarked car were driving through a mobile home park that was occupied mainly by senior citizens when they saw Stokes standing in the middle of the street, and he was holding a rectangular object covered by a blanket. The officers recognized Stokes as a local burglar, and they noticed that he kept looking around and appeared to be nervous. They also knew that several residents of the park had recently been burglarized. Just then, a car pulled up beside him and he stepped inside. As the officers walked up to the car, they heard the driver say to Stokes, "I told you not to do it." They also noticed a screwdriver in Stokes' back pocket, and they saw that the object he had been carrying was a VCR. Although the officers had no direct evidence that the VCR was stolen, the court ruled there was sufficient circumstantial evidence to satisfy the plain view rule.

DRUGS: Even though officers cannot see the contents of a container, they may have probable cause to believe it contains drugs based on the surrounding circumstances, especially the nature of the container. As the court noted in *People* v. *Holt*, "Courts have recognized certain containers as distinctive drug carrying devices which may be seized upon observation [such as] heroin balloons, paper bindles, and marijuana smelling brick-shaped packages."[39] But the court added that other containers, such as pill bottles, plastic bags, and film canisters, "are seen as more generic and may not be seized merely because they may be used to store narcotics."

Other relevant circumstances include a distinctive odor, the presence of narcotic paraphernalia nearby, an alert by a drug-detecting dog, and the "feel" of the container.[40]

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[35] (1990) 224 Cal.App.3d 715, 719.

[36] (1987) 196 Cal.App.3d 1032.

[37] See *People* v. *Clark* (1989) 212 Cal.App.3d 1233, 1236 ["As appellant pulled out a wallet, [the officers] saw a 'clump' of ladies' watches and miscellaneous jewelry in the pocket."]; *People* v. *Williams* (1988) 198 Cal.App.3d 873, 890 ["[The officers] knew from experience that firearms and electronic equipment are among the 'hottest' items encountered by the burglary detail."]; *People* v. *Superior Court (Thomas)* (1970) 9 Cal.App.3d 203, 210 ["some items still carried price tags and some which defendant claimed to have acquired at 'surplus' bore no markings indicating prior government ownership"]; *People* v. *Curtis T.* (1989) 214 Cal.App.3d 1391 [large quantity of car stereo equipment piled on the floor].

[38] (1990) 224 Cal.App.3d 715.

[39] (1989) 212 Cal.App.3d 1200, 1205.

[40] See *Texas* v. *Brown* (1983) 460 U.S. 730, 742-3 [heroin-filled balloon]; *People* v. *Arango* (1993) 12 Cal.App.4th 450, 455 ["distinctively shaped and wrapped kilos of cocaine"]; *Guidi* v. *Superior Court* (1973) 10 Cal.3d 1, 18 [a marijuana "joint"]; *People v. Lennies H.* (2005) 126 Cal.App.4th 1232, 1238 [although a key is not inherently illegal to possess, the officer "had probable cause to believe that the keys were evidence linking the minor to the carjacking at the time of the initial 'plain-feel' search"]; *People* v. *Glasgow* (1970) 4 Cal.App.3d 416, 418 ["commercial packages" of marijuana]; *U.S.* v. *Yamba* (3rd Cir. 2007) 506 F.3d 251, 260 ["soft, spongy-like substance" containing "small buds and seeds"]; *U.S.* v. *Hudson* (9th Cir. 1996) 100 F.3d 1409, 1420 ["glassware often associated with methamphetamine manufacture"]; *People* v. *Topp* (1974) 40 Cal.App.3d 372, 378 ["tell-tale" leafy and powdery feel]; *People* v. *Shandloff* (1985) 170 Cal.App.3d 372, 381 [odor of cocaine]; *U.S.* v. *Yamba* (3rd Cir. 2007) 506 F.3d 251, 260 [a "soft, spongy-like substance" [marijuana] inside a plastic bag]; *People* v. *Molina* (1994) 25 Cal.App.4th 1038, 1042 [odor of fresh beer]. COMPARE *Kaplan* v. *Superior Court* (1971) 6 C3 150, 153 [officer merely "had an idea" the objects he felt were pills].

For example, in *People* v. *Lee*[41] an Oakland police officer was pat searching a suspected drug dealer when he felt "a clump of small resilient objects" which he believed (correctly) were heroin-filled balloons. In ruling that the officer's seizure of the balloons was lawful under the "plain feel" rule, the court noted that he "recognized the feel of such balloons from at least 100 other occasions on which he had pat-searched people and felt what were later determined to be heroin-filled balloons. As he described it, the feel is unmistakable."

Lawful Access

The last requirement—lawful access—pertains only to situations in which officers must enter a residence or other private structure to seize evidence they had lawfully discovered from the outside. Although the evidence is in plain sight, it cannot be seized under the plain view rule unless the officers had a legal right to enter.[42] Summarizing this requirement, the United States Supreme Court explained, "[N]ot only must the officer be lawfully located in a place from which the object can be plainly seen, but he or she must also have a lawful right of access to the object itself."[43]

For example, officers who see evidence inside a vehicle will automatically have lawful access because the Supreme Court has ruled that officers may enter and search a vehicle without a warrant whenever they have probable cause to believe it contains evidence of a crime.[44] Lawful access may also be based on a search warrant, consent, an emergency situation, or the terms of an occupant's probation or parole. It may also be based on the exigent circumstance known as "destruction of evidence" if, (1) officers who were standing outside a house saw drugs or other evidence inside; and (2) they reasonably believed that an occupant knew that they had seen the evidence, in which case it would be reasonable to believe that the suspect would destroy it if he was given the opportunity.

For example, in *People* v. *Ortiz*,[45] an officer was walking by the open door to the defendant's hotel room when he saw a woman inside. He also noticed that she was "counting out tinfoil bindles and placing them on a table near the bed" on which the defendant was sitting. Believing (correctly) that the bindles contained heroin, the officer went inside, seized them and arrested the occupants. In ruling that the officer had lawful access to the evidence, the court pointed out that, because he was only three to six feet away from the woman, he reasonably believed that she had seen him and it is "common knowledge that those who possess drugs often attempt to destroy the evidence when they are observed by law enforcement officers." Thus, said the court, "it was reasonable for [the officer] to believe the contraband he saw in front of defendant and the woman was in imminent danger of being destroyed."[46] POV

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[41] (1987) 194 Cal.App.3d 975.

[42] See *Illinois* v. *Andreas* (1983) 463 U.S. 765, 771 [plain view applies only if the evidence was "visible to a police officer whose access to the object has some prior Fourth Amendment justification"]; *Washington* v. *Chrisman* (1982) 455 U.S. 1, 5-6 [the evidence must be "discovered in a place where the officer has a right to be"]; *Texas* v. *Brown* (1983) 460 U.S. 730, 738 [the officer's "access to an object [must have had] some prior justification under the Fourth Amendment"]; *People* v. *Ortiz* (1995) 32 Cal.App.4th 286, 291 ["[I]t was not enough that the contraband was in plain view. Before [the officer] could enter the hotel room to [seize the heroin], he needed to have a lawful right of access to defendant and the heroin."]; *G&G Jewelry* v. *City of Oakland* (9th Cir. 1993) 989 F.2d 1093, 1101 ["[Even [when] contraband plainly can be seen and identified from outside the premises, a warrantless entry into those premises to seize the contraband would not be justified absent exigent circumstances"].

[43] *Horton* v. *California* (1990) 496 U.S. 128, 137.

[44] See *United States* v. *Ross* (1982) 456 U.S. 798, 809; *People* v. *Carpenter* (1997) 15 Cal.4th 312, 365 ["The police had probable cause to search the vehicle. Under the 'automobile exception' to the warrant requirement, they did not need a warrant at all."]; *People* v. *Superior Court* (*Nasmeh)* (2007) 151 Cal.App.4th 85, 100 ["When the police have probable cause to believe an automobile contains contraband or evidence they may search the automobile and the containers within it without a warrant."]. ALSO SEE *Texas* v. *Brown* (1983) 460 U.S. 730, 738, fn.4 ["Alternatively, police may need no justification under the Fourth Amendment for their access to an item, such as when property is left in a public place."].

[45] 32 Cal.App.4th 286.

[46] **NOTE**: The court also ruled that even if there was no reason for the officers to believe the woman had seen them, they would still have had a right to access the room because they could have reasonably believed that a drug deal "was soon to be completed, and that the purchaser or seller was about to leave the hotel room.