



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 110
March 21, 1987

PROBABLE CAUSE REQUIRED TO SEIZE
EVIDENCE IN PLAIN VIEW RESULTING
FROM EMERGENCY ENTRY

Reference: Arizona
v.
James Thomas Hicks

U.S. Supreme Court
55 USLW 4258 (No. 85-1027)
March 3, 1987

FACTS:

A bullet was fired through the floor of Hicks' apartment. It struck and injured a man in the apartment below. Responding officers made a warrantless entry into Hicks' apartment to search for the shooter, other victims and weapons. They found and seized three weapons, including a sawed-off rifle and a stocking-cap mask. A police officer observed two sets of expensive stereo components, which seemed "out of place." Suspecting they were stolen, he moved some of the components to read and record serial numbers. Upon calling police headquarters, the officer was informed that the stereo components had been stolen in an armed robbery. The components were seized and Hicks was indicted for the robbery. The Arizona Court of Appeals held the evidence to be inadmissible and the State appealed to the United States Supreme Court.

ISSUE:

Did the obtaining of the serial numbers constitute an additional search unrelated to the exigency?

HELD: Yes.

REASONING:

1. The initial entry and search, although warrantless, were justified by the exigent circumstance of the shooting.
2. The mere recording of the serial numbers did not constitute a seizure. Moving of the equipment, however, did constitute a "search" separate and apart from the search for the shooter, victims and weapons that was the lawful objective of police entry into the apartment.
3. The search here was valid if the "plain view" doctrine would have sustained a seizure of the equipment; there is no doubt it would have done so if the officer had probable cause to believe that the equipment was stolen. (emphasis added)

4. Probable cause is required to invoke the "plain view" doctrine as it applies to seizures.

NOTES:

The initial entry was justified as the "emergency exception" to the warrant requirement. "Plain view" consists of three distinct elements: (1) initial intrusion must be lawful, (2) evidence must be discovered inadvertently, and (3) evidence must be immediately apparent.

In this case, the initial entry was lawful due to the exigency. The stereo components were inadvertently discovered because the discovery was not the purpose of the entry. The third element--immediately apparent--cannot be justified, because the officer could not establish that he had "probable cause" to believe the equipment was stolen.

Remember--the court is not interested in "gut feelings" nor suspicions. Had the officer been aware of a recent theft involving such equipment, he could have satisfied the third element.

Review of the following cases is recommended:

Daygee v. State, Legal Bulletin No. 10--"plain view" seizure of evidence from vehicle.

Klenke v. State, Legal Bulletin No. 15--while serving valid warrant, officer may seizure items not named in the warrant if the items are in "plain view" and the police have probable cause to believe they are stolen.

Texas v. Brown, Legal Bulletin No. 68--"plain view" search of vehicle.

Mincy v. Arizona, Legal Bulletin No. 31--emergency search of murder scene.

Gallmyer v. State, Legal Bulletin No. 54--emergency entry into private residence to apprehend armed man.

Johnson v. State, Legal Beullein No. 66--emergency entry into private residence to apprehend armed man and prevent destruction of evidence of sexual assault.

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Add this case to Section C, page 2, and Section K, page 4, of your "Contents" and to C-3 and K-4 of "Text". File Legal Bulletin No. 110 numerically under Section R of the manual.