Plain View

"It is well established that under certain circumstances the police may seize evidence in plain view without a warrant."[1]

There is general agreement that the plain view rule is fairly simple to understand and apply. Even the words "plain view" seem to to saying, "If it's visible, it's seizable!" Of course, it is not that simple, but it's not very complicated either. Specifically, evidence is deemed in plain view—and can therefore be seized without a warrant—if the following circumstances existed:

(1) **Lawful vantage point**: The officers' initial viewing of the evidence must have been "lawful."

(2) **Probable cause**: Before seizing the evidence, officers must have had probable cause to believe it was, in fact, evidence of a crime

(3) **Lawful access**: Officers must have had a legal right to enter the place in which the evidence was located.

If these circumstances exist, the officers' act of observing the evidence does not constitute a "search" because no one can reasonably expect privacy in something that is so readily exposed; and their act of seizing the evidence is lawful because the plain view rule constitutes an exception to the warrant requirement.[2] As the United States Supreme Court explained, "The seizure of property in plain view involves no invasion of privacy and is presumptively reasonable."[3]

Lawful Vantage Point

The requirement that the officers' initial observation of the evidence must have been "lawful" is satisfied if the officers did not violate the suspect's Fourth Amendment rights by getting into the position from which they saw it.[4] "The plain view doctrine," said the Supreme Court, "is grounded on the proposition that once police are lawfully in a position to observe an item first-hand, its owner's privacy interest in that item is lost."[5]

Before we discuss the types of places from which an observation is apt to be legal, it should be noted an observation does not become an unlawful search merely because officers had to make some effort to see the evidence, so long as the effort was reasonably foreseeable. Thus, it is unimportant that officers could not initially see the evidence without using a common visual aid (such as a flashlight or binoculars),[6] or without bending down or elevating themselves somewhat. Thus, the D.C. Circuit explained, "That a policeman may have to crane his neck, or bend over, or squat, does not render the [plain view] doctrine inapplicable, so long as what he saw would have been visible to any curious passerby."[7] Similarly, the Court of Appeal ruled that merely looking over the five-foot fence from a neighbor's yard "disclosed no more than what was in plain view."[8]

In contrast, the courts have ruled that officers "searched" a high-rise apartment when they could only see the evidence inside by using high-power

[1] *Coolidge v. New Hampshire* (1971) 403 U.S. 443, 465.

[2] See *People v. Kilpatrick* (1980) 105 Cal.App.3d 401, 408; *People v. Albritton* (1982) 138 Cal.App.3d 79, 85, fn.1.

[3] *Payton v. New York* (1980) 445 U.S. 573, 587.

[4] See *Minnesota v. Dickerson* (1993) 508 U.S. 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'"]; *Washington v. Chrisman* (1982) 455 U.S. 1, 5-6 ["The 'plain view' exception to the Fourth Amendment warrant requirement permits a law enforcement officer to seize what clearly is incriminating evidence or contraband when it is discovered in a place where the officer has a right to be."]; *People v. Bradford* (1997) 15 Cal.4th 1229, 1295.

[5] *Illinois v. Andreas* (1983) 463 U.S. 765, 771.

[6] See *On Lee v. United States* (1952) 343 U.S. 747, 754; *Texas v. Brown* (1983) 460 U.S. 730, 740; *People v. Superior Court (Mata)* (1970) 3 Cal.App.3d 636, 639; *People v. St. Amour* (1980) 104 Cal.App.3d 886, 893 ["So long as the object which is viewed is perceptible to the naked eye … the government may use technological aid of whatever type without infringing on the person's Fourth Amendment rights."].

[7] *James v. U.S.* (D.C. Cir. 1969) 418 F.2d 1150, 1151.

[8] *People v. Superior Court (Stroud)* (1974) 37 Cal.App.3d 836, 839.

binoculars from a hilltop about 250 yards away,[9] or when officers "had to squeeze into a narrow area between the neighbor's garage and defendant's fence" and that area was almost blocked by foliage.[10]

OBSERVATION FROM PUBLIC PLACE: The most obvious example of a lawful vantage point is a place that is accessible to the general public.[11] Thus, the Supreme Court pointed out that "the police may see what may be seen from a public vantage point where they have a right to be,"[12] and that officers "cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public."[13]

OBSERVATION DURING DETENTION OR ARREST: An observation that occurred in the course of a detention is lawful if officers had sufficient grounds for the detention or arrest and it was reasonable in its scope and intensity.[14] For example, in *People v. Sandoval*[15] the Court of Appeal ruled that an officer, having made a lawful car stop, lawfully observed drugs and paraphernalia in the passenger compartment because "the officer clearly had a right to be in the position to have that view."

OBSERVATION DURING PAT SEARCH: In a variation of the plain view rule (i.e., the "plain feel" rule), officers who feel evidence while conducting a pat search are deemed to be in a lawful vantage point if they had grounds for the search.[16] In such cases, said the Third Circuit, the "proper question" is whether the officer detected the evidence "in a manner consistent with a routine frisk."[17] Or, in the words of the Supreme Court, a lawful pat search must "be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer."[18]

OBSERVATION WHILE EXECUTING A SEARCH WARRANT: Officers who are executing search warrants often find evidence that was not listed in the warrant. When this happens, the discovery will be deemed lawful under the plain view rule if they found the evidence while looking in places or things in which any of the listed evidence might have been found. For example, in *Skelton v. Superior Court*[19] officers in La Palma were searching for a wedding ring and carving set which were taken in a burglary. While searching for these items, they also found some watches and rings that matched the descriptions of items taken in related burglaries. 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 therefore "the officers had the authority to conduct an intensive search of the entire house."

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[9] *People v. Arno* (1979) 90 Cal.App.3d 505. Also see *People v. Henderson* (1990) 220 Cal.App.3d 1632, 1649.

[10] *People v. Fly* (1973) 34 Cal.App.3d 665, 667. Also see *Pate v. Municipal Court* (1970) 11 Cal.App.3d 721, 724 [officer climbed over a fence onto a trellis, then walked along the trellis for a considerable distance]; *Jacobs v. Superior Court* (1973) 36 Cal.App.3d 489 [the officer had to step onto a small planter area between the building and the parking lot]; *Lorenzana v. Superior Court* (1973) 9 Cal.3d 626, 636 [officer had to traverse some bushes that constituted a "significant hindrance"].

[11] See *Katz v. United States* (1967) 389 U.S. 347, 351 ["What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection."]; *Florida v. Riley* (1989) 488 U.S. 445, 449-50 ["Thus the police, like the public, would have been free to inspect the backyard garden from the street if their view had been unobstructed."]; *People v. Deutsch* (1996) 44 Cal.App.4th 1224, 1229 ["Information or activities which are exposed to public view cannot be characterized as something in which a person has a subjective expectation of privacy."].

[12] *Florida v. Riley* (1989) 488 U.S. 445, 449.

[13] *California v. Greenwood* (1988) 486 U.S. 35, 41.

[14] See *United States v. Hensley* (1985) 469 U.S. 221, 235; *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."].

[15] (1985) 164 Cal.App.3d 958.

[16] See *People v. Avila* (1997) 58 Cal.App.4th 1069, 1075 ["However, if contraband is found while performing a permissible *Terry* search, the officer cannot be expected to ignore that contraband."]; *People v. Armenta* (1968) 268 Cal.App.2d 248, 253 ["The officer was not required to blind himself to the heroin simply because it was disconnected from the initial purpose of the search."]; *People v. Garcia* (1969) 274 Cal.App.2d 100, 106-7 ["[T]he manner of conducting an otherwise justified precautionary search is of vital importance."].

[17] *U.S. v. Yamba* (3rd Cir. 2007) 506 F.3d 251, 259.

[18] *Terry v. Ohio* (1968) 392 U.S. 1 29.

[19] (1969) 1 Cal.3d 144. Also see *Horton v. California* (1990) 496 U.S. 128, 142.

Similarly, in *U.S. v. Smith*,[20] officers in Tampa obtained a warrant to search the home of Smith's mother for drugs and indicia. In the course of the search, they opened Smith's lockbox and found child pornography. In ruling that the pornography was discovered lawfully, the court said, "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*[21] 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 others and went to the garage" where he checked the VIN numbers on several cars and learned that four were stolen. On appeal, prosecutors argued that the detective's initial viewing of the VIN numbers was lawful, and therefore the plain view rule applied. But the court disagreed, ruling the detective's observation of the VIN numbers was unlawful because none of the evidence listed in the search warrant could reasonably have been found in the areas in which the VIN numbers were located.

OBSERVATION DURING WARRANTLESS ENTRY: In a similar vein, officers may seize evidence inside a residence if (1) they were lawfully on the premises (e.g., exigent circumstances, consentual entry, execution of an arrest warrant), and (2) they discovered the evidence while they were carrying out their lawful duties. For example, if the officers' entry into a living room was consensual (e.g., a knock and talk), and if they saw drugs in the room, their observation would be deemed lawful because they had been invited into that room. But if they saw the evidence by opening a container in the living room or while wandering into another room, the observations would be unlawful.

A good example of such an unlawful observation is found in *Arizona v. Hicks*[22] in which officers had entered Hicks' apartment without a warrant because someone in his apartment had fired a shot through the floor, injuring an occupant in the apartment below. While looking around, one of the officers noticed an expensive audio system which he thought might have been stolen because the apartment was otherwise "squalid." The officer then confirmed his suspicion by picking up a component, writing down the serial number, and running it through a police database. Although the U.S. Supreme Court ruled that the entry into the apartment was lawful, it ruled that the serial number was not in plain view because the officer could not have seen it without doing something (picking up the component) that went beyond the objective of the entry, which was to apprehend the shooter and look for any other injured people.

OBSERVATION DURING ENTRY INTO YARDS: As with warrantless entries into residences, warrantless entries into a suspect's front, back, or side yards may fall within an exception to the warrant requirement (e.g., exigent circumstances, consent), in which case their observations would be lawful. In the absence of a warrant, officers may still walk to the front door via normal access routes, then knock or otherwise announce their presence. But if no one answers the door within a reasonable time, any observations they make may be illegal if they loitered on the property or explored the grounds. As the Supreme Court explained, officers are impliedly authorized "to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave."[23]

For example, in *People v. Edelbacher*[24] the defendant shot and killed his estranged wife in Fresno County, then drove to his home in Madera County. 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. Consequently, officers took photos of the shoeprints and prosecutors used them against Edelbacher at his

[20] (11th Cir. 2006) 459 F.3d 1276.
[21] (1982) 138 Cal.App.3d 79.
[22] (1987) 480 U.S. 321.
[23] *Florida v. Jardines* (2013) __ U.S. __ [133 S.Ct. 1409, 1415].
[24] (1989) 47 Cal.3d 983.

trial. On appeal, he argued that the discovery was unlawful because the deputy had been standing on his 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."

OBSERVATION FROM ADJACENT PROPERTY: An observation of evidence in a suspect's yard or other private property is not unlawful if it was made from a neighbor's property, even if the officers were technically trespassing.[25] This is because it was the neighbor who was intruded upon—not the suspect. As the Court of Appeal observed, "[A] search does not violate the Fourth Amendment simply because police officers trespassed onto a neighbor's property when making their observations."[26]

OBSERVATION DURING COMPUTER SEARCH: Officers who are executing a warrant to search a computer will often discover unlisted data or evidence of some other crime. When this happens the discovery will be deemed lawful under the plain view rule if the file in which the evidence was found could have contained any of the data or graphics listed in the warrant. In most cases, that means every file must be read because, as the Ninth Circuit pointed out in *U.S. v. Comprehensive Drug Testing, Inc.*, unless officers read every file they would have "no way of knowing which or how many illicit files there might be or where they might be stored."[27]

Probable Cause

The second requirement for a plain view seizure is that the officers—at or before the moment they seized the evidence—must have had probable cause to believe the item was, in fact, evidence of a crime.[28] And like the other forms of proof, probable cause to seize an item in plain view may be based on direct or circumstantial proof. Examples of direct proof would include an officer's observation of a weapon that is illegal to possess,[29] a weapon used in a crime,[30] readily-identifiable drugs or drug paraphernalia,[31] readily-identifiable child pornography,[32] or property that had been reported stolen.[33]

As we will now discuss, circumstantial proof typically consists of an officer's observation of something that, based on his training and experience, appears to be seizable evidence.

INSTRUMENTALITIES OF A CRIME: Probable cause is often based on an officer's knowledge of a link between the item and a certain crime or a type of crime. The following are examples of such a link:

- A man suspected of having just robbed a bank had a large amount of cash protruding from his wallet.[34]

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[25] See *Dillon v. Superior Court* (1972) 7 Cal.3d 305, 311 [officer's observation of a marijuana garden in a fenced-in backyard was lawful where the officer viewed the garden from the second floor of the house next door whose owner had consented to the entry]; *People v. Shaw* (2002) 97 Cal.App.4th 833 [with permission of a neighbor, officers standing behind a fence looked into the common area of defendant's apartment]; *People v. Smith* (1986) 180 Cal.App.3d 72, 83-84 ["The fence surrounding Smith's (marijuana) garden was only five feet high and allowed people outside to see the activities occurring inside the garden."].

[26] *People v. Claeys* (2002) 97 Cal.App.4th 55, 59.

[27] (9th Cir. 2010) 621 F.3d 1162, 1171. Also see *U.S. v. Schesso* (9th Cir. 2013) 730 F.3d 1040, 1046.

[28] (7th Cir. 2010) 592 F.3d 779, 785. Also see *U.S. v. Stabile* (3rd Cir. 2011) 633 F.3d 219, 239 ["Detective Vanadia's decision to highlight and view the contents of the Kazvid folder was objectively reasonable because criminals can easily alter file names and file extensions to conceal contraband."].

[29] See *Arizona v. Hicks* (1987) 480 U.S. 321, 326; *People v. Stokes* (1990) 224 Cal.App.3d 715, 719. **NOTE**: In *Coolidge v. New Hampshire* (1971) 403 U.S. 443, 466 a plurality of the Supreme Court said that officers may not seize evidence in plain view unless it was "immediately apparent" that the item was evidence of a crime. Subsequently, the Court observed that the term "immediately apparent" was "very likely an unhappy choice of words, since it can be taken to imply that an unduly high degree of certainty as to the incriminatory character of evidence is necessary for an application of the 'plain view' doctrine." *Texas v. Brown* (1983) 460 U.S. 730, 741. The Court then ruled that only probable cause is required. At p. 742. Also see *Minnesota v. Dickerson* (1993) 508 U.S. 366, 375; *People v. Clark* (1989) 212 Cal.App.3d 1233, 1238.

[30] *Texas v. Brown* (1983) 460 U.S. 730, 742. Also see *People v. Stokes* (1990) 224 Cal.App.3d 715, 719.

[31] See *People v. McNeal* (1979) 90 CA3 830, 841 [nunchucks].

[32] *Horton v. California* (1990) 496 U.S. 128, 131 [stun gun used in robbery]; *People v. Bradford* (1997) 15 Cal.4th 1229, 1296.

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

[34] See *U.S. v. Benoit* (10th Cir.2013) 713 F.3d 1, 11.

- A suspect in an armed robbery or shooting possessed firearms, ammunition, shell casings;[35] clothing that matched those of the perpetrator;[36] a mask (the perpetrator wore one);[37] a handcuff key (the victim had been handcuffed).[38]
- A murder suspect possessed bailing wire (bailing wire had been used to bind the victims).[39]
- A murder suspect possessed "cut-off panty hose" (the officer knew that the murderers had worn masks and that cut-off panty hose are used as masks).[40]
- A man who had solicited the murder of his estranged wife possessed a hand-drawn diagram of his wife's home and lighting system.[41]
- A burglary suspect possessed pillow cases filled with "large, bulky" items[42] or burglary tools.[43]
- A suspected drug dealer possessed "a bundle of small, plastic baggies";[44] a "big stack or wad of bills";[45] firearms.[46]

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*[47] the court ruled that officers had probable cause to seize an air compressor in plain view 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. Similarly, in *People v. Stokes*[48] two Hayward police officers in an unmarked car were driving through a mobile home park that was occupied mainly by senior citizens. As they turned a corner, they saw Stokes standing in the middle of the street, holding a vido recorder. The officers recognized Stokes as a local burglar, they noticed that he kept looking around and appeared to be nervous, that he was carrying a screwdriver, and that several homes in the park had recently been burglarized. Although the officers had no direct evidence that the recorder had been stolen, the court ruled that the circumstantial evidence was quite sufficient.

Other circumstantial evidence that may suffice 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 the type of property that is frequently stolen, such as TVs, cell phones, tablets, firearms, and jewelry.[49]

POSSESSION OF DRUGS, PARAPHERNALIA: Officers frequently develop probable cause to seize a container in the possession of a drug user or trafficker based entirely on circumstantial evidence that it contained drugs, paraphernalia, or evidence of sales.[50] As the court observed in *People v. Holt*, "Courts have

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[35] See *Colorado v. Bannister* (1980) 449 U.S. 1, 2; *Christians v. Chester* (1990) 218 Cal.App.3d 273, 275.
[36] *U.S. v. Muhammad* (8th Cir. 2010) 604 F.3d 1022, 1027-28.
[37] See *People v. Rico* (1979) 97 Cal.App.3d 124, 133; *People v. Superior Court (Orozco)* (1981) 121 CA3 395, 404,
[38] *Warden v. Hayden* (1967) 387 U.S. 294.
[39] *People v. Jardine* (1981) 116 Cal.App.3d 907, 913.
[40] *Horton v. California* (1990) 496 U.S. 128, 130-1, 142.
[41] *People v. Easley* (1983) 34 Cal.3d 858, 872.
[42] *People v. Hill* (1974) 12 Cal.3d 731, 763.
[43] *People v. Miley* (1984) 158 Cal.App.3d 25, 35-36.
[44] *People v. Vasquez* (1983) 138 Cal.App.3d 995, 999-1000.
[45] *People v. Koelzer* (1963) 222 Cal.App.3d 20, 25; *People v. Mack* (1977) 66 Cal.App.3d 839, 859.
[46] *People v. Taylor* (1975) 46 Cal.App.3d 513, 518.
[47] (1987) 196 Cal.App.3d 1032.
[49] (1990) 224 Cal.App.3d 715.
[49] See *In re Donald L.* (1978) 81 Cal.App.3d 770, 775 [the officer "could have reasonably believed that the assorted objects of jewelry, including women's jewelry, were probably stolen"]; *In re Curtis T.* (1989) 214 Cal.App.3d 1391, 1398; *People v. Sedillo* (1982) 135 Cal.App.3d 616, 623; *People v. Williams* (1988) 198 Cal.App.3d 873, 890; *People v. McGraw* (1981) 119 Cal.App.3d 582, 603; *People v. Atkins* (1982) 128 Cal.App.3d 564, 570; *People v. Garcia* (1981) 121 Cal.App.3d 239, 246; *People v. Superior Court (Thomas)* (1970) 9 Cal.App.3d 203, 210; *People v. Jennings* (1965) 231 Cal.App.2d 744.
[50] See *Texas v. Brown* (1983) 460 U.S. 730, 743 ["[T]he distinctive character of the balloon itself spoke volumes as to its contents—particularly to the trained eye of the officer."]; *United States v. Jacobsen* (1984) 466 U.S. 109, 121 ["it was just like a balloon the distinctive character of which spoke volumes as to its contents"]; *People v. Nonnette* (1990) 221 Cal.App3d 659, 666 [bundle of tiny baggies of the type used for drugs]; *People v. Chapman* (1990) 224 Cal.App.3d 253, 257 ["Probable cause to believe a container holds contraband may be adequately afforded by its shape, design, and the manner in which it is carried."].

recognized certain containers as distinctive drug carrying devices which may be seized upon observation: heroin balloons, paper bindles and marijuana smelling brick-shaped packages."[51]

Probable cause may also be based on how the object felt; i.e., "plain feel."[52] For example, in *People v. Lee*[53] 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

Finally, even if officers could see the evidence and had probable cause to believe it was seizable, they may not enter the suspect's home or other place in which he had a reasonable expectation of privacy unless they had a legal right to enter; e.g., a vehicle in which the evidence was located.[54] Thus, in discussing the plain view rule, the Supreme Court explained that "not 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."[55] Or, as Justice Grodin observed in *People v. Superior Court (Spielman),* "Seeing something in plain view does not, of course, dispose, ipso facto, of the problem of crossing constitutionally protected thresholds. Those who thoughtlessly overapply the plain view doctrine to every situation where there is a visual open view have not yet learned the simple lesson long since mastered by old hands at the burlesque houses, 'You can't touch everything you can see.'"[56] Note that officers will always have lawful access to evidence located in a public place or a vehicle located in a public place.[57] In addition, they may enter a residence and seize evidence observed from the outside if they were aware that a resident was subject to a parole or probation search or if they reasonably believed the evidence would be destroyed if they delayed seizing it.

For example, in *People v. Ortiz*[58] an officer happened to be walking by the open door of a hotel room when he saw a woman inside, and she was "counting out tinfoil bindles and placing them on a table." Having probable cause to believe the bindles contained heroin, the officer went inside, seized the bindles, and arrested the woman and the other occupants. In ruling that the officer had lawful access to the evidence, the court pointed out that, because he was initially 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." Consequently, the court ruled that the officer had a legal right to enter because "it was reasonable for [him] to believe the contraband he saw in front of defendant and the woman was in imminent danger of being destroyed. POV

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[51] 212 Cal.App.3d 1200, 1205.

[52] See *People v. Dibb* (1995) 37 Cal.App.4th 832, 836-37 ["The critical question is not whether [the officer] could identify the object as contraband based on only the 'plain feel' of the object, but whether the totality of circumstances made it immediately apparent to [the officer] when he first felt the lump that the object was contraband."]; *People v. Chavers* (1983) 33 Cal.3d 462, 471 ["[T]he knowledge [gained by the officer through sense of touch] was as meaningful and accurate as if the container had been transparent and he had seen the gun within the container."].

[53] (1987) 194 Cal.App.3d 975.

[54] See *Texas v. Brown* (1983) 460 U.S. 730, 738 ["[P]lain view provides grounds for seizure of an item when an officer's access to an object has some prior justification under the Fourth Amendment."]; *United States v. Ross* (1982) 456 U.S. 798, 809; *People v. Ortiz* (1995) 32 Cal.App.4th 286, 291 ["Before Officer Forsythe could enter the hotel room to arrest defendant and seize the tinfoil bindles containing heroin, he needed to have a lawful right of access to defendant and the heroin."]; *U.S. v. Davis* (4th Cir. 2012) 690 F.3d 226, 234 ["the lawful access requirement is intended to clarify that police may not enter a premises to make a warrantless seizure, even if they could otherwise see (from a lawful vantage point) that there was contraband in plain sight"].

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

[56] (1980) 102 Cal.App.3d 342, 348, fn.1 (conc. opn. Grodin, J.).

[57] See *United States v. Ross* (1982) 456 U.S. 798, 809; *People v. Superior Court* (*Nasmeh)* (2007) 151 Cal.App.4th 85, 100.

[58] (1995) 32 Cal.App.4th 286.