

|                    |   |                      |
|--------------------|---|----------------------|
| THE STATE OF ARIDA | ) |                      |
|                    | ) | IN THE CIRCUIT COURT |
| v.                 | ) |                      |
|                    | ) |                      |
| TERRY E. JAMESON   | ) | ROANOAK, ARIDA       |
| Defendant          | ) |                      |
|                    | ) |                      |

STATEMENT OF STIPULATED FACTS

I.

Terry E. Jameson was arrested on January 20, 1998 and charged with possession of less than 28 grams of methamphetamine in violation of Section 4.02 of the Arida Penal Code. The Defendant, Terry Jameson, was 18 years old at the time of his arrest.

II.

On January 20, 1998, the Roanoak Physical Evidence Section of the Police Department received a package from Officer Shackelford. The case number was 88-12054. A qualified chemist analyzed the substance in the package and determined it to be methamphetamine. The weight of the contents of the package was 27.2 grams (about 4/5 of an ounce).

III.

Section 4.02 of the Arida Penal Code provides that a person commits a felony offense of the second degree if he knowingly or intentionally possesses less than 28 grams of methamphetamine. A second degree felony is punishable by imprisonment in the state penitentiary for not less than two (2) years and not more than 20 years. A fine may also be imposed in an amount not to exceed \$10,000.00. Under the discretion of the court, the sentence may be suspended and the Defendant placed upon probation for a period of years to be determined by the court.

Section 4.42 of the Arida Education Code reads as follows:

Whenever a police officer has probable cause to believe that a student is in unlawful possession of a controlled substance on school grounds and during school session, the police officer may, in lieu of securing a search warrant (as provided elsewhere in this code), obtain consent to search the student's locker or property or person. This consent may be obtained either from the student or from the principal of the school campus.

IV.

The prosecution report, the disciplinary referrals, the report cards and the drawing of the east wing of the high school are authentic and their admissibility may not be challenged on the grounds of authenticity. The locker indicated on the diagram is Terry Jameson's. The diagram is accurate.

V.

No assault charges, complaints, or suits have been filed by Terry Jameson against Billy Barrow.

VI.

The prosecution must prove beyond a reasonable doubt that the Defendant knowingly and intentionally possessed less than 28 grams of methamphetamine. "Reasonable doubt" does not mean beyond a shadow of a doubt, but is a doubt based upon reason. The Defendant may create a reasonable doubt by showing that the search was not conducted according to proper legal authority or that he did not have knowing and intentional possession of the drugs. In the absence of a search warrant, the prosecution must prove the legality of the search beyond a reasonable doubt. If, after considering all the evidence, the jury is left with a reasonable doubt as to the lawfulness of the search, then the Defendant must be acquitted.

VII.

A police officer has the right to conduct a warrantless search of property under exigent circumstances, a consent search of property, or a plain view search of property to the extent and in accordance with the Fourth amendment principals enunciated by the United States Supreme Court. The State of Arida follows the Federal search and seizure guidelines in determining search issues within the state and the State of Arida imposes no stricter standards on police officers than that required by the United States Supreme Court.

VIII.

The case will be tried to a jury.

Respectfully submitted,

---

Attorney for the State

---

Attorney for the Defendant

FACT STATEMENT OF TERRY JAMESON

My name is Terry Jameson. I am the Defendant in this case. I am not guilty of this offense. It is obviously that Barrow has set me up. In the first place, the handle on my locker sticks, and it is hard to open. It takes me a two-handed struggle to open the locker most of the time. It is inconceivable to me that the locker could have fallen open accidentally. Secondly, I do not sell drugs and have never stored drugs in my locker. Sure, I have smoked marijuana, but only socially. Hard drugs I stay away from. The only other time I got in trouble at school was when I was taking my mother's valium. That was right after Barrow hit me. My head hurt for several days, so I stole some pills from my mother, and I got caught with them, but that really does not count. I understand that the shop teacher, Mr. Petty, has indicated that I flunked the urinalysis tests for his class, but I don't see how that is possible. I understand that urinalysis tests have a high percentage of false positive readings, so that must account for it. I certainly do not do drugs.

Finally, everyone knows that Barrow is just plain nuts. He has always been a pain. I guess maybe he is jealous because he has no friends, but then he has no personality either. Once when I was fooling around in auto shop, he got made and hit me from behind with a wrench for no reason. He hit me hard enough to know me out. Since that time, I have kept away from him. Everyone knows that he blames me because he has to go to summer school.

The day I was arrested, I knew someone had been in my locker. It was all messed up. I was going to report it to the principal after the 2:00 class, but I was in a hurry to get to my next class. Then after school, when I was returning to my locker, Officer Shackelford came up and told me that I was under arrest for possession of methamphetamine. I said to her, "I don't know what you are talking about." She then told me that she had found a baggie of tablets in my locker. It all came together for me when I found out that Barrow was the one who snitched.

---

TERRY JAMESON

SIGNED AND SWORN to before me on this the 1st day of February, 1998.

---

C.M. McCormack, Notary Public  
State of Arida, U.S.A.

My Commission expires:

---

WITNESS ADDENDUM

I have reviewed this statement prior to trial. The only material facts that I could add are that on the advice of my attorney, I have taken a private polygraph examination, and I passed it, but the police still do not listen to my story. Also, because of my arrest, I had to have an injunction taken against the school to allow me to graduate. I have submitted applications to several trade schools, but I have been informed that my applications are being held pending the outcome of this case. I may end up having to go to a junior college.

---

TERRY JAMESON

SIGNED AND SWORN to before me at 8:00 a.m. on this the 6th day of May, 1998.

---

C.M. McCormack, Notary Public  
State of Arida, U.S.A.

My Commission expires:

---

FACT STATEMENT OF WILLIAM CLYDE BARROW

My name is William Barrow. My birthdate is December 23, 1979. My friends call me Billy. I am 18 years old and a junior at Andrew Johnson High School. I like music and cars; that's about all. I am taking automobile shop classes in the vocational technical wing of the school (VO-Tech) in order to become an automobile mechanic. I have know Terry Jameson since we were in kindergarten. We always got along okay. I never really had any problems with him until he got socially promoted out of the 10th grade and I didn't. He started making fun of me all the time, calling me names like "stupid." We did get into a fight in November at VO-Tech, but he started it. I was grinding down some heads when he came up behind me with an air hose and tried to goose me. He started laughing at me and making fun. I got made and hit him once. The shop teacher, Mr. Petty, saw me hit Terry and blamed it all on me. I got kicked out of that class for two weeks, and now I have to go to summer school to catch up. Anyway, on January 20, 1998, I was late getting to auto shop class after my history class. As I was walking down the hall, I saw a locker open, so I slammed the door real hard. A plastic bag fell out on the floor. The bag had a bunch of "crank" in it. I know because I have seen crank at some of the school parties. At that time, I did not know whose locker it was. I tossed the bag back in the locker and just as I closed the door the hall monitor came up. I told her what I saw and told her to get the security guard. She made me come along instead of going on to class. We went down to the lounge and found the school officer. I tool Officer Shackelford back to the locker. After a few minutes at the locker, we went to the principals' office. When we couldn't find the principal, we went back to the lockers. There Officer Shackelford opened the locker and found the drugs. I found out later the locker belonged to Terry. I think drugs are a very serious problem, and I think that Terry should get what is coming to him.

---

BILLY BARROW

SIGNED AND SWORN to before me on this the 1st day of February, 1998.

---

C.M. McCormack, Notary Public  
State of Arida, U.S.A.

My Commission expires:

---

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add except that since the arrest I have had to put up with many threats by friends of Terry Jameson. I have been called a snitch, and I have gone out of my way to avoid seeing Terry and that crowd. I figure that by next year Terry and his friends will have graduated and will be out of my life.

---

BILLY BARROW

SIGNED AND SWORN to before me at 8:00 a.m. on this the 6th day of May, 1998.

---

C.M. McCormack, Notary Public  
State of Arida, U.S.A.

My Commission expires:

---

FACT STATEMENT OF SHANNON SHACKELFORD

My name is Shannon Shackelford. I have lived in Roanoak all of my life. I am a commissioned policy officer for the State of Arida and have been a member of the Roanoak Police Department for the past eighteen months. Since graduating from the Roanoak Policy Academy, I have been assigned as the school officer at Andrew Johnson High School in Roanoak, Arida. My training includes riot control, traffic control, first aid and drug identification. I am equipped with a field test kit, which enables me to render a preliminary analysis on suspicious substances for methamphetamine content. I am authorized to search lockers at the school and to strip search students, so long as I have approval to do so from either the student suspect, from Principal Turner, or from a magistrate.

On January 20, 1998, at about 2:15 p.m., I was having a coffee break in the teacher's lounge, when Billy Barrow knocked on the lounge door. He was accompanied by Kelly Smith, the hall monitor. I knew Barrow to be a truant with a record for frequent disturbances. Billy is also one of a number of students I have suspected of running with the drug crowd and a student who knew the drug crowd on campus. Billy told me that he had observed a quantity of methamphetamine in Jameson's locker. Billy said he knew the locker was Jameson's because he had seen Jameson using it.

I went with Kelly and Billy to see Ms. Turner, but she wasn't in her office. After I waited in there for a while, I decided to go with Billy to the locker area for a stake out. As we approached the locker, I notice that the locker was not padlocked and was standing ajar. I then opened further the locker and behind some notebooks on the top shelf, I found a plastic baggie containing some tablets. I opened the bag and took out a tablet. It field tested out to be methamphetamine. I called the police department and had the Physical Evidence Section come out and pick up the drugs. In the mean time, I waited by the lockers. While I was waiting, I saw Terry Jameson come to the locker. He opened up the locker and seemed to be rummaging around in it. I heard him say, "someone's been in my locker." I decided not to arrest him at that time, but to wait until after the halls had cleared to avoid an incident. At about 3:45 p.m., I approached Terry and told him that he was under arrest for possession of methamphetamine. He got really angry and upset and started yelling, "It's not mine, I don't do crank," but he didn't have an explanation for what the drugs were doing in his locker.

\_\_\_\_\_  
SHANNON SHACKELFORD

SIGNED AND SWORN to before me on this the 1st day of February, 1998.

\_\_\_\_\_  
C.M. McCormack, Notary Public  
State of Arida, U.S.A.

My Commission expires:

\_\_\_\_\_  
WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add except that the suspect, Terry Jameson, was offered a policy polygraph examination prior to trial, but refused to take one.

---

SHANNON SHACKELFORD

SIGNED AND SWORN to before me at 8:00 a.m. on this the 6th day of May, 1998.

---

C.M. McCormack, Notary Public  
State of Arida, U.S.A.

My Commission expires:

---

FACT STATEMENT OF KELLY SMITH

My name is Kelly Smith. I am a senior at Andrew Johnson High School. As an honor student, I can receive an elective credit for serving as a hall monitor. I have elected to serve as hall monitor instead of taking a study hall during the afternoons. Everyone knows Terry Jameson. He has a reputation for running with the fast crowd and for being somewhat of a practical joker. Once he posted signs around the school saying "Today is the first of the month, beware of the sniffer dogs," which upset the principal. He and Billy Barrow are both auto shop students in VO-Tech. I don't know Billy very well. He is somewhat of a loner and acts kind of different.

The afternoon of January 20, 1998 was a slow day. I was sitting at my hall monitor station in the east wing. I was catching up on my trigonometry. It was about 2:00 p.m. when I heard a loud banging on a locker. I got up to investigate. Just as I neared the locker stalls, I saw Billy Barrow coming around the corner. I asked if he had a hall pass and he said no. I told him that I would have to report him to Ms. Turner, the principal, but he said to me that we had to go see the police, because he thought someone was dealing drugs. I followed Billy down to the teacher's lounge to find Officer Shackelford. I overheard Billy tell the officer that he had found some crank in a locker. Officer Shackelford told us to come with her and we went to Ms. Turner's office. Officer Shackelford went into the principal's office while we waited. I heard someone say, "She is not in." Shackelford came out of the office about a minute later. Billy jumped up and told her, "If we don't hurry, class will be out soon." Then Officer Shackelford said, "Okay, show me the locker." We followed the officer down to the locker area in the vicinity of where I first had seen Billy that afternoon. Officer Shackelford asked me to watch what was going on. She then looked inside the locker that Billy had indicated. A few seconds later she came out with a plastic baggie. Officer Shackelford then closed the locker and told me to return to my hall monitor station. Later, I heard that Terry Jameson had been arrested, but that was no surprise to me.

---

KELLY SMITH

SIGNED AND SWORN to before me on this the 1st day of February, 1998.

---

C.M. McCormack, Notary Public  
State of Arida, U.S.A.

My Commission expires:

---

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

---

KELLY SMITH

SIGNED AND SWORN to before me at 8:00 a.m. on this the 6th day of May, 1998.

---

C.M. McCormack, Notary Public  
State of Arida, U.S.A.

My Commission expires:

---

FACT STATEMENT OF CALE PETTY

My name is Cale Petty. This is my 12th year as the VO-Tech auto shop instructor at Andrew Johnson High School. In fact, I helped develop the career class for this district. Many of my policies are followed state-wide now. Because of the dangerous tools that we have around, I require each of my students to submit to a urinalysis test once a month.

I have had both Terry Jameson and Billy Barrow in my class. Billy has a high aptitude for auto mechanics and is a quick learner. He is very enthusiastic. Terry Jameson can also be pretty handy when he applies himself, but it seems that he just doesn't want to make that effort. I've been told that Billy often cuts class, but he rarely misses my class. In fact, he had only one or two absences before the incident with Terry. I've also heard that Billy is a trouble-maker, but I've not known him to be. He's always cooperative, and he has never flunked the urinalysis test. The only trouble Billy's had in auto shop was the time that he hit Terry on the side of the head with a wrench. I heard some yelling, and as I looked up to that area of the shop, I saw Billy haul off and belt Terry. The blow split Terry's head. I immediately notified the principal's office and called the police. Terry went to the school nurse. Billy was suspended from auto shop for the last two weeks of the semester, so he got an "incomplete."

Billy came back this semester and asked to be enrolled again. Billy assured me that his only problem was a personality conflict with Terry, and since Terry was not in my spring semester class, I decided to give Billy a second chance.

I know drugs are a problem in school. I suspect that many of my students use them. I imagine anyone who wanted some could get some. I have reported suspects several times to Susan Turner, but she is frequently not in her office to take the appropriate action. I think a lot of the drug problems in this school can be traced to her lackadaisical attitude. I would say on behalf of Terry Jameson that I have always found him to be extremely truthful and honest with me. He never offers excuses for his mistakes or tries to claim that he has done work which he has not done. He has a lot of friends. On the other hand, a lot of students refer to Billy as a snitch. I don't know why they call him that, but I do know it bothers him.

---

CALE PETTY

SIGNED AND SWORN to before me on this the 1st day of February, 1998.

---

C.M. McCormack, Notary Public  
State of Arida, U.S.A.

My Commission expires:

---

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

---

CALE PETTY

SIGNED AND SWORN to before me at 8:00 a.m. on this the 6th day of May, 1998.

---

C.M. McCormack, Notary Public  
State of Arida, U.S.A.

My Commission expires:

---

## FACT STATEMENT OF SUSAN F. TURNER

My name is Susan F. Turner. I am the principal at Andrew Johnson High School and have been for the past three years. Before becoming a principal, I was the ladies basketball coach for fifteen years. I grew up in this town. I know my students and most of their parents were classmates of mine. The Barrow boy has always been somewhat of a problem. He skips classes a lot and has been in frequent fights. Basically, I think he has an attitude problem. He is a loner. I think he is a lot smarter than his grades indicate. I have never known him to use drugs. On the other hand, I have had problems with Terry Jameson being involved with drugs. As a matter of fact, he has been suspended twice for drug use on school property: once for smoking marijuana in the boys room and once for possession of tablets in the parking lot. Additionally, I have heard from Mr. Petty that Terry has flunked a urinalysis test, but I have no paper work in my file on it. Terry is a fairly popular student and has a reputation for being somewhat of a prankster.

We have a school policy that we don't check lockers for drugs or have students strip-searched without prior approval. Whenever someone is suspected of possible drug abuse, I am to call the school's attorneys before giving the okay. We are awfully concerned about lawsuits. Everyone knows that we don't do anything without prior approval, unless the students are caught in the act, or if under certain circumstances prior approval cannot be obtained.

I was in my office the entire afternoon of January 20, 1998. I could have been out of my office for a few seconds either to go get a cup of coffee or to go to the lounge. I do not recall Officer Shackelford coming by my office until she had arrested Terry Jameson, which must have been about 3:45 p.m. or 4:00 p.m. That was the first that I knew of what was going on.

Drugs have been a big problem at the school for about ten years. For that reason, we have periodically used sniffer dogs, and we prohibit the use of padlocks on the lockers. We advise students not to bring any valuables to school and if the students need to store something, we have a repository in my office. We have started giving senior students credit to act as hall monitors in lieu of study hall. They are assigned to patrol the halls while on duty and to report suspicious activity. Using sniffer dogs and students as hall monitors has reduced the drug problem here at Andrew Johnson.

As the principal, I am the official records custodian of the transcripts and disciplinary referrals of the school district. The disciplinary referrals are filled out by my teachers at the time of the complaint based upon information known personally to them. I review the form and give the students an opportunity to explain their positions on each referral.

---

SUSAN F. TURNER

SIGNED AND SWORN to before me on this the 1st day of February, 1998.

---

C.M. McCormack, Notary Public  
State of Arida, U.S.A.

My Commission expires:

---

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add except that aside from the fact that Terry Jameson's lawyers have caused me all kinds of administrative problems with their jurisdiction, nothing has changed. I did, however, sit down with the school monitor and Officer Shackelford to review proper procedures for reporting suspected criminal violations. I now carry a pager. The unexcused absence reports were too numerous to bring to court today.

\_\_\_\_\_  
SUSAN F. TURNER

SIGNED AND SWORN to before me at 8:00 a.m. on this the 6th day of May, 1998.

\_\_\_\_\_  
C.M. McCormack, Notary Public  
State of Arida, U.S.A.

My Commission expires:

\_\_\_\_\_

# ARIDA v. JAMESON

## WITNESSES

- For the Prosecution:
- (1) William Clyde Barrow, Student
  - (2) Cale Petty, VO-Tech auto shop instructor
  - (3) Shannon Shackelford, School Resource Officer
  - (4) Kelly Smith, Student
  - (5) Susan F. Turner, School Principal
- For the Defense:
- (1) Terry Jameson, Defendant

ADDENDUM:

APPLICABLE SUBSTANTIVE LAW

for

STATE OF ARIDA VS. TERRY E. JAMESON

## I. PROBABLE CAUSE FOR A WARRANTLESS SEARCH

The fourth amendment to the U.S. Constitution, applicable to the states through the fourteenth amendment, prohibits unreasonable searches by state officials. Elkins v. United States, 364 U.S. 206, 213, 80 S.Ct. 1437, 1442, 4L.Ed2d 1669 (1960). It does not apply to a search, even an unreasonable one, by a private individual who is not acting as an agent of the government or with the participation or knowledge of any government official. United States v. Jacobson, 466 U.S. 109, 113, 104 S.Ct. 1652, 1656, 80 L.Ed. 2d 85 (1984). The fourth amendment protects only expectations of privacy that are reasonable or that society is prepared to recognize as legitimate, Hudson v. Palmer, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed. 2d 393 (1984); Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2556, 65 L.Ed. 2d 633 (1980), and the fourth amendment may protect containers of contraband that are not shown to be readily apparent as contraband. Robbins v. California, 453 U.S. 420, 101 S.Ct. 2841, 69 L.Ed 2d 744 (1981). There is no legitimate expectation of privacy, however, in readily apparent contraband and a “field test” of suspected contraband compromises no legitimate privacy interest. Jacobson, 466 U.S. at 121-23, 104 S.Ct. at 1661-62. There is, however, a reasonable expectation of privacy in a rented storage locker. United States v. Karo, 468 U.S. 705, 720 n.6, 104 S.Ct. 3296, 3306 n.6, 82 L.Ed. 2d 530 (1984).

All searches by government officials without a valid warrant are presumptively unreasonable unless shown to fall within one of the exceptions to the rule that a search must rest upon a valid warrant and the burden is on the person seeking to uphold the search to show that it comes within an exception. Coolidge v. New Hampshire, 403 U.S. 443, 455, 91 S.Ct. 2002, 2032, 29 L.Ed 2d 564 (1971); Stoner v. California, 376 U.S. 483, 84 S.Ct. 889, 11 L.ed 2d 856 (1964).

Probable cause is flexible, common sense standard. It exists where the facts and circumstances within the police officer's knowledge and of which they have reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that an offense has been, or is being committed. Ker v. California, 374 U.S. 23, 35, 83 S.Ct. 1623, 1630 (1962). The existence of probable cause is to be determined only from what the officers had reason to believe at the time of entry. Id. at n.12 A practical, nontechnical probability that incriminating evidence is involved is all that is required to establish probable cause. Brinegar v. United States, 338 U.S. 160, 176, 69 S.Ct. 1302, 1311, 93 L.Ed 2d 1879 (1949).

Probable cause to search, plus exigent circumstances, may justify a warrantless search. Note that probable cause alone is insufficient; it must be coupled with exigent circumstances before a warrantless search is justified. Vale v. Louisiana, 357 U.S. 30, 90 S.Ct. 1969, 26 L.Ed. 2d 409 (1970). (What constitutes exigent circumstances is discussed below).

NOTE: In New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed 2 720 (1985), the Supreme Court held that a student had a legitimate expectation of privacy in the contents of her purse and held that searches by school officials are protected by the fourth amendment, although less than probable cause may justify a search. The court left open the question of whether a student's expectation of privacy extends to his locker, n.5, and further left open the question of

whether a school search conducted by law enforcement agents may be justified when supported by something less than probable cause. Note 7.

## II. DUE DILIGENCE IN PROCESSING A WARRANT

The cases are not clear concerning when, and for how long, the police may delay in seeking a search warrant. In United States v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed 2d 538 (1977), the Supreme Court held that a person had a reasonable expectation of privacy in the contents of his footlocker and, once the police gained exclusive possession of the footlocker, a warrantless search conducted one hour later was unreasonable and not justified by exigent circumstances. Similarly, in Arkansas v. Sanders, 442 U.S. 753, 766, 99 S.Ct. 2586, 2594, 61 L.Ed. 2d 235 (1979), the Supreme Court held that once the police, without risking the loss of evidence, had detained a suspect and secured his suitcase, the police should have delayed the search of the suitcase until they obtained a search warrant. In United States v. Johns, 469 U.S. 478, 105 S.Ct. 881, 83 L.Ed. 2d 890 (1985), however, the Supreme Court held that because the police could have conducted a warrantless search of packages seized from a truck immediately, a three day delay in searching the packages was reasonable, even though no search warrant was obtained. The deciding factor appears to be whether or not the police have the right to conduct a search immediately when they gain exclusive possession of the object to be searched. If the police, because probable cause plus exigent circumstances, are entitled to search the object as soon as they gain exclusive possession of it, they need not delay the search and seek a warrant. If, however, exigent circumstances do not exist at the time the police gain exclusive possession of the object, the police cannot immediately conduct a search. Instead, they must obtain a warrant.

## III. EXIGENT CIRCUMSTANCES JUSTIFYING A WARRANTLESS SEARCH

Exigent circumstances, when coupled with probable cause, may excuse the requirement that a warrant be obtained before a search is conducted but, even when applying this principle, the Supreme Court has emphasized that a warrant should be obtained where practicable. See United States v. United States District Court, E.D. of Michigan, Southern Div., 407 U.S. 297, 318, 92 S.Ct. 2125, 2137, 32 L.Ed. 2d 752 (1972). The seriousness of the offense alone does not create an exigent circumstance that would justify a warrantless search. Mincey v. Arizona, 437 U.S. 385, 394, 98 S.Ct. 2408, 2414, 57 L.Ed. 2d 290 (1978).

One exigent circumstance the Supreme Court has recognized is that when there is a danger that evidence will be lost or destroyed while a warrant is sought, a warrantless search may be reasonable, Arkansas v. Sanders, 442 U.S. at 759, 99 S.Ct. at 2590-91, because subjects have no constitutional right to destroy or dispose of evidence. Ker, 374 U.S. at 39, 83 S.Ct. at 1633. Narcotics specifically have been held to be uniquely "quickly and easily destroyed." Id.

The test for determining whether exigent circumstances exist so as to excuse the failure to obtain a warrant is whether the officer reasonably believed that he was confronted with an emergency in which the delay necessary to obtain the warrant, under the circumstances, threatened the destruction of evidence. Schmerber v. California, 384 U.S. 757, 770, 86 S.Ct. at 1826, 1835 (1966). In applying such a test, the answer is not to be determined by hindsight;

instead, the state of mind of the police at the time the search was made is the relevant factor. Cf. Ker, 374 U.S. at 40, N.12, 83 S.Ct. at 1633, n.12.

#### IV. PLAIN VIEW

The plain view doctrine authorizes the seizure of illegal or evidentiary items visible to a police officer whose access to the object has some prior fourth amendment justification and who has probable cause to suspect that the item is connected with criminal activity. Texas v. Brown, 460 U.S. at 738 and n.4, 741-42, 103 S.Ct. at 1540 and n.4, 1542-43. The plain view doctrine 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; the owner may retain incidents of title and possession but not privacy. Illinois v. Andreas, 463 U.S. 765, 771, 103 S.Ct. 3319, 3324, 77 L.Ed. 2d 1003 (1983).

Where the initial intrusion that brings the police within plain view of the object is supported, not by a warrant, but by one of the recognized exceptions to the warrant requirement, seizure of the object is permitted, Coolidge, 403 U.S. at 465, 91 S.Ct. at 2037; however, plain view alone is insufficient to justify warrantless seizure of evidence. Exigent circumstances must also exist, Coolidge, 403 U.S. at 468, 91 S.Ct. at 2039, and the search or seizure of objects in plain view must be supported by probable cause. Arizona v. Hicks, 107 S.Ct. 1154 (1987) (moving a stereo to see serial numbers was a search which could only be supported by probable cause). In addition, the discovery of items in plain view may have to be inadvertent; where the police know in advance the location of evidence and intend to seize it, a warrant is required absent exigent circumstances. Coolidge, 403 U.S. at 469, 91 S.Ct. at 2040 (plurality opinion never adopted by a majority of the court, see Arizona v. Hicks, 107 S.Ct. 1149, 1155 (White, J., concurring)).