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November 2004

Valid Searches and Seizures Without Warrants

The Supreme Court stresses the importance of warrants and has repeatedly referred to searches without warrants as "exceptional." *See e.g., Johnson v. United States*, 333 U.S. 10, 14 (1948); *McDonald v. United States*, 335 U.S. 451, 453 (1948); *Camara v. Municipal Court*, 387 U.S. 523, 528 -29 (1967); *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 352 -53, 355 (1977). The Court frequently asserts that "the most basic constitutional rule in this area is that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable' under the Fourth Amendment--subject only to a few specially established and well-delineated exceptions." *Coolidge v. New Hampshire*, 403 U.S. 443, 454 -55 (1971) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)); *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 352 -53, 358 (1977).

Exceptions to the warrant requirement are said to be "jealously and carefully drawn," *Jones v. United States*, 357 U.S. 493, 499 (1958), and there must be "a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative." *McDonald v. United States*, 335 U.S. 451, 456 (1948).

A warrantless search is not unconstitutional when probable cause to search exists and the government satisfies its burden of demonstrating that the circumstances of the situation made a warrantless search imperative. *State v. Allison*, 298 N.C. 135, 257 S.E.2d 417 (1979). Some of the more significant exceptions to the warrant requirement are discussed below.

Exigent Circumstances. A warrantless search is permitted when probable cause to search exists and officers reasonably believe that contraband or other evidence may be destroyed or removed before a search warrant could be obtained. *Mincey v. Arizona*, 437 U.S. 385 (1978). Likewise, exigent circumstances also permit a warrantless entry or search while a warrant is being obtained, and may excuse the failure to knock and announcement" before entry. *United States Cephas*, 254 F.3d 488 (4th Cir. 2001); *State v. Harris*, 145 N.C. App. 734, 562 S.E.2d 499 (2001); *State v. Woods*, 136 N.C. App. 630, 571 S.E.2d 592 (2000).

Exigent circumstances exist when there is a situation that demands immediate action necessitating unusual action and circumvention of usual procedures. *State v. Nance*, 149 N.C. App. 734, 562 S.E.2d 557 (2002).The state has the burden of proving that the exigencies of the situation made search without a warrant imperative. *State v. Allison*, 298 N.C. 135, 257 S.E.2d 417 (1979).

Circumstances which may be sufficient to qualify as exigent for purposes of a warrant exception include the probable destruction of evidence, such as controlled substances. *State v. Nowell*, 144 N.C. App. 636, 550 S.E.2d 807 (2001). The exigent circumstances exception may apply where police are responding to an emergency or where there is a

compelling need for official action and no time to secure a warrant. *State v. Phillips*, 151 N.C. App. 185, 565 S.E.2d 697 (2002).

Search Incident to Arrest. A warrantless search may be conducted incident to a lawful arrest. If probable cause to arrest exists prior to the search and the arrest is permitted by law. *State v. Collins*, 585 S.E.2d 481 (N.C. App. 2003). The common-law rule permitting searches of the person of an arrestee as an incident to the arrest has occasioned little controversy. *See Weeks v. United States*, 232 U.S. 383, 392 (1914); *Carroll v. United States*, 267 U.S. 132, 158 (1925); *Agnello v. United States*, 269 U.S. 20, 30 (1925). The dispute has centered around the scope of the search as it extends beyond the person to the area in which the person is arrested, most commonly either his premises or his vehicle.

Under the exception for a search incident to arrest, an officer may conduct a warrantless search of the arrestee's person and the area within the arrestee's immediate control. *State v. Logner*, 148 N.C. App. 135, 557 S.E.2d 191 (2001). In the course of a search incident to arrest, police may take from an arrestee any property which the arrestee may have about him, and which is connected with the crime charged or which may be required as evidence. *State v. Goode*, 350 N.C. 247, 512 S.E.2d 414 (1999).

The legitimacy of a search incident to arrest rests on the validity of the underlying arrest. However, a search made before an actual arrest may nevertheless be justified as a search incident to arrest if the arrest is made contemporaneously with the search and if the validity of the arrest does not depend on the fruits of the search incident to it. *State. Brooks*, 337 N.C. 132, 446 S.E.d2d 579 (1994); *State v. Chadwick*, 149 N.C.App. 200, 560 S.E.2d 207 (2002).

A search incident to arrest may constitutionally be undertaken hours after the arrest. *State v.* Hopkins, 296 N.C. 673, 252 S.E.2d 755 (1979) (search conducted six hours after arrest still a lawful search) *Compare State v. McHone*, 158 N.C. App. 117, 580 S.E.2d 80 (2003) (search conducted on the day after arrest was too remote to qualify as incident to arrest).

Vehicle Searches .--In the early days of the automobile the Supreme Court created an exception for searches of vehicles, holding in *Carroll v. United States*, 267 U.S. 132 (1925), that vehicles may be searched without warrants if the officer undertaking the search has probable cause to believe that the vehicle contains contraband. The Court explained that the mobility of vehicles would allow them to be quickly moved from the jurisdiction if time were taken to obtain a warrant. *Id.* at 153. *See also Husty v. United States*, 282 U.S. 694 (1931); *Scher v. United States*, 305 U.S. 251 (1938); *Brinegar v. United States*, 338 U.S. 160 (1949). All of these cases involved contraband, but in *Chambers v. Maroney*, 399 U.S. 42 (1970), the Court, without discussion, and over Justice Harlan's dissent, id. at 55, 62, extended the rule to evidentiary searches.

Initially the vehicle search exception was based on the mobility of vehicles. Eventually, however, the Supreme Court developed a reduced privacy rationale to supplement the mobility rationale, explaining that "the configuration, use, and regulation of automobiles

often may dilute the reasonable expectation of privacy that exists with respect to differently situated property." *Arkansas v. Sanders*, 442 U.S. 753, 761 (1979). "'One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. . . . It travels public thoroughfares where both its occupants and its contents are in plain view.'" *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974) (plurality opinion), quoted in *United States v. Chadwick*, 433 U.S. 1, 12 (1977). *See also United States v. Ortiz*, 422 U.S. 891, 896 (1975); *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976); *South Dakota v. Opperman*, 428 U.S. 364, 367 -68 (1976); *Robbins v. California*, 453 U.S. 420, 424 -25 (1981); *United States v. Ross*, 456 U.S. 798, 807 n.9 (1982).

The scope of a vehicle search without a warrant is defined by the object of the search and the places in which there is probable cause to believe that it may be found. *United States v. Carter*, 300 F.3d 415 (4th Cir. 2002).

Once police have probable cause to believe there is contraband in a vehicle, they may remove it from the scene to the stationhouse in order to conduct a search, without thereby being required to obtain a warrant. Once the right to make a warrantless vehicle search has accrued, it is immaterial the police wait to conduct the search until after the vehicle has been moved. *State v. White*, 82 N.C. App. 358, 346 S.E.2d 243 (1986).

Likewise, despite the rationale underpinning the exception, immobility of the vehicle and the opportunity to procure a warrant are not relevant to the applicability of the vehicle exception. ‘‘[T]he justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant.” *Michigan v. Thomas*, 458 U.S. 259, 261 (1982). *See also Chambers v. Maroney*, 399 U.S. 42 (1970); *Texas v. White*, 423 U.S. 67 (1975); *United States v Ross*, 456 U.S. 798, 807 n.9 (1982). The Justices were evenly divided, however, on the propriety of warrantless seizure of an arrestee's automobile from a public parking lot several hours after his arrest, its transportation to a police impoundment lot, and the taking of tire casts and exterior paint scrapings. *Cardwell v. Lewis*, 417 U.S. 583 (1974). Justice Powell concurred on other grounds. *See also State v. Isleib*, 319 N.C. App. 634, 356 S.E.2d 573 (1987).

Because of the lessened expectation of privacy, inventory searches of impounded automobiles are justifiable in order to protect public safety and the owner's property, and any evidence of criminal activity discovered in the course of the inventories is admissible in court. *Cady v. Dombrowski*, 413 U.S. 433 (1973); *South Dakota v. Opperman*, 428 U.S. 364 (1976). *See also Cooper v. California*, 386 U.S. 58 (1967); *United States v. Harris*, 390 U.S. 234 (1968). Police, in conducting an inventory search of a vehicle, may open closed containers in order to inventory contents. *Colorado v. Bertine*, 479 U.S. 367 (1987).

Consent Searches. Fourth Amendment rights, like other constitutional rights, may be waived, and one may consent to search of his or her person or premises by officers who have not complied with the Amendment. *Amos v. United States*, 255 U.S. 313 (1921); *Zap v. United States*, 328 U.S. 624 (1946); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). The burden is on the prosecution to prove the voluntariness of the consent, *Bumper v. North Carolina*, 391 U.S. 543 (1968), and awareness of the right of choice. *Johnson v. United States*, 333 U.S. 10, 13 (1948).

Reviewing courts must determine on the basis of the totality of the circumstances whether consent has been freely given or has been coerced. Actual knowledge of the right to refuse consent is not essential to the issue of voluntariness, and therefore police are not required to acquaint a person with his rights, as through a Fourth Amendment version of Miranda warnings. *Schneckloth v. Bustamonte*, 412 U.S. 218, 231 -33 (1973); *State v. Steen*, 352 N.C. 227, 536 S.E.2d 1 (2000). But consent will not be regarded as voluntary when the officer asserts his official status and claim of right and the occupant yields to these factors rather than makes his own determination to admit officers. *Amos v. United States*, 255 U.S. 313 (1921); *Johnson v. United States*, 333 U.S. 10 (1948); *Bumper v. North Carolina*, 391 U.S. 543 (1968).

When consent is obtained through the deception of an undercover officer or an informer gaining admission without, of course, advising a suspect who he is, the suspect has simply assumed the risk that an invitee would betray him, and evidence obtained through the deception is admissible. *Lee v. United States*, 343 U.S. 747 (1952); *Lopez v. United States*, 373 U.S. 427 (1963); *Hoffa v. United States*, 385 U.S. 293 (1966); *Lewis v. United States*, 385 U.S. 206 (1966); *United States v. White*, 401 U.S. 745 (1971).

Consent issues often arise in situations where the consenting party does not speak English or is not a native English speaker. Likewise, a person's below normal mental capacity is a factor relevant to determining whether consent is knowing and intelligent. *State v. James*, 118 N.C. App. 221, 454 S.E.2d 858 (1995).

Additional issues arise in determining the validity of consent to search when consent is given not by the suspect but by a third party. In early cases, third party consent was deemed sufficient if that party "possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected." *United States v. Matlock*, 415 U.S. 164, 171 (1974) (valid consent by woman with whom defendant was living and sharing the bedroom searched). *See also Chapman v. United States*, 365 U.S. 610 (1961) (landlord's consent insufficient); *Stoner v. California*, 376 U.S. 483 (1964) (hotel desk clerk lacked authority to consent to search of guest's room); *Frazier v. Culp*, 394 U.S. 731 (1969) (joint user of duffel bag had authority to consent to search). Now, however, actual common authority over the premises is no longer required; it is enough if the searching officer had a reasonable but mistaken belief that the third party had common authority and could consent to the search. *Illinois v. Rodriguez*, 497 U.S. 177 (1990). *See also Florida v. Jimeno*, 500 U.S. 248, 251 (1991) (it was "objectively reasonable" for officer to believe that suspect's consent to search his car for narcotics included consent to search containers found within the car); *State v. Garner*, 340 N.C. 573, 459 S.E.2d 718

(1985); *see also State v. Weathers*, 339 N.C. 441, 451 S.E.2d 266 (1994) (where two or more persons share a reasonable expectation of privacy in the same place, either party may consent)..

Border Searches. "That searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border, should, by now, require no extended demonstration." *United States v. Ramsey*, 431 U.S. 606, 616 (1977) (sustaining search of incoming mail). *See also Illinois v. Andreas*, 463 U.S. 765 (1983) (opening by customs inspector of locked container shipped from abroad). Authorized by the First Congress, Act of July 31, 1789, ch.5, Sec. Sec. 23, Sec. 24, 1 Stat. 43. See 19 U.S.C. Sec. Sec. 507, 1581, 1582, the customs search in these circumstances requires no warrant, no probable cause, not even the showing of some degree of suspicion. The fact that a person or item has entered the United States from outside suffices to endow a border search with the reasonableness required by the Fourth Amendment. No additional requirement of probable cause is necessary. *State v. Rirard*, 57 N.C. App. 672, 292 S.E.2d 174 (1982).

Inland stops and searches in areas away from the borders are a different matter altogether. Thus, in *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973). the Court held that a warrantless stop and search of defendant's automobile on a highway some 20 miles from the border by a roving patrol lacking probable cause to believe that the vehicle contained illegal aliens violated the Fourth Amendment.

"Open Fields." In *Hester v. United States*, 265 U.S. 57 (1924), the Supreme Court held that the Fourth Amendment did not protect "open fields" and that, therefore, police searches in such areas as pastures, wooded areas, open water, and vacant lots need not comply with the requirements of warrants and probable cause. Invoking *Hester*'s reliance on the literal wording of the Fourth Amendment (open fields are not "effects", the Court ruled that the open fields exception applies to fields that are fenced and posted., in *Oliver v. United States*, 466 U.S. 170 (1984). "[A]n individual may not legitimately demand privacy for activities conducted out of doors in fields, except in the area immediately surrounding the home." *Id.* at 178.

An individual cannot demand privacy for activities conducted within outbuildings and visible by trespassers peering into the buildings from just outside. *United States v. Dunn*, 480 U.S. 294 (1987) (space immediately outside a barn, accessible only after crossing a series of "ranch-style" fences and situated one-half mile from the public road, constitutes unprotected "open field").

Activities within the curtilage are nonetheless still entitled to some Fourth Amendment protection. The Court has described four considerations for determining whether an area falls within the curtilage: the proximity to the home, the presence of an enclosure also surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to shield the area from view of passersby. *United States v. Dunn*, 480 U.S. 294 (1987) (barn 50 yards outside fence surrounding home, used for processing

chemicals, and separated from public access only by series of livestock fences, by chained and locked driveway, and by one-half mile's distance, is not within curtilage).

Naked-eye inspection from helicopters flying overhead contravenes no reasonable expectation of privacy. *Florida v. Riley*, 488 U.S. 445 (1989) (view through partially open roof of greenhouse). And aerial photography of commercial facilities secured from ground-level public view is permissible, the Court finding such spaces more analogous to open fields than to the curtilage of a dwelling. *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986).

"Plain View." --Somewhat similar in rationale is the rule that objects falling in the "plain view" of an officer who has a right to be in the position to have that view are subject to seizure without a warrant *Washington v. Chrisman*, 455 U.S. 1 (1982) (officer lawfully in dorm room may seize marijuana seeds and pipe in open view*); United States v. Santana*, 427 U.S. 38 (1976) ("plain view" justification for officers to enter home to arrest after observing defendant standing in open doorway); *Harris v. United States*, 390 U.S. 234 (1968) (officer who opened door of impounded automobile and saw evidence in plain view properly seized it); *Ker v. California*, 374 U.S. 23 (1963) (officers entered premises without warrant to make arrest because of exigent circumstances seized evidence in plain sight). *Cf. Coolidge v. New Hampshire*, 403 U.S. 443, 464 -73 (1971), and id. at 510 (Justice White dissenting). *Maryland v. Buie*, 494 U.S. 325 (1990) (items seized in plain view during protective sweep of home incident to arrest); *Texas v. Brown*, 460 U.S. 730 (1983) (contraband on car seat in plain view of officer who had stopped car and asked for driver's license); *New York v. Class*, 475 U.S. 106 (1986) (evidence seen while looking for vehicle identification number).

A seizure is lawful under the plain view doctrine where the officer was in a place he or she had a right to be at the time the evidence was discovered and it is immediately apparent that the items observed are evidence of a crime. *State v. Bone*, 354 N.C.C. 1, 550 S.E.2d 482 (2001); *State v. Mickey*, 347 N.C. 508, 495 S.E.2d 669 (1998); *State v. Harper*, 158 N.C. App. 595, 582 S.E.2d 62 (2003). In the plain view context, the phrase “immediately apparent” is satisfied only where the police have probable cause to believe that what they have come upon is evidence of a crime. *State v. Graves*, 135 N.C. App. 216, 519 S.E.2d 779 (1999). Officers must have probable cause to believe that items in plain view are contraband before they may seize them. *Arizona v. Hicks*, 480 U.S. 321 (1987) (police lawfully in apartment to investigate shooting lacked probable cause to inspect expensive stereo equipment to record serial numbers).

With a notable North Carolina statutory exception, there is no requirement that the discovery of evidence in plain view must be "inadvertent." *See Horton v. California*, 496 U.S. 128 (1990) (in spite of Amendment's particularity requirement, officers with warrant to search for proceeds of robbery may seize weapons of robbery in plain view). In North Carolina, however, where the seizure occurred during execution of a search warrant, the discovery must be inadvertent. N.C. Gen. Stat §15A-253.

Where an officer needs a warrant or probable cause to search and seize his lawful observation will provide grounds therefor. *Steele v. United States*, 267 U.S. 498 (1925) (officers observed contraband in view through open doorway; had probable cause to procure warrant). *Cf. Taylor v. United States*, 286 U.S. 1 (1932) (officers observed contraband in plain view in garage, warrantless entry to seize was unconstitutional). Originally, the plain view doctrine applied only to contraband but has been extended to evidence generally.

The Supreme Court has analogized from the plain view doctrine to hold that once officers have lawfully observed contraband, "the owner's privacy interest in that item is lost," and officers may reseal a container, trace its path through a controlled delivery, and seize and reopen the container without a warrant. *Illinois v. Andreas*, 463 U.S. 765, 771 (1983) (locker customs agents had opened, and which was subsequently traced). *Accord, United States v. Jacobsen*, 466 U.S. 109 (1984) (inspection of package opened by private freight carrier who notified drug agents).

The plain view doctrine is also applicable by analogy to cases in which an officer discovers contraband through the sense of touch during an otherwise lawful search. Where a police officer lawfully pats down a suspect's out clothing and feels an object whose contour or shape makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons, and if the object is contraband its warrantless seizure would be justified by the same practical considerations that inhere in the plain view doctrine. *Minnesota v. Dickerson*, 508 U.S. 366 (1993). The totality of the circumstances should be considered in determining whether the incriminating nature of the object was immediately apparent and thus probable cause existed to seize it under the plain feel doctrine. *State v. Briggs*, 140 N.C. App. 484, 536 S.E.2d 858 (2000).

Special Needs The special needs doctrine provides an additional and less specific exception to the warrant requirement. Importantly, a general interest in crime control is not a "special need" which would overcome the general prohibition against warrantless searches. *Ferguson*, 532 U.S. 67 (2001). Where the government asserts the applicability of a special needs exception, courts must undertake a context specific inquiry, examining the closely competing public and private interests advanced by the parties. *Chandler*, 520 U.S. 305 (1997).

Examples of categories of special needs exceptions include prisons and regulation of probation, and employment related drug testing.

> **Prisons and Regulation of Probation.** Searches of prison cells by prison administrators are not limited even by a reasonableness standard, the Court having held that "the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell." *Hudson v. Palmer*, 468 U.S. 517, 526 (1984). Thus, prison administrators may conduct random "shakedown" searches of inmates' cells without the need to adopt any established practice or

plan, and inmates must look to the Eighth Amendment or to tort law for redress against harassment, malicious property destruction, and the like.

Neither a warrant nor probable cause is needed for an administrative search of a probationer's home. It is enough, the Court ruled in *Griffin v. Wisconsin*, that such a search was conducted pursuant to a valid regulation that itself satisfies the Fourth Amendment's reasonableness standard (e.g., by requiring "reasonable grounds" for a search). 483 U.S. 868 (1987) (search based on information from police detective that there was or might be contraband in probationer's apartment). "A State's operation of a probation system, like its operation of a school, government office or prison, or its supervision of a regulated industry, . . . presents 'special needs' beyond normal law enforcement that may justify departures from the usual warrant and probable cause requirements." *Id.*. at 873-74. "Probation, like incarceration, is a form of criminal sanction," the Court noted, and a warrant or probable cause requirement would interfere with the "ongoing [non- adversarial] supervisory relationship" required for proper functioning of the system. *Id*. at 718, 721.

Drug Testing. In two 1989 decisions the Court held that no warrant, probable cause, or even individualized suspicion is required for mandatory drug testing of certain classes of railroad and public employees. In each case, "special needs beyond the normal need for law enforcement" were identified as justifying the drug testing. In *Skinner v. Railway Labor Executives' Ass'n,* 489 U.S. 602 (1989). the Court upheld regulations requiring railroads to administer blood, urine, and breath tests to employees involved in certain train accidents or violating certain safety rules. Upheld in *National Treasury Employees Union v. Von Raab* 489 U.S. 656 (1989) was a Customs Service screening program requiring urinalysis testing of employees seeking transfer or promotion to positions having direct involvement with drug interdiction, or to positions requiring the incumbent to carry firearms. In *Boesche*, 111 N.C. App. 149, 432 S.E.2d 157 (1993), the North Carolina Court of Appeals applied the special needs exception to drug testing of an airport mechanic because of the strong public interest in airline passenger safety.

Exceptions to the Exclusionary Rule

Narrowing Application of the Exclusionary Rule.--For as long as we have had the exclusionary rule, critics have attacked it, challenged its premises, and disputed its morality. Several opinions voiced strong doubts about the efficacy of the rule as a deterrent and advanced public interest values in effective law enforcement and public safety as reasons to discard the rule altogether or curtail its application. *United States v. Janis*, 428 U.S. 433, 448 -54 (1976), contains a lengthy review of the literature on the deterrent effect of the rule and doubts about that effect. *See also Stone v. Powell*, 428 U.S. 465, 492 n.32 (1976).

Although the exclusionary rule has not been repudiated, its utilization has been substantially curbed. Initial decisions chipped away at the rule's application. Defendants who themselves were not subjected to illegal searches and seizures may not object to the introduction against themselves of evidence illegally obtained from co-conspirators or codefendants, *e.g., Rakas v. Illinois*, 439 U.S. 128 (1978); *United States v. Salvucci*, 448 U.S. 83 (1980); *Rawlings v. Kentucky*, 448 U.S. 98 (1980). In *United States v. Payner*, 447 U.S. 727 (1980), the Court held it impermissible for a federal court to exercise its supervisory power to police the administration of justice in the federal system to suppress otherwise admissible evidence on the ground that federal agents had flagrantly violated the Fourth Amendment rights of third parties in order to obtain evidence to use against others when the agents knew that the defendant would be unable to challenge their conduct under the Fourth Amendment.

Even a defendant whose rights have been infringed may find the evidence coming in, not as proof of guilt, but to impeach his testimony. *United States v. Havens*, 446 U.S. 620 (1980); *Walder v. United States*, 347 U.S. 62 (1954). *Cf. Agnello v. United States*, 269 U.S. 20 (1925) (now vitiated by *Havens*). The impeachment exception applies only to the defendant's own testimony, and may not be extended to use illegally obtained evidence to impeach the testimony of other defense witnesses. *James v. Illinois*, 493 U.S. 307 (1990).

Inevitable Discovery. Improperly seized evidence may be admitted under the inevitable discovery doctrine if the evidence would have been ultimately or inevitably discovered by lawful means. The government must prove by a preponderance of the evidence that the evidence would have been discovered. *Nix v. Williams*, 467 U.S. 431 (1984). Mere speculation that the evidence could have been discovered is not sufficient; the question is whether the evidence would have been discovered. *United States v. Allen*, 159 F.3d 832 (4th Cir. 1998).

Independent Source Rule. Evidence that is initially discovered or seized unlawfully may nevertheless be admissible if later acquired though a lawful "independent source." *Murray v. United States*, 487 U.S. 533 (1988). The initially obtained evidence may not be used to procure the same evidence from an alternate source.

Attenuation Doctrine Evidence obtained through a wrongful search and seizure may sometimes be used in the criminal trial, if the prosecution can show a sufficient attenuation of the link between police misconduct and obtaining of the evidence. *Wong Sun v. United States*, 371 U.S. 471, 487 -88 (1963); *Alderman v. United States*, 394 U.S. 165, 180 -85 (1969); *Brown v. Illinois*, 422 U.S. 590 (1975); *Taylor v. Alabama*, 457 U.S. 687 (1982). *United States v. Ceccolin*i, 435 U.S. 268 (1978).

This rule applies as well to evidence observed in plain view during the initial illegal search. *Murray v. United States*, 487 U.S. 533 (1988). See also *United States v. Karo*, 468 U.S. 705 (1984) (excluding consideration of tainted evidence, there was sufficient untainted evidence in affidavit to justify finding of probable cause and issuance of search warrant).