

Plain View Exception to 4th Amendment Search & Seizure Warrant Requirements

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The 4th Amendment protection against unlawful search and seizure is fairly broad. Violations of the protections under 4th Amendment and/or New Mexico Constitution, Article II, Section 10 are perhaps the most common basis for suppression of evidence and the dismissal of criminal actions. However, there are limits to search and seizure protections. Among the most commonly invoked is the plain view doctrine.

In most cases, particularly in the search of a home or vehicle, a warrant is required. The plain view doctrine gives police the right to seize evidence in plain view without a warrant, as long as three conditions are met:

- The officer did not violate the Fourth Amendment in arriving at the place from which the object could be plainly viewed.
- The object's incriminating character must be immediately apparent.
- The officer must have a lawful right of access to the object itself.

These conditions are set forth in the 1990 U.S. Supreme Court case *Horton v. California*. They are commonly known as the "three-prong Horton test."

Prior to the *Horton* case, plain view evidence needed to be discovered "inadvertently." This is no longer the case, and police officers may actively look for plain view evidence as long as they do not violate the Fourth Amendment in doing so. In other words, if they in the home or business legally, stopped the vehicle legally, or otherwise encountered a defendant on his or her property legally, then they may conduct a plain view search of the subject premises.

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Naturally, the plain view doctrine is often abused by law enforcement who will take the opportunity to conduct a broad and invasive search well beyond the scope of the plain view doctrine. In addition, it is critical that law enforcement is legally on the premises or otherwise engaged with the citizen.

Illegal presence is in fact the most common basis for challenging a plain view search. This is not uncommon in cases involving vehicle searches where the car was stopped illegally from the inception.

The search may also be challenged if the incriminating nature of the item seized was not immediately apparent (i.e. the officer felt a hard item in your pocket but knew that it was not a weapon and did not otherwise know of its incriminating nature). It is also worth noting that for an object's "incriminating character" to be "immediately apparent," an officer is not allowed to move the object in order to further inspect the item (i.e. turning the item over to record its serial number which shows that it is stolen).

The case-law on search and seizure and the plain view exceptions are expansive. Each case must be closely evaluated to determine the possibility of a successful challenge. It is important to provide as much information as possible to your criminal defense attorney. It is equally important to provide accurate information so that your attorney is not wasting time on baseless challenges when his or her time could be more productively spent on other aspects of your defense.

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