DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 145
September 16, 1990

PLAIN VIEW SEIZURE OF EVIDENCE
NOT DISCOVERED "INADVERTENTLY"

Reference: Terry Brice Horton
v.
California

United State Supreme Court
58 LW 4694 (No. 88-7164)
June 4, 1990

FACTS:

The treasurer of the San Jose Coin Club was the victim of an armed robbery where rings, cash and coins were stolen. Two masked men committed the robbery. One was armed with a machine gun and the other had a stun gun. Police identified Horton as one of the robbers and, based on probable cause, obtained a warrant to search his residence. The warrant authorized only a search for proceeds of the robbery, including three rings.

Pursuant to the warrant, police searched Horton's residence, but did not locate the stolen property. During the course of the search, police found weapons (not specified in the warrant) and seized them. An Uzi machine gun, a .38 caliber revolver, two stun guns, a handcuff key, a San Jose Coin Club advertising brochure, and a few items of clothing were seized. Other handguns and rifles were observed during the search but were not seized, because the officers had no probable cause to believe they were associated with criminal activity.

ISSUE:

Was the warrantless seizure of the evidence (guns, clothing, etc.) prohibited by the Fourth Amendment if the discovery was not inadvertent?

HELD: No.

REASONING:

1. If an article is already in plain view, neither its observation nor its seizure would involve an invasion of privacy.

2. The fact that an officer is interested in an item of evidence and fully expects to find it in the course of a search should not invalidate its seizure if the search is confined in area and duration by the terms of a warrant or a valid exception to the warrant requirement. (emphasis added)

3. In this case, the scope of the search was not enlarged in the slightest by the omission of any reference to the weapons in the warrant.

4. The items seized from Horton's home were discovered during a lawful search authorized by a valid warrant. When they were discovered, it was immediately apparent to officers that these items constituted incriminating evidence. The search was authorized by the warrant and the seizure by the "plain view" doctrine.

NOTES:

In this case, the United States Supreme Court has indicated that the "plain view" doctrine does not require that evidence seized during a "lawful" search be discovered inadvertently. The Alaska Supreme Court has addressed similar issues in several other cases. In State v. Davenport, 510 P.2d 78 (no Legal Bulletin), police had a warrant to search for a weapon, but before it was served they were told that certain stolen furs might be on the premises. No weapons were found, but seven furs were identified as stolen property and were recovered. Another reference to be reviewed is Deal v. State, 626 P.2d 1073 (no Legal Bulletin).

Review of Section K, Plain View, of the Alaska Legal Brief Manual is encouraged and, in particular, the following:

Texas v. Brown, Legal Bulletin No. 68
Klenke v. State, Legal Bulletin No. 15
Arizona v. Hicks, Legal Bulletin No. 110
Maryland v. Buie, Legal Bulletin No. 139
Earley v. State, Legal Bulletin No. 140

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

Add this case to Section K of your Contents and Text. File Legal Bulletin No. 145 numerically under Section R of the manual.