




10-1981

Washington v. Chrisman

Lewis F. Powell Jr.

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Grant & Rev.
Summarily
or Deny

Court below misapplied
4th Amend principles.

Police officer clearly had cause
to accompany student he had arrested
to her room (to keep him under
surveillance), where drugs were
in plain view.

But no new principles

PRELIMINARY MEMORANDUM

April 17, 1981 Conference
List 1, Sheet 2

No. 80-1349

STATE OF WASHINGTON

v.

CHRISMAN

Cert to Wash. S. Ct.
(Dolliver, Utter, Rozallini,
Hicks, Williams; Brachtenbach,
Stafford, Horowitz, dis.)
State/Criminal Timely

1. SUMMARY: Petr contends that the court below erroneously
held that an officer may not enter the premises of a person he
has arrested.

2. FACTS AND DECISION BELOW: Resps were tried without a
jury and convicted of possession of more than 40 grams of
marijuana and a smaller amount of LSD. The CA affirmed the

*Summarily reverse or deny. It seems wrongly
decided, but it's not worth a grant. Paul C.*

conviction, but the Washington S. Ct. reversed on the grounds that evidence seized was in violation of the Fourth Amendment. The evidence showed that defendant Overdahl was spotted by police officer Daugherty walking out of a college dormitory with a half gallon of gin. Daugherty stopped Overdahl and requested his identification, suspecting that Overdahl was under the age of 21. Overdahl said he would have to go upstairs to get his identification, but while they were waiting for the elevator, the officer asked Overdahl how old he was. Overdahl responded that he was 19. Upon arriving at Overdahl's dorm room, Overdahl went into the room while the officer stood either in the open doorway or just inside the room. The room was occupied by petr and the officer observed marijuana seeds and a small pipe lying on the desk near him. Concluding that the seeds were marijuana and the pipe smelled of marijuana, Daugherty gave the two students their Miranda rights and both students signed a waiver consenting to the search of their room. A search turned up even more amounts of marijuana and LSD.

The Wash.S.Ct. accetped petr's contention that Daugherty's initial warrantless examination of the seeds and the pipe amounted to an unconstitutional search and that the evidence seized should have been suppressed. It concluded that the plain view exception to searches did not apply. The three elements of that exception are, (1) prior justification for intrusion, (2) inadvertent discovery of incriminating evidence, and (3) immediate knowledge by the officer that he had evidence before him. In this case, there was no justification for Daugherty's

presence in the dorm room. Although Overdahl had been placed under arrest at the time he reached his room, that arrest did not give the officer the right to enter the room to conduct the search. There was no evidence that it was necessary for the officer to enter the room to seize a weapon which might be used in an assault or that the bottle of gin was about to be destroyed or that Overdahl was going to attempt an escape. It simply was not necessary for the officer to enter the room to make certain Overdahl secured his identification.

Judge Brachtenbach dissented. He claims that the majority failed to explain why the officer was not entitled to keep the arrested person within his sight. It notes that the decision below conflicts with other decisions holding that the police officer may keep an arrested person within view. See State v. Brown, 132 N.J. Super. 180 (1975). Other cases indicate that if a defendant is arrested at his dwelling and asks for access to another room, the police may search that room before and after granting the request. E.g. United States v. Manson, 523 F.2d 1122 (DCCA 1975). Still other cases hold that if a defendant is arrested in his home and is allowed to go to another part of it the police may accompany the defendant there and seize any evidence in plain view. E.g., United States v. DeStephano, 555 F.2d 1094, 1102 (CA 2 1977). The rationale of these cases - concern for police safety, avoiding possible destruction of evidence, and discouraging potential escape attempts - is equally persuasive when arrestee outside his dwelling requests to enter it. Those cases are indistinguishable from the situation here.

3. CONTENTIONS: Petr partially tracts the reasoning of the dissent. The first question presented is whether an individual validly under arrest may be accompanied by the arresting officer into another area without a warrant. The answer in such cases is clearly affirmative, as other cases have held. The second question is based on exigent circumstances. Assuming the officer was standing outside the premises, his observations of contraband in plain view constitute exigent circumstances which permit him to enter the premises. See Colorado v. Banister, U.S. (1980), State v. Patterson, 192 Neb. 308 (1974) (authorizing an officer who has reason to believe a crime is being committed inside a residence to enter that residence).

Resp criticizes petr for taking two conflicting positions, the first based on the assumption that the police officer was in the room and the second based on the assumption that he was outside the room.

4. DISCUSSION: I recommend summary reversal essentially for the reasons stated by the dissent. If for no other reason than personal safety, a police officer must surely be permitted to keep an arrested person under surveillance at all times. To require a police officer to stand outside the home of a person he has lawfully arrested puts the officer in an incredibly vulnerable position. There is also the danger that the arrestee will destroy evidence or make an escape attempt. Because the officer was justifiably in the room of the arrestee in this case, the plain view exception applies.

There is a response.

4/1/81

Knauss

Op in petn.

WASHINGTON

V8.

CHRISMAN

Relisted for the Chief Justice.

Relist
for
C. I. to
write P. C.

[illegible]

opinion on it
anything objectionable in it.
I would join. Paul C.

Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

No. 80-1349, Washington v. Chrisman

From: The Chief Justice

Circulated: MAY 5 1981

Recirculated: _____

PER CURIAM.

A campus police officer at Washington State University observed a male youth, Carl Overdahl, exit a student dormitory carrying a half-gallon bottle of gin. Because Washington law forbids possession of alcoholic beverages by persons under 21, Wash. Rev. Code §66.44.270,¹ and Overdahl appeared to be under age, the officer stopped him and asked for identification. Overdahl replied that he would have to return to his room to obtain identification. The officer accompanied him.²

Join
LJP

The room was approximately 11 by 17 feet and located on the 11th floor of the dormitory. The respondent, Overdahl's roommate, was in the room when

¹University regulations also forbade possession of alcoholic beverages on university property. Tr. 4.

²While waiting for the elevator, the officer asked Overdahl his age. Overdahl responded that he was 19. The respondent did not argue in the Washington courts or in his Brief in Opposition here that this admission eliminated the need for Overdahl to produce identification and thus invalidates the visit to the room.

I agree with you P.C.
in this case

the officer and Overdahl arrived. The officer remained in the doorway when Overdahl went inside. The respondent became visibly nervous at the sight of the officer.

While waiting, the officer observed seeds and a small pipe lying on a table in the room. From his training and experience, he believed the seeds were marijuana and the pipe was of a type used to smoke marijuana. He then entered the room, went over to the table, and examined the seeds and the pipe more closely. The pipe smelled of marijuana.

The officer informed both students of their rights under Miranda v. Arizona, 384 U.S. 426 (1966), and each indicated he was willing to waive those rights. The officer then asked whether they had any other drugs. The respondent handed him three small plastic bags containing marijuana. At that point, the officer called by radio for assistance. Once a second officer had arrived, the students were told a thorough search of the room would be necessary. The officers explained to the two students that they had an absolute right to insist that the officers first obtain a warrant but that they could consent to the search. The officers also informed them that any consent would have to be voluntary and they could refuse to consent. The respondent and Overdahl conferred in whispers, then

announced that they would consent. The search yielded more marijuana and a quantity of lysergic acid diethylamide (LSD).

An information charged the respondent with one count of possessing more than 40 grams of marijuana and one of possessing LSD, both felonies under Wash. Rev. Code §69.50.401(c) (current version at Wash Rev. Code §69.50.401(d)).³ A pretrial motion to suppress the evidence seized in the room was denied. The respondent was convicted after a bench trial. On appeal, the Washington Court of Appeals upheld the search and affirmed. 24 Wash. App. 385, 600 P.2d 1316 (1979).

The Supreme Court of Washington reversed. 94 Wash. 2d 711, 619 P.2d 971 (1980). It held that, although the officer properly had placed Overdahl under arrest and followed him to the dormitory room, he had no right to enter the room. There was no indication that Overdahl might seize a weapon or destroy evidence (the gin bottle), and, with the officer blocking the only exit from the room, there was no possibility of escape. Because no exigent circumstance required the officer to enter the room and thus view its interior,

³Overdahl was tried with the respondent for possessing marijuana and also was convicted. The charges against him were dismissed while the case was pending before the Supreme Court of Washington.

his seizure of the seeds and the pipe did not fall within the "plain view" exception to the warrant requirement; that exception requires some prior justification for the officer's being where he sees the contraband. In addition, because the respondent and Overdahl's consent to the subsequent search of room was the fruit of the officer's initial entry, the contraband found during that search should have been suppressed as well.⁴

Three Justices dissented. They believed it was fully reasonable for a police officer to keep Overdahl, an arrestee, in sight at all times, including while he entered the room. The officer therefore had a legitimate reason, in the view of the dissenters, for being in the place where he discovered contraband in "plain view."

The "plain view" exception to the warrant requirement permits a law enforcement official to seize what clearly is evidence or contraband when it is discovered in a place where the officer has a

⁴Although Art. I, §7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law," the court never cited that provision. It did repeatedly refer to the Fourth Amendment and cases construing it; therefore it is clear the court did not rest its decision on an independent state ground.

legitimate right to be. Coolidge v. New Hampshire, 403 U.S. 443 (1971); Harris v. United States, 390 U.S. 234 (1968). Here, the Supreme Court of Washington concluded the officer had lawfully placed Overdahl under arrest and therefore was authorized to follow him to his room. The Fourth Amendment does not deny a police officer who lawfully has taken a person into custody the authority to keep that individual in sight. The absence of an affirmative indication that a particular arrestee might reach for a weapon or attempt to escape does not vitiate that authority. See Pennsylvania v. Mimms, 434 U.S. 106, 109-110 (1977); United States v. Robinson, 414 U.S. 218, 234-236 (1974). The officer did not undertake a complete search of the room, including areas completely out of reach of the arrestee. Cf. Chimel v. California, 395 U.S. 752, 763 (1969). Rather, with appropriate restraint, he remained at the door, entering no farther than was necessary to keep the arrested person in view. It was only by chance that the officer observed on a table what he recognized at once to be contraband. This is a classic case of evidence found in plain view when a police officer, for unrelated and entirely legitimate reasons, obtains access to someone's private area.

Nothing in the Fourth Amendment prohibits seizure of evidence of criminal conduct found in these

circumstances. Accordingly, we grant the petition for a writ of certiorari, vacate the judgment of the Supreme Court of Washington, and remand the case for further proceedings not inconsistent with this opinion.

So ordered.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 6, 1981

Re: No. 80-1349, Washington v. Chrisman

Dear Chief,

I agree with the proposed per curiam
you have circulated.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 6, 1981

Re: 80-1349 - Washington v. Chrisman

Dear Chief,

I am doubtful that I can join your suggested Per Curiam because it extends the plain view doctrine beyond its previous bounds. Perhaps entry into the room could be justified on another ground but I have my doubts about the rationale you use. I am considering writing a dissent.

Sincerely yours,



The Chief Justice
Copies to the Conference
cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 6, 1981

Re: No. 80-1349 Washington v. Chrisman

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

No. 80-1349 - Washington v. Chrisman

Circulated: 7 MAY 1981

Recirculated: _____

I dissent. In this summary disposition, the Court substantially expands the scope of the plain view doctrine and wholly fails to acknowledge that expansion, characterizing this as a "classic case" for application of the plain view doctrine. Ante, at ____.

I do not quarrel with the Court's assertion that the officer had a right to stand in the doorway of respondent's dormitory room to keep Overdahl in view and that the officer's observation of the seeds and pipe from that vantage point did not violate the Fourth Amendment. However, the issue in this case is whether, having made that observation, the officer was authorized to enter the dormitory room without a warrant to examine and seize those items.¹ The Court holds that this warrantless entry and seizure was justified by the "plain view" doctrine.²

¹The officer testified at the suppression hearing that the only reason he entered the room was to examine the seeds and the pipe more closely and to seize them if he determined that they were contraband. The pipe was made out of a seashell, so the officer needed to examine it to determine whether it was a pipe and whether it had been used for smoking marijuana. The seeds were on a tray, apart from the pipe. The officer testified that when he looked at these seeds from the doorway he thought they were marijuana seeds. However, he found it difficult to explain how he had been able to distinguish the seeds from other types of seeds. Tr., 51. The officer explained that he had entered the room for just one purpose--"to affirm my beliefs and to seize the articles, if they were [contraband]." Tr., p. 44.

Footnote(s) 2 appear on following page(s).

Inexplicably, the Court fails to acknowledge the distinction between a police officer's observation of an object that is inside a dwelling and his entry into the dwelling to seize that object. In Coolidge v. New Hampshire, 403 U.S. 443, 468 (1971), Justice Stewart clearly stated:

"[P]lain view alone is never enough to justify the warrantless search and seizure of evidence. This is simply a corollary of the familiar principle, discussed above, that no amount of probable cause can justify a warrantless search or seizure absent 'exigent circumstances.' Incontrovertible testimony of the senses that an incriminating object is on premises belonging to a criminal suspect may establish the fullest possible measure of probable cause. But even where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure. Taylor v. United States, 268 U.S. 1; Johnson v. United States, 333 U.S. 10; McDonald v. United States, 335 U.S. 451; Jones v. United States, 357 U.S. 493, 497-498; Chapman v. United States, 365 U.S. 610; Trupiano v. United States, 334 U.S. 699." 403 U.S., at 468.³

Coolidge emphasized that the plain view doctrine applies only after a lawful search is in progress. The "initial intrusion"

²Although I do not entirely agree with the Supreme Court of Washington's analysis in this case, I agree with its conclusion that the plain view doctrine alone could not justify this warrantless entry and seizure.

³One of the many cases cited in Coolidge to illustrate this point was Taylor v. United States, 268 U.S. 1 (1932). The police officers in Taylor had looked through a small opening in a garage and had seen cardboard cases inside the garage that they believed contained contraband liquor. The officers could smell the odor of whiskey coming from the garage. Yet this Court held that they had violated the Fourth Amendment by entering the garage and seizing the whiskey without obtaining a warrant. See Coolidge v. New Hampshire, 403 U.S. 443, 469 n. 25 (1971).

must be justified by a warrant or by an exception to the warrant requirement. 403 U.S., at 467.

The Court seeks to justify the officer's warrantless intrusion into the dormitory room by relying solely on the plain view doctrine. It reasons that since the officer was entitled to stand in the doorway to keep Overdahl in view, he was also entitled to enter the room to investigate suspicious items that were in plain view.⁴ On this reasoning, any officer passing by

⁴The Court relies on Coolidge v. New Hampshire, supra, and Harris v. United States, 390 U.S. 234 (1968). Neither decision supports the majority's analysis in this case. In Harris the Court emphasized that the officer had already lawfully entered the car when he saw incriminating evidence inside the car and seized it:

"Once the door had been lawfully opened, the registration card, with the name of the robbery victim on it, was plainly visible. It has long been settled 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 and may be introduced in evidence." 390 U.S., at 236 (emphasis added).

The broad wording of the second sentence quoted above has apparently created some confusion regarding the plain view doctrine. One commentator remarked:

"The hardest conceptual problem attending the plain view doctrine is to grasp that it is not a universal statement of the right of a policeman to seize after seeing something in open view; it is rather a limited statement of that right in one of its several instances--following a valid intrusion. ... The source of difficulty is that the harbinger case, Harris v. United States, spoke carelessly in universal terms: 'It has long been settled 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 ...'

"Seeing something in open view does not, of

the open door of a home who saw incriminating evidence within could enter the home and seize the evidence without a warrant.⁵ This would severely undercut the protection afforded by the Fourth Amendment, for "the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." Payton v. New York, __ U.S. __, __ (1980), quoting United States v. United States District Court, 407 U.S. 297, 313 (1972). As I read our cases, if an officer who is legitimately standing in the doorway of a home sees incriminating items inside

course, dispose ... of the problem of crossing constitutionally protected thresholds." Moylan, "The Plain View Doctrine: Unexpected Child of the Great 'Search Incident' Geography Battle," 26 Mercer L. Rev. 1047, 1096 (1975). See also 1 W. LaFare, Search and Seizure § 2.2(a) (1978).

Whatever confusion was created by this statement in Harris should have been dispelled by the clear statement in Coolidge that "plain view alone is never enough to justify the warrantless search and seizure of evidence." 403 U.S., at 468.

⁵In this case it might be argued that the officer's observations from the doorway did not even provide probable cause to believe that there was contraband in the dormitory room. See note 1, supra. However, even if these observations did provide probable cause, it is axiomatic that "no amount of probable cause can justify a warrantless search or seizure absent 'exigent circumstances.'" Coolidge v. New Hampshire, supra, at 468.

In many respects this case is similar to Colorado v. Bannister, __ U.S. __ (1980), in which we held that an officer's observation of items in plain view within a car did not violate the occupant's Fourth Amendment rights. __ U.S., at __ n. 4. The officer's observations could therefore be used to establish probable cause to search the car. However, it was also necessary to justify the warrantless intrusion into the car. We did not seek to justify that intrusion by relying on the plain view doctrine. Rather, we held that the warrantless entry was justified under the so-called "automobile exception" to the warrant requirement. See Chambers v. Maroney, 399 U.S. 42 (1970); Carroll v. United States, 267 U.S. 132 (1925).

the home, the plain view doctrine alone does not authorize him to enter the home without a search warrant to seize those items.⁶

Accordingly, I dissent.

⁶There is no contention in this case that by entering the dormitory building the officer had already entered respondent's dwelling. The officer himself testified at trial that a dormitory room is considered a "private area" but that the public has access to the hallway. Tr., at 37.

May 7, 1981

80-1349 Washington v. Chrisman

Dear Chief:

I agree with your Per Curiam in this case.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 8, 1981

Re: 80-1349 - Washington v. Chrisman

Dear Chief:

After reading Byron's circulation, I am firmly convinced that it would be a mistake to dispose of this case summarily. I therefore will not be able to join your proposed Per Curiam.

Because we have had our quota of Fourth Amendment cases, my first preference is still to deny the petition for certiorari. However, rather than have the issues decided summarily, I would vote to grant. In the event that the case is granted, I would like to suggest that the parties be directed to argue two separate questions:

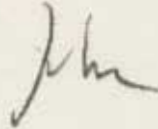
- (1) Whether a warrantless entry into a dwelling can be justified on the ground that contraband is in plain view of an officer outside the dwelling; and
- (2) whether the "plain view" doctrine requires not only that the object be plainly visible, but also that it is plain that the officer has a right to search it or to examine it.

With respect to the latter question, I suppose there are at least three possible answers:

- (a) That the article merely be suspicious in character, as was the case of the sea shell here;
- (b) that there is probable cause to believe that it is contraband; or

(c) that there is a virtual certainty that the item is associated with criminal activity.

Respectfully,

A handwritten signature in dark ink, appearing to be 'J. H.' or similar, written in a cursive style.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 8, 1981

RE: No. 80-1349 Washington v. Chrisman

Dear Byron:

Please join me in your dissent in the above.

Sincerely,

Bill

Justice White

cc: The Conference

MEMORANDUM TO: Mr. Justice Powell

FROM: Paul Cane

DATE: May 11, 1981

RE: 80-1349, Washington v. Chrisman

I've joined C.J.

~~the~~ These were
exigent
circumstances
- drugs could
have been
removed.

? This case, as you will recall, is the one in which the police officer accompanied a student to his dormitory room and stood in the doorway while the student searched for his I.D. card. Seeds appearing to be drugs were spotted in the room and the officer seized them. The state supreme court held that the search was invalid because the officer had no right to stand in the doorway of the room. The Conference properly found that this was incorrect, and the Chief has written a per curiam.

As BRW now points out, there is a problem in the Chief's draft that no one focused on originally. The Chief does not state that exigent circumstances existed to justify the entry once the officer (based on his observation from the doorway) was confident that drugs were in the room. Without a finding of exigent circumstances, as BRW says, the officer should have had to get a warrant to enter the room.

Plainly there were exigent circumstances here: the roommate or others could have disposed of the drugs if the officer had left the room. But I think BRW is correct that this needs to be made explicit in the opinion.

C.J. can
add to
higher ??
o/p

Otherwise the "plain view" doctrine would be extended beyond its present bounds.

Paul

P.W.C. 05/11/81

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

1st PRINTED DRAFT

Recirculated: MAY 11 1981

SUPREME COURT OF THE UNITED STATES

STATE OF WASHINGTON v. NEIL MARTIN
CHRISMAN

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF WASHINGTON

No. 80-1349. Decided May —, 1981

PER CURIAM.

A campus police officer at Washington State University observed a male youth, Carl Overdahl, exit a student dormitory carrying a half-gallon bottle of gin. Because Washington law forbids possession of alcoholic beverages by persons under 21, Wash. Rev. Code § 66.44.270,¹ and Overdahl appeared to be under age, the officer stopped him and asked for identification. Overdahl replied that he would have to return to his room to obtain identification. The officer accompanied him.²

The room was approximately 11 by 17 feet and located on the 11th floor of the dormitory. The respondent, Overdahl's roommate, was in the room when the officer and Overdahl arrived. The officer remained in the doorway when Overdahl went inside. The respondent became visibly nervous at the sight of the officer.

While waiting, the officer observed seeds and a small pipe lying on a table in the room. From his training and experience, he believed the seeds were marihuana and the pipe was of a type used to smoke marihuana. He then went over to

¹ University regulations also forbade possession of alcoholic beverages on university property. Tr. 4, 34.

² While waiting for the elevator, the officer asked Overdahl his age. Overdahl responded that he was 19. The respondent did not argue in the Washington courts or in his Brief in Opposition here that this admission eliminated the need for Overdahl to produce identification and thus invalidates the visit to the room.

*See
n 5 (p 4)
where
exigent
circumstances
are noted*

the table and examined the seeds and the pipe more closely. The pipe smelled of marihuana.

The officer informed both students of their rights under *Miranda v. Arizona*, 384 U. S. 426 (1966), and each indicated he was willing to waive those rights. The officer then asked whether they had any other drugs. The respondent handed him three small plastic bags containing marihuana. At that point, the officer called by radio for assistance. Once a second officer had arrived, the students were told a thorough search of the room would be necessary. The officers explained to the two students that they had an absolute right to insist that the officers first obtain a warrant but that they could consent to the search. The officers also informed them that any consent would have to be voluntary and they could refuse to consent. The respondent and Overdahl conferred in whispers, then announced that they would consent. The search yielded more marihuana and a quantity of lysergic acid diethylamide (LSD).

An information charged the respondent with one count of possessing more than 40 grams of marihuana and one of possessing LSD, both felonies under Wash. Rev. Code § 69.50.401 (c) (current version at Wash. Rev. Code § 69.50.401 (d)).³ A pretrial motion to suppress the evidence seized in the room was denied. The respondent was convicted after a bench trial. On appeal, the Washington Court of Appeals upheld the search and affirmed. 24 Wash. App. 385, 600 P. 2d 1316 (1979).

The Supreme Court of Washington reversed. 94 Wash. 2d 711, 619 P. 2d 971 (1980). It held that, although the officer properly had placed Overdahl under arrest and followed him to the dormitory room, he had no right to enter the room. There was no indication that Overdahl might seize a weapon or destroy evidence (the gin bottle), and, with the officer blocking the only exit from the room, there was no possibility

³ Overdahl was tried with the respondent for possessing marihuana and also was convicted. The charges against him were dismissed while the case was pending before the Supreme Court of Washington.

of escape. Because no exigent circumstance required the officer to enter the room and thus view its interior, his seizure of the seeds and the pipe did not fall within the "plain view" exception to the warrant requirement; that exception requires some prior justification for the officer's being where he sees the contraband. In addition, because the respondent and Overdahl's consent to the subsequent search of room was the fruit of the officer's initial entry, the contraband found during that search should have been suppressed as well.⁴

Three Justices dissented. They believed it was fully reasonable for a police officer to keep Overdahl, an arrestee, in sight at all times, including while he entered the room. The officer therefore had a legitimate reason, in the view of the dissenters, for being in the place where he discovered contraband in "plain view."

The "plain view" exception to the warrant requirement permits a law enforcement officials to seize what clearly is evidence or contraband when it is discovered in a place where the officer has a legitimate right to be. *Coolidge v. New Hampshire*, 403 U. S. 443 (1971); *Harris v. United States*, 390 U. S. 234 (1968). Here, the Supreme Court of Washington concluded the officer had lawfully placed Overdahl under arrest and therefore was authorized to follow him to his room. The Fourth Amendment does not deny a police officer who lawfully has taken a person into custody the authority to keep that individual in sight. The absence of an affirmative indication that a particular arrestee might reach for a weapon or attempt to escape does not vitiate that authority. See *Pennsylvania v. Mimms*, 434 U. S. 106, 109-110 (1977); *United States v. Robinson*, 414 U. S. 218, 234-236 (1974). The officer did not undertake a complete search of the room,

⁴ Although Art. I, § 7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law," the court never cited that provision. It did repeatedly refer to the Fourth Amendment and cases construing it; therefore it is clear the court did not rest its decision on an independent state ground.

including areas completely out of reach of the arrestee. Cf. *Chimel v. California*, 395 U. S. 752, 763 (1969). Rather, with appropriate restraint, he remained at the door, entering no farther than was necessary to keep the arrested person in view. It was only by chance that the officer, after he had entered the room,² observed on a table what he recognized at once to be contraband. This is a classic case of evidence found in plain view when a police officer, for unrelated and entirely legitimate reasons, obtains access to someone's private area.

Nothing in the Fourth Amendment prohibits seizure of evidence of criminal conduct found in these circumstances. Accordingly, we grant the petition for a writ of certiorari, vacate the judgment of the Supreme Court of Washington, and remand the case for further proceedings not inconsistent with this opinion.

So ordered.

² The dissent misconceives the facts shown by the record when it states the officer entered the room only after he saw the marijuana seeds and the pipe. *Post*, at —. On the contrary, the officer testified that he was standing in the doorjamb, Tr. 9, 21, 31, 50, and the Supreme Court of Washington had no trouble concluding that "[t]he police officer was in the room at the time he observed the seeds and pipe." 94 Wash. 2d, at 716; 619 P. 2d, at 974 (emphasis added). Whatever may be the validity of a rule requiring a warrant to enter a dwelling initially when an officer observes evidence from the outside—a matter not at issue in this case—the "initial intrusion" here occurred when the officer followed an arrestee in his custody into the room, and only after that entry already had taken place did he see the contraband.

We also note that the trial judge found the respondent's presence in the room and his suspicious behavior indicated that "if [the officer] departed with the intention of obtaining a search warrant, that the contraband would rapidly disappear. This clearly constitutes exigent circumstances" eliminating any need there otherwise might have been to obtain a warrant. Record 20. Of course, this finding became irrelevant once the Supreme Court of Washington held that the officer could not even look into the room.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
✓ Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: + note 4

1st PRINTED DRAFT

From: Mr. Justice White

Circulated: _____

Recirculated: 11 MAY 1981

SUPREME COURT OF THE UNITED STATES

STATE OF WASHINGTON v. NEIL MARTIN
CHRISMAN

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF WASHINGTON

No. 80-1349. Decided May —, 1981

JUSTICE WHITE, dissenting.

I dissent. In this summary disposition, the Court substantially expands the scope of the plain view doctrine and wholly fails to acknowledge that expansion, characterizing this as a "classic case" for application of the plain view doctrine. *Ante*, at —.

I do not quarrel with the Court's assertion that the officer had a right to stand in the doorway of respondent's dormitory room to keep Overdahl in view and that the officer's observation of the seeds and pipe from that vantage point did not violate the Fourth Amendment. However, the issue in this case is whether, having made that observation, the officer was authorized to enter the dormitory room without a warrant to examine and seize those items.¹ The Court holds that this warrantless entry and seizure was justified by the "plain view" doctrine.²

¹ The officer testified at the suppression hearing that the only reason he entered the room was to examine the seeds and the pipe more closely and to seize them if he determined that they were contraband. The pipe was made out of a seashell, so the officer needed to examine it to determine whether it was a pipe and whether it had been used for smoking marijuana. The seeds were on a tray, apart from the pipe. The officer testified that when he looked at these seeds from the doorway he thought they were marijuana seeds. However, he found it difficult to explain how he had been able to distinguish the seeds from other types of seeds. Tr., 51. The officer explained that he had entered the room for just one purpose—"to affirm my beliefs and to seize the articles, if they were [contraband]." Tr., p. 44.

² Although I do not entirely agree with the Supreme Court of Wash-

I'm
still
with
C.G.
per
curiam

Inexplicably, the Court fails to acknowledge the distinction between a police officer's observation of an object that is inside a dwelling and his entry into the dwelling to seize that object. In *Coolidge v. New Hampshire*, 403 U. S. 443 (1971), JUSTICE STEWART clearly stated:

"[P]lain view *alone* is never enough to justify the warrantless seizure of evidence. This is simply a corollary of the familiar principle discussed above, that no amount of probable cause can justify a warrantless search or seizure absent 'exigent circumstances.' Incontrovertible testimony of the senses that an incriminating object is on premises belonging to a criminal suspect may establish the fullest possible measure of probable cause. But even where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure. *Taylor v. United States*, 286 U. S. 1; *Johnson v. United States*, 333 U. S. 10; *McDonald v. United States*, 335 U. S. 451; *Jones v. United States*, 357 U. S. 493, 497-498; *Chapman v. United States*, 365 U. S. 610; *Trupiano v. United States*, 334 U. S. 699." 403 U. S., at 468."

Coolidge emphasized that the plain view doctrine applies only after a lawful search is in progress. The "initial intrusion" must be justified by a warrant or by an exception to the warrant requirement. 403 U. S., at 467.

The Court seeks to justify the officer's warrantless intru-

ington's analysis in this case, I agree with its conclusion that the plain view doctrine alone could not justify this warrantless entry and seizure.

* One of the many cases cited in *Coolidge* to illustrate this point was *Taylor v. United States*, 286 U. S. 1 (1932). The police officers in *Taylor* had looked through a small opening in a garage and had seen cardboard cases inside the garage that they believed contained contraband liquor. The officers could smell the odor of whiskey coming from the garage. Yet this Court held that they had violated the Fourth Amendment by entering the garage and seizing the whiskey without obtaining a warrant. See *Coolidge v. New Hampshire*, 403 U. S. 443, 469, n. 25 (1971).

sion into the dormitory room by relying solely on the plain view doctrine. It reasons that since the officer was entitled to stand in the doorway to keep Overdahl in view, he was also entitled to enter the room to investigate suspicious items that were in plain view.⁴ On this reasoning, any officer pass-

⁴ The Court relies on *Coolidge v. New Hampshire*, *supra*, and *Harris v. United States*, 390 U. S. 234 (1968). Neither decision supports the Court's analysis in this case. *Harris* involved an automobile that had been impounded and towed to a police station. The windows of the car were open, the doors were unlocked, and it had begun to rain. The Court held that the Fourth Amendment did not require the police officer to obtain a warrant before opening the door of the car to roll up the car window, for this was simply "a measure taken to protect the car while it was in police custody." 390 U. S., at 236. *Harris* did not rely on the plain view doctrine to justify the warrantless intrusion into the automobile. The Court emphasized that the police officer had already lawfully entered the car when he saw incriminating evidence in plain view inside the car and seized it:

"Once the door had lawfully been opened, the registration card, with the name of the robbery victim on it, was plainly visible. It has long been settled 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 and may be introduced in evidence." *Ibid.* (emphasis added).

The broad wording of the second sentence quoted above has apparently created some confusion regarding the plain view doctrine. One commentator remarked:

"The hardest conceptual problem attending the plain view doctrine is to grasp that it is not a universal statement of the right of a policeman to seize after seeing something in open view; it is rather a limited statement of that right in one of its several instances—following a valid intrusion. . . . The source of difficulty is that the harbinger case, *Harris v. United States*, spoke carelessly in universal terms: 'It has long been settled 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. . . .'

"Seeing something in open view does not, of course, dispose . . . of the problem of crossing constitutionally protected thresholds."

Moylan, "The Plain View Doctrine: Unexpected Child of the Great 'Search Incident' Geography Battle," 26 *Mercer L. Rev.* 1047, 1096 (1975). See also 1 W. LaFare, *Search and Seizure* § 2.2 (a) (1978). This problem of "crossing constitutionally protected thresholds" without a warrant is easily resolved if the so-called "automobile exception" to the warrant requirement applies, for that exception justifies the officer's warrantless entry

ing by the open door of a home who saw incriminating evidence within could enter the home and seize the evidence without a warrant.⁵ This would severely undercut the protection afforded by the Fourth Amendment, for "the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" *Payton v. New York*, 445 U. S. 573, 585-586 (1980), quoting *United States v. United States District Court*, 407 U. S. 297, 313 (1972). As I read our cases, if an officer who is legitimately standing in the doorway of a home sees incriminating items inside the home, the plain view doctrine alone does not authorize him to enter the home without a search warrant to seize those items.⁶

Accordingly, I dissent.

into the automobile to seize contraband in plain view inside the car. See n. 5, *infra*.

⁵ In this case it might be argued that the officer's observations from the doorway did not even provide probable cause to believe that there was contraband in the dormitory room. See n. 1, *supra*. However, even if these observations did provide probable cause, it is axiomatic that "no amount of probable cause can justify a warrantless search or seizure absent 'exigent circumstances.'" *Coolidge v. New Hampshire*, *supra*, at 468.

In many respects this case is similar to *Colorado v. Bannister*, — U. S. — (1980), in which we held that an officer's observation of items in plain view within a car did not violate the occupant's Fourth Amendment rights. — U. S., at —, n. 4. The officer's observations could therefore be used to establish probable cause to search the car. However, it was also necessary to justify the warrantless intrusion into the car. We did not seek to justify that intrusion by relying on the plain view doctrine. Rather, we held that the warrantless entry was justified under the so-called "automobile exception" to the warrant requirement. See *Chambers v. Maroney*, 399 U. S. 42 (1970); *Carroll v. United States*, 267 U. S. 132 (1925).

⁶ There is no contention in this case that by entering the dormitory building the officer had already entered respondent's dwelling. The officer himself testified at trial that a dormitory room is considered a "private area" but that the public has access to the hallway. Tr., at 37.

1
(omission)

40
The CJ's changed in n.s.
resolve my concerns.
Paul C.

2
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

Five joined
CJ's P.C.
5/13

May 12, 1981

Re: No. 80-1349 - Washington v. Chrisman

Dear Byron:

Please join me in your dissent.

Sincerely,

J.M.

T.M.

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 20, 1981

*You've joined
C.J. Paul C*

*I've joined
C.J.*

Re: No. 80-1349 - Washington v. Chrisman

Dear Chief:

Byron apparently is making no response to your recirculation of May 11. I therefore join that circulation.

Sincerely,

H.A.B.

The Chief Justice
cc: The Conference

WASHINGTON

v8.

CHRISMAN

Relisted for the Chief Justice.

4. we joined
 C.I.'s opinion
 There are
 two imp.
 Qs

Relict
for
B.R.W.
who is making
some changes
in his opinions

[illegible]

*you've joined
BRW changed this
opinion to a concurrence. Paul C.*

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

9 me joined C. 1
May 21, 1981

Re: 80-1349 - Washington v. Chrisman

Dear Chief,

I have substantially revised my writing in
this case as the enclosed will indicate. It is at
the printer.

Sincerely yours,

Byron

The Chief Justice

Copies to the Conference

cpm

SUBSTANTIALLY REWRITTEN

No. 80-1349 - Washington v. Chrisman

10. The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
✓ Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 21 MAY 1981

Recirculated: _____

JUSTICE WHITE, concurring in the result.

I do not quarrel with the Court's assertion that the officer had a right to stand in the doorway of respondent's dormitory room to keep Overdahl in view and that the officer's observation of the seeds and pipe from that vantage point did not violate the Fourth Amendment. Yet I do not agree that the officer entered the room by standing in the doorway. The officer's subsequent warrantless entry into the room to seize the seeds and pipe cannot be justified by relying solely on the plain view doctrine. Therefore, I would vacate the judgment and remand the case to enable the Supreme Court of Washington to determine whether exigent circumstances justified this warrantless entry and whether the officer had probable cause to believe that the items he saw inside the room were contraband.

The officer testified at the suppression hearing that he had not physically entered the room while he was observing Overdahl, and that he had subsequently entered the room solely to confirm his suspicion that the seeds and the seashell he had observed from the doorway were marihuana seeds and a seashell pipe that had been used to smoke marihuana. The officer's uncontradicted testimony establishes that he remained in the doorway until he entered the room to examine the seeds and pipe.¹ The Court

Footnote(s) 1 appear on following page(s).

apparently has determined as a matter of law that any police officer who stands in the open doorway of a home has "entered" the home. I disagree, for under the Court's analysis a police officer may intrude into a home without a warrant to seize any incriminating evidence or contraband that he is able to see while standing in the doorway.

The plain view doctrine clearly does not authorize an officer to enter a dwelling without a warrant to seize contraband merely because the contraband was visible from outside the dwelling. As Justice Stewart stated in Coolidge v. New Hampshire, 403 U.S. 443 (1971):

"[P]lain view alone is never enough to justify

¹The officer testified:

"I stood in the doorway without entering, actually physically entering the room. ... I was standing against the doorjamb. ... I was not in the room. I was in the doorway." Tr. 7, 9, 21.

The trial court stated in its memorandum opinion that "the officer stood in the doorway, and watched [Overdahl]," observed the seashell pipe and the seeds from the doorway, and "then entered the room and examined the pipe and seeds closely." Record 18 (emphasis added). Similarly, the court of appeals stated: "Prior to entering the room, the officer saw from his vantage point in the doorway what he believed to be contraband. Only at that time, did he cross the threshold and seize the pipe and marijuana seeds." App. to Pet. for Cert. 27 (emphasis added).

As I read the Supreme Court of Washington's opinion, the court held that whether or not the officer had physically entered the room by standing in the doorway, his presence in the doorway was sufficiently intrusive that his observations were unlawful unless he could justify his presence. The court concluded that the officer should have remained outside the room, since there was no indication that Overdahl was likely to escape, destroy evidence, or seize a weapon.

the warrantless seizure of evidence. This is simply a corollary of the familiar principle discussed above, that no amount of probable cause can justify a warrantless search or seizure absent 'exigent circumstances.' Incontrovertible testimony of the senses that an incriminating object is on premises belonging to a criminal suspect may establish the fullest possible measure of probable cause. But even where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure. Taylor v. United States, 286 U.S. 1; Johnson v. United States, 333 U.S. 10, McDonald v. United States, 335 U.S. 451; Jones v. United States, 357 U.S. 493, 497-498; Chapman v. United States, 365 U.S. 610; Trupiano v. United States, 334 U.S. 699." 403 U.S., at 468.²

Coolidge emphasized that the plain view doctrine applies only after a lawful search is in progress. The "initial intrusion" must be justified by a warrant or by an exception to the warrant requirement. 403 U.S., at 467.

If a police officer passing by the open door of a home sees incriminating evidence within the home, his observations may provide probable cause for the issuance of a search warrant. Yet the officer may not enter the home without a warrant unless an exception to the warrant requirement applies.³ This rule is

²One of the many cases cited in Coolidge to illustrate this point was Taylor v. United States, 286 U.S. 1 (1932). The police officers in Taylor had looked through a small opening in a garage and had seen cardboard cases inside the garage that they believed contained contraband liquor. The officers could smell the odor of whiskey coming from the garage. Yet this Court held that they had violated the Fourth Amendment by entering the garage and seizing the whiskey without obtaining a warrant.

³There is no contention in this case that by entering the dormitory building the officer had already entered respondent's dwelling. The officer himself testified at trial that a dormitory room is considered a "private area" but that the public

fully supported by Coolidge v. New Hampshire, supra, and Harris v. United States, 390 U.S. 234 (1968).⁴ Any contrary rule would

has access to the hallway. Tr. 37.

⁴Harris v. United States involved an automobile that had been impounded and towed to a police station. The windows of the car were open, the doors were unlocked, and it had begun to rain. The Court held that the Fourth Amendment did not require the police officer to obtain a warrant before opening the door of the car to roll up the car window, for this was simply "a measure taken to protect the car while it was in police custody." 390 U.S., at 236. Harris did not rely on the plain view doctrine to justify the warrantless intrusion into the automobile. The Court emphasized that the police officer had already lawfully entered the car when he saw incriminating evidence in plain view inside the car and seized it:

"Once the door had lawfully been opened, the registration card, with the name of the robbery victim on it, was plainly visible. It has long been settled 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 and may be introduced in evidence." Ibid. (emphasis added).

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severely undercut the protection afforded by the Fourth Amendment, for "the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" Payton v. New York, 445 U.S. 573, 585-586 (1980), quoting United States v. United States District Court, 407 U.S. 297, 313 (1972).

I do not read the Court's opinion as conflicting with this general analysis.⁵ The Court simply contends that here the officer had already lawfully entered the room to observe Overdahl. Apparently the Court would approach this case quite

Moylan, "The Plain View Doctrine: Unexpected Child of the Great 'Search Incident' Geography Battle," 26 Mercer L. Rev. 1047, 1096 (1975). See also 1 W. LaFare, Search and Seizure § 2.2(a) (1978).

This problem of "crossing constitutionally protected thresholds" without a warrant is easily resolved if the so-called "automobile exception" to the warrant requirement applies, for that exception justifies a warrantless entry into the automobile to seize contraband in plain view inside the car. In Colorado v. Bannister, ___ U.S. ___ (1980), for example, we held that an officer's observation of items in plain view inside a car did not violate the occupant's Fourth Amendment rights. ___ U.S., at ___ n. 4. The officer's observations could therefore be used to establish probable cause to search the car. Yet it was also necessary to justify the warrantless intrusion into the car. We did not seek to justify that intrusion by relying on the plain view doctrine. Rather, we held that the warrantless entry was justified under the "automobile exception" to the warrant requirement. See Chambers v. Maroney, 399 U.S. 42 (1970); Carroll v. United States, 267 U.S. 132 (1925).

⁵In fact, the Court explains that "[t]he 'plain view' exception to the warrant requirement permits a law enforcement official to seize what clearly is evidence or contraband when it is discovered in a place where the officer has a legitimate right to be." Ante, at ___ (emphasis added). Thus, the plain view doctrine justifies a warrantless seizure of contraband only if the officer lawfully enters the premises where the contraband is located.

the seeds looked like marihuana seeds. Yet he found it difficult to explain how he had been able to distinguish these seeds from other types of seeds, particularly from a distance. Tr. 16-17, 51-53. The officer testified that he entered the room to inspect the seeds and the seashell and to seize these articles if they were contraband.⁷ Only after he had examined the seeds more closely, picked up the pipe, smelled the contents of the pipe, and concluded that the pipe had been used to smoke marijuana, did the officer advise Overdahl and respondent of their rights.⁸

Because I agree that the Supreme Court of Washington erred in holding that the officer was not entitled to stand in the

⁷The officer did not suggest that he had entered the room to keep a closer watch on Overdahl. Rather, he stated that the only reason he had entered the room was to examine the seeds and the pipe more closely and to seize them if he determined that they were contraband:

A: "I went, entered in to affirm my beliefs and to seize the articles if they were [contraband]."

...
Q: "So, you went in to inspect the seeds and the pipe, for further inspections and for no other purpose? ... There was no other purpose?"

A: "No, sir." Tr. 44.

⁸The officer testified:

"I then entered the room, walked directly to the seeds, I looked at them. I walked past them. I walked over to the desk and picked up the pipe, smelled the contents of the pipe, which was similar to that of marijuana that I had been in contact with in the past. I then turned and stated to the individuals that before we proceeded any farther I must advise them of their rights." Tr. 19-20.

doorway to keep Overdahl in view, I would vacate the judgment and remand for further proceedings not inconsistent with this opinion.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 22, 1981

We don't want
to grant this case,
I don't think. We've
joined CJ, but
if he doesn't get
a Court ~~we~~ I recommend
you vote to deny. Paul C.

MEMORANDUM TO THE CONFERENCE

RE: No. 80-1349 Washington v. Chrisman

After reading the exchanges between the Chief and
Byron I am going to vote to grant and hear this case.

I've joined
C.J. to Reverse
summarily.

But I don't
want to ~~take~~
grant &
hear this
case.

No new
4th Amend
principles
are
involved

Bill
W.J.B., Jr.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
✓ Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 22 MAY 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

STATE OF WASHINGTON v. NEIL MARTIN
CHRISMAN

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF WASHINGTON

No. 80-1349. Decided May —, 1981

JUSTICE WHITE, concurring in the result.

I do not quarrel with the Court's assertion that the officer had a right to stand in the doorway of respondent's dormitory room to keep Overdahl in view and that the officer's observation of the seeds and pipe from that vantage point did not violate the Fourth Amendment. Yet I do not agree that the officer entered the room by standing in the doorway. The officer's subsequent warrantless entry into the room to seize the seeds and pipe cannot be justified by relying solely on the plain view doctrine. Therefore, I would vacate the judgment and remand the case to enable the Supreme Court of Washington to determine whether exigent circumstances justified this warrantless entry and whether the officer had probable cause to believe that the items he saw inside the room were contraband.

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¹ The officer testified:

"I stood in the doorway without entering, actually physically entering the

*You've joined
CT
Paul C*

as a matter of law that any police officer who stands in the open doorway of a home has "entered" the home. I disagree, for under the Court's analysis a police officer may intrude into a home without a warrant to seize any incriminating evidence or contraband that he is able to see while standing in the doorway.

The plain view doctrine clearly does not authorize an officer to enter a dwelling without a warrant to seize contraband merely because the contraband was visible from outside the dwelling. As JUSTICE STEWART stated in *Coolidge v. New Hampshire*, 403 U. S. 443 (1971):

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room. . . . I was standing against the doorjamb. . . . I was not in the room. I was in the doorway." Tr. 7, 9, 21.

The trial court stated in its memorandum opinion that "the officer stood in the doorway, and watched [Overdahl]," observed the seashell pipe and the seeds from the doorway, and "then entered the room and examined the pipe and seeds closely." Record 18 (emphasis added). Similarly, the court of appeals stated: "Prior to entering the room, the officer saw from his vantage point in the doorway what he believed to be contraband. *Only at that time, did he cross the threshold and seize the pipe and marijuana seeds.*" App. to Pet. for Cert. 27 (emphasis added).

As I read the Supreme Court of Washington's opinion, the court held that whether or not the officer had physically entered the room by standing in the doorway, his presence in the doorway was sufficiently intrusive that his observations were unlawful unless he could justify his presence. The court concluded that the officer should have remained outside the room, since there was no indication that Overdahl was likely to escape, destroy evidence, or seize a weapon.

States, 286 U. S. 1; *Johnson v. United States*, 333 U. S. 10; *McDonald v. United States*, 335 U. S. 451; *Jones v. United States*, 357 U. S. 493, 497-498; *Chapman v. United States*, 365 U. S. 610; *Trupiano v. United States*, 403 U. S., at 468.²

Coolidge emphasized that the plain view doctrine applies only after a lawful search is in progress. The "initial intrusion" must be justified by a warrant or by an exception to the warrant requirement. 403 U. S., at 467.

If a police officer passing by the open door of a home sees incriminating evidence within the home, his observation may provide probable cause for the issuance of a search warrant. Yet the officer may not enter the home without a warrant unless an exception to the warrant requirement applies.³ This rule is fully supported by *Coolidge v. New Hampshire*, *supra*, and *Harris v. United States*, 390 U. S. 234 (1968).⁴

² One of the many cases cited in *Coolidge* to illustrate this point was *Taylor v. United States*, 286 U. S. 1 (1932). The police officers in *Taylor* had looked through a small opening in a garage and had seen cardboard cases inside the garage that they believed contained contraband liquor. The officers could smell the odor of whiskey coming from the garage. Yet this Court held that they had violated the Fourth Amendment by entering the garage and seizing the whiskey without obtaining a warrant.

³ There is no contention in this case that by entering the dormitory building the officer had already entered respondent's dwelling. The officer himself testified at trial that a dormitory room is considered a "private area" but that the public has access to the hallway. Tr. 37.

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"Once the door had lawfully been opened, the registration card, with the name of the robbery victim on it, was plainly visible. It has long

Any contrary rule would severely undercut the protection afforded by the Fourth Amendment, for "the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" *Payton v. New York*, 445 U. S. 573, 585-586 (1980), quoting *United States v. United States District Court* 407 U. S. 297, 313 (1972).

I do not read the Court's opinion as conflicting with this general analysis.³ The Court simply contends that here the

been settled 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 and may be introduced in evidence." *Ibid.* (emphasis added).

The broad wording of the second sentence quoted above has apparently created some confusion regarding the plain view doctrine. One commentator remarked:

"The hardest conceptual problem attending the plain view doctrine is to grasp that it is not a universal statement of the right of a policeman to seize after seeing something in open view; it is rather a limited statement of that right in one of its several instances—following a valid intrusion. . . . The source of difficulty is that the harbinger case, *Harris v. United States*, spoke carelessly in universal terms: 'It has long been settled 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. . . .'

"Seeing something in open view does not, of course, dispose . . . of the problem of crossing constitutionally protected thresholds."

Moylan, "The Plain View Doctrine: Unexpected Child of the Great 'Search Incident' Geography Battle," 26 Mercer L. Rev. 1047, 1096 (1975). See also 1 W. LaFare, Search and Seizure § 2.2 (a) (1978).

This problem of "crossing constitutionally protected thresholds" without a warrant is easily resolved if the so-called "automobile exception" to the warrant requirement applies, for that exception justifies a warrantless entry into the automobile to seize contraband in plain view inside the car. In *Colorado v. Bannister*, — U. S. — (1980), for example, we held that an officer's observation of items in plain view inside a car did not violate the occupant's Fourth Amendment rights. — U. S., at —, n. 4. The officer's observations could therefore be used to establish probable cause to search the car. Yet it was also necessary to justify the warrantless intrusion into the car. We did not seek to justify that intrusion by relying on the plain view doctrine. Rather, we held that the warrantless entry was justified under the "automobile exception" to the warrant requirement. See *Chambers v. Maroney*, 399 U. S. 42 (1970); *Carroll v. United States*, 267 U. S. 132 (1925).

³ In fact, the Court explains that "[t]he 'plain view' exception to the

officer had already lawfully entered the room to observe Overdahl. Apparently the Court would approach this case quite differently if the officer had seen these items through an open window or if the officer had been standing in the hallway rather than the doorway.

As the Court observes, *ante*, at —, n. 5, an exception to the warrant requirement may apply here. The trial court found that exigent circumstances justified the officer's warrantless entry into the room to seize the seeds and the pipe. The Supreme Court of Washington did not review this finding.⁶ Nor did it consider whether the officer's observations from the doorway provided him with probable cause to believe that the items he had observed were contraband.

Although the Court asserts that the officer observed items that "he recognized at once to be contraband" *ante*, at —, the record suggests that the officer merely suspected that the items he saw were contraband. The officer saw a seashell and some seeds on a tray inside the room. He suspected that the seashell had been used as a marihuana pipe since he had seen seashell pipes before and one end of this seashell was black. He thought the seeds looked like marihuana seeds. Yet he found it difficult to explain how he had been able to distin-

warrant requirement permits a law enforcement official to seize what clearly is evidence or contraband when it is discovered *in a place where the officer has a legitimate right to be.*" *Ante*, at — (emphasis added). Thus, the plain view doctrine justifies a warrantless seizure of contraband only if the officer lawfully enters the premises where the contraband is located.

⁶ The Supreme Court of Washington concluded that it was unnecessary for the officer to intrude into the room to observe Overdahl. However, it did not consider whether there were exigent circumstances that justified a warrantless entry to seize the seeds and the pipe.

The court of appeals concluded: "[E]xigent circumstances existed here. Because the drugs could have been readily disposed of while the police officer was trying to obtain a search warrant, sufficient exigent circumstances existed to justify the [warrantless] seizure." App. to Pet. for Cert. 29. The court of appeals recognized that the "preintrusion 'open view' observation from the doorway of Overdahl's room" did not justify the warrantless entry into the room. *Ibid.*

guish these seeds from other types of seeds, particularly from a distance. Tr. 16-17, 51-53. The officer testified that he entered the room to inspect the seeds and the seashell and to seize these articles if they were contraband.⁷ Only after he had examined the seeds more closely, picked up the pipe, smelled the contents of the pipe, and concluded that the pipe had been used to smoke marihuana, did the officer advise Overdahl and respondent of their rights.⁸

Because I agree that the Supreme Court of Washington erred in holding that the officer was not entitled to stand in the doorway to keep Overdahl in view, I would vacate the judgment and remand for further proceedings not inconsistent with this opinion,

⁷ The officer did not suggest that he had entered the room to keep a closer watch on Overdahl. Rather, he stated that the only reason he had entered the room was to examine the seeds and the pipe more closely and to seize them if he determined that they were contraband:

A: "I went, entered in to affirm my beliefs and to seize the articles if they were [contraband]. . . ."

Q: "So, you went in to inspect the seeds and the pipe, for further inspections and for no other purpose? . . . There was no other purpose?"

A: "No, sir." Tr. 44.

⁸ The officer testified:

"I then entered the room, walked directly to the seeds, I looked at them, I walked past them. I walked over to the desk and picked up the pipe, smelled the contents of the pipe, which was similar to that of marijuana that I had been in contact with in the past. I then turned and stated to the individuals that before we proceeded any farther I must advise them of their rights." Tr. 19-20.

This is a good compromise by C.J. I would join. My only reservation is that the bracketed sentence on p. 4 seems to present the "inadvertence" that potato. Does this bother you?
Supreme Court of the United States
Washington, D. C. 20543
June 10, 1981
Paul C.
I'm joined CJS P.C.

CHAMBERS OF
THE CHIEF JUSTICE

MEMORANDUM TO THE CONFERENCE

RE: No. 80-1349, Washington v. Chrisman

In the interest of getting this case moving, I am proposing a modification. Byron has raised an interesting issue regarding the scope of the "plain view" doctrine--i.e., whether a police officer may enter a dwelling without a warrant when he sees contraband from the outside. I believe we should address this problem at some point, but this is probably not the case in which to do so. First, this is a dormitory room; we would be better off reaching this issue for the first time in the context of a private home. Second, the Washington Supreme Court expressly held that the officer was already inside the room when he first observed the contraband; thus, the issue is not squarely presented. Third, since Overdahl was under arrest, the officer could have followed him into the room in any event to maintain the arrest custody.

Although I continue to believe going over to the table would have been permissible even if the officer had first noticed the marijuana while standing completely outside the dormitory room--and although four have joined on this point--I am prepared to yield to avoid granting this case. My primary concern from the start--with which no one seems to have disagreed--has been the Washington Supreme Court's holding that a police officer may not keep a lawfully arrested person in sight absent some affirmative indication that his safety is endangered, that evidence might be destroyed, or that the arrestee might escape. I therefore am willing to modify my per curiam to hold only that the officer's observation of the pipe and seeds was permissible. The opinion would then vacate and remand, leaving the respondent free to raise Byron's point--or the other elements of "plain view"--on remand.

I attach a typed revision of the final two paragraphs that decides the case along these lines.

Regards,
WRB

From: The Chief Justice

Circulated: _____

PROPOSED MODIFIED DRAFT recirculated: JUNE 10, 1981

SUPREME COURT OF THE UNITED STATES

STATE OF WASHINGTON v. NEIL MARTIN
CHRISMAN

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF WASHINGTON

No. 80-1349. Decided May —, 1981

PER CURIAM.

A campus police officer at Washington State University observed a male youth, Carl Overdahl, exit a student dormitory carrying a half-gallon bottle of gin. Because Washington law forbids possession of alcoholic beverages by persons under 21, Wash. Rev. Code § 66.44.270,¹ and Overdahl appeared to be under age, the officer stopped him and asked for identification. Overdahl replied that he would have to return to his room to obtain identification. The officer accompanied him.²

The room was approximately 11 by 17 feet and located on the 11th floor of the dormitory. The respondent, Overdahl's roommate, was in the room when the officer and Overdahl arrived. The officer remained in the doorway when Overdahl went inside. The respondent became visibly nervous at the sight of the officer.

While waiting, the officer observed seeds and a small pipe lying on a table in the room. From his training and experience, he believed the seeds were marihuana and the pipe was of a type used to smoke marihuana. He then went over to

¹ University regulations also forbade possession of alcoholic beverages on university property. Tr. 4, 34.

² While waiting for the elevator, the officer asked Overdahl his age. Overdahl responded that he was 19. The respondent did not argue in the Washington courts or in his Brief in Opposition here that this admission eliminated the need for Overdahl to produce identification and thus invalidates the visit to the room.

pp. 3-4

the table and examined the seeds and the pipe more closely. The pipe smelled of marihuana.

The officer informed both students of their rights under *Miranda v. Arizona*, 384 U. S. 426 (1966), and each indicated he was willing to waive those rights. The officer then asked whether they had any other drugs. The respondent handed him three small plastic bags containing marihuana. At that point, the officer called by radio for assistance. Once a second officer had arrived, the students were told a thorough search of the room would be necessary. The officers explained to the two students that they had an absolute right to insist that the officers first obtain a warrant but that they could consent to the search. The officers also informed them that any consent would have to be voluntary and they could refuse to consent. The respondent and Overdahl conferred in whispers, then announced that they would consent. The search yielded more marihuana and a quantity of lysergic acid diethylamide (LSD).

An information charged the respondent with one count of possessing more than 40 grams of marihuana and one of possessing LSD, both felonies under Wash. Rev. Code § 69.50.401 (c) (current version at Wash. Rev. Code § 69.50.401 (d)).² A pretrial motion to suppress the evidence seized in the room was denied. The respondent was convicted after a bench trial. On appeal, the Washington Court of Appeals upheld the search and affirmed. 24 Wash. App. 385, 600 P. 2d 1316 (1979).

The Supreme Court of Washington reversed. 94 Wash. 2d 711, 619 P. 2d 971 (1980). It held that, although the officer properly had placed Overdahl under arrest and followed him to the dormitory room, he had no right to enter the room. There was no indication that Overdahl might seize a weapon or destroy evidence (the gin bottle), and, with the officer blocking the only exit from the room, there was no possibility

² Overdahl was tried with the respondent for possessing marihuana and also was convicted. The charges against him were dismissed while the case was pending before the Supreme Court of Washington.

of escape. Because no exigent circumstance required the officer to enter the room and thus view its interior, his seizure of the seeds and the pipe did not fall within the "plain view" exception to the warrant requirement; that exception requires some prior justification for the officer's being where he sees the contraband. In addition, because the respondent and Overdahl's consent to the subsequent search of room was the fruit of the officer's initial entry, the contraband found during that search should have been suppressed as well.*

Three Justices dissented. They believed it was fully reasonable for a police officer to keep Overdahl, an arrestee, in sight at all times, including while he entered the room. The officer therefore had a legitimate reason, in the view of the dissenters, for being in the place where he discovered contraband in "plain view."

We believe the Supreme Court of Washington erred in holding that the officer had no right to stand in the doorway. That court concluded that the officer, having lawfully placed Overdahl under arrest, could follow him to his room. The Fourth Amendment does not deny a police officer who lawfully has taken a person into custody the authority to keep that individual in sight. The absence of an affirmative indication that a particular arrestee might reach for a weapon, destroy evidence, or escape does not vitiate that authority. See Pennsylvania v. Mimms, 434 U.S. 106, 109-110 (1977); United States v. Robinson, 414 U.S. 218, 234-236 (1974). Here, the officer did not, upon his arrival, undertake a complete search of the

* Although Art. I, §7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law," the court never cited that provision. It did repeatedly refer to the Fourth Amendment and cases construing it; therefore it is clear the court did not rest its decision on an independent state ground.

room, including areas completely out of reach of the arrestee. Cf. Chimel v. California, 395 U.S. 752, 763 (1969). Rather, with appropriate restraint, he remained at the door, entering no farther than was necessary to keep the arrested person in view. It was only by chance that the officer, from this vantage point, observed on a table what he believed was contraband.

Nothing in the Fourth Amendment prohibited the officer from being where he was when he made the critical observation in this case. Accordingly, we grant the petition for a writ of certiorari, vacate the judgment of the Supreme Court of Washington, and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

[FN OMITTED]

WASHINGTON

v8.

CHRISMAN

Relisted for the Chief Justice.

CHRISMAN

Relisted for the Chief Justice.

*9've joined C.J. Revere
I would still want
- but don't want
to grant.*

we joined C.F. Reed
I would still want
- but don't want
to grant.

for the Chief Justice.

Related
on
C.V.

on

C.V.

[illegible]

6

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

*I have no problems
with CJ's version.
Paul C*

*9 in joined
me C J*

June 11, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 80-1349, Washington v. Chrisman

In response to the Chief Justice's circulation, I should say that the Chief Justice previously asked me whether I would be able to join his opinion if he made essentially the same changes he proposes in his circulation. I responded that the proposed changes did not overcome our differences in this case, and I countered by suggesting that the last two paragraphs of the opinion be modified to read as follows:

"We believe the Supreme Court of Washington erred in holding the officer had no right to stand in the doorway. That court concluded that the officer had lawfully placed Overdahl under arrest and therefore was permitted to follow him to his room. The Fourth Amendment does not deny a police officer who lawfully has taken a person into custody the authority to keep that individual in sight. The absence of an affirmative indication that a particular arrestee might reach for a weapon, destroy evidence, or attempt to escape does not vitiate that authority. See Pennsylvania v. Mimms, 434 U.S. 106, 109-110 (1977); United States v. Robinson, 414 U.S. 218, 234-236 (1973). Here, the officer did not, upon his arrival, undertake a complete search of the room, including areas completely out of reach of the arrestee. Cf. Chimel v. California, 395 U.S. 742, 763 (1969). Rather, with what seems to us appropriate restraint, he stood in the doorway, proceeding no farther than was necessary to keep the arrested person in view. It was only by chance that, from this vantage point, the officer observed on a table what he believed was contraband.

Nothing in the Fourth Amendment prohibits the officer from being where he was when he made this observation. If the officer was 'in' the room we are quite sure he was legally there; and if from that vantage point he reasonably believed that what he saw on the table was contraband, he could seize that material without a warrant. Our 'plain view' cases indicate as much. On the other hand, if he was not in' the room, the plain view doctrine would not itself justify his entry into the room even if he had probable cause to believe that what he saw was contraband. A warrantless entry would be proper only if there were exigent circumstances, which may or may not have been present in this case. Accordingly, we grant the petition for writ of certiorari, vacate the judgment of the Supreme Court of Washington and remand the case for further proceedings not inconsistent with this opinion."

BRW's
dis-
tinction

As I understand it, the Chief Justice found my suggested revision unacceptable because it recognizes that although an officer's lawful observations from outside a dwelling may give him probable cause to believe that there is incriminating evidence inside the dwelling, the plain view doctrine alone does not justify a warrantless entry to seize that evidence. I would rather grant the petition for a writ of certiorari and hear the case than join the per curiam with the Chief Justice's suggested revision. I believe the Washington Supreme Court would interpret the Chief Justice's opinion as strongly suggesting that whether or not the officer had "entered" the room by standing in the doorway, the plain view doctrine alone permitted him to seize these items without a warrant.

BRW
by RL

*You have joined it,
but he might have
fallen 1 vote short of
getting a summary
reversal.*

CHAMBERS OF
THE CHIEF JUSTICE

Supreme Court of the United States
Washington, D. C. 20543

Paul C

June 16, 1981

*for
joined
C. J.*

MEMORANDUM TO THE CONFERENCE

RE: No. 80-1349, Washington v. Chrisman

I still would like to correct the primary defect of the Washington Supreme Court's decision--i.e., its holding that a police officer may not keep an arrestee in sight--without using the "poor" facts of this case for resolving, one way or another, whether a warrant is required to enter a dwelling when contraband is seen in "plain view" from the outside. Therefore, I am willing to add a footnote expressly saying that other elements of the "plain view" doctrine remain unresolved in this case. I am not willing, however, to go along with Byron's proposed final paragraph, which, as I read it, would decide that a warrant ordinarily is needed under such circumstances. I continue to disagree with that position, and Potter, Harry, Lewis, and Bill Rehnquist seemed to share my view. *you*

I do not know how the Washington Supreme Court will resolve this question, if Chrisman raises it. I still am convinced that (a) we need not reach this issue in this case and (b) we would be better off addressing it in a case without so many factual problems.

Regards,

WRB

Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

REVISED PROPOSED DRAFT Recirculated: JUNE 16, 1981

SUPREME COURT OF THE UNITED STATES

STATE OF WASHINGTON v. NEIL MARTIN
CHRISTMAN

ON PETITION FOR WRIT OF HABEAS CORPUS TO THE SUPREME COURT
OF WASHINGTON

No. 89-1849. Decided May —, 1981

PER CURIAM.

A campus police officer at Washington State University observed a male youth, Carl Overdahl, exit a student dormitory carrying a half-gallon bottle of gin. Because Washington law forbids possession of alcoholic beverages by persons under 21, Wash. Rev. Code § 60.44.270,¹ and Overdahl appeared to be under age, the officer stopped him and asked for identification. Overdahl replied that he would have to return to his room to obtain identification. The officer accompanied him.²

The room was approximately 11 by 17 feet and located on the 11th floor of the dormitory. The respondent, Overdahl's roommate, was in the room when the officer and Overdahl arrived. The officer remained in the doorway when Overdahl went inside. The respondent became visibly nervous at the sight of the officer.

While waiting, the officer observed seeds and a small pipe lying on a table in the room. From his training and experience, he believed the seeds were marijuana and the pipe was of a type used to smoke marijuana. He then went over to

¹ University regulations also forbade possession of alcoholic beverages on university property. Tr. 4, 34.

² While waiting for the elevator, the officer asked Overdahl his age. Overdahl responded that he was 19. The respondent did not argue in the Washington courts or in his Brief in Opposition here that this admission eliminated the need for Overdahl to produce identification and thus invalidates the visit to the room.

the table and examined the seeds and the pipe more closely. The pipe smelled of marihuana.

The officer informed both students of their rights under *Miranda v. Arizona*, 384 U. S. 426 (1966), and each indicated he was willing to waive those rights. The officer then asked whether they had any other drugs. The respondent handed him three small plastic bags containing marihuana. At that point, the officer called by radio for assistance. Once a second officer had arrived, the students were told a thorough search of the room would be necessary. The officers explained to the two students that they had an absolute right to insist that the officers first obtain a warrant but that they could consent to the search. The officers also informed them that any consent would have to be voluntary and they could refuse to consent. The respondent and Overdahl conferred in whispers, then announced that they would consent. The search yielded more marihuana and a quantity of lysergic acid diethylamide (LSD).

An information charged the respondent with one count of possessing more than 40 grams of marihuana and one of possessing LSD, both felonies under Wash. Rev. Code § 69.50.401 (c) (current version at Wash. Rev. Code § 69.50.401 (d)).² A pretrial motion to suppress the evidence seized in the room was denied. The respondent was convicted after a bench trial. On appeal, the Washington Court of Appeals upheld the search and affirmed. 24 Wash. App. 385, 600 P. 2d 1316 (1979).

The Supreme Court of Washington reversed. 94 Wash. 2d 711, 619 P. 2d 971 (1980). It held that, although the officer properly had placed Overdahl under arrest and followed him to the dormitory room, he had no right to enter the room. There was no indication that Overdahl might seize a weapon or destroy evidence (the gin bottle), and, with the officer blocking the only exit from the room, there was no possibility

² Overdahl was tried with the respondent for possessing marihuana and also was convicted. The charges against him were dismissed while the case was pending before the Supreme Court of Washington.

of escape. Because no exigent circumstance required the officer to enter the room and thus view its interior, his seizure of the seeds and the pipe did not fall within the "plain view" exception to the warrant requirement; that exception requires some prior justification for the officer's being where he sees the contraband. In addition, because the respondent and Overdahl's consent to the subsequent search of room was the fruit of the officer's initial entry, the contraband found during that search should have been suppressed as well.*

Three Justices dissented. They believed it was fully reasonable for a police officer to keep Overdahl, an arrestee, in sight at all times, including while he entered the room. The officer therefore had a legitimate reason, in the view of the dissenters, for being in the place where he discovered contraband in "plain view."

In our view, the Supreme Court of Washington erred in holding that the officer had no right to stand in the doorway. That court concluded that the officer, having lawfully placed Overdahl under arrest, could follow him to his room. The Fourth Amendment permits a police officer who lawfully has taken a person into custody to keep that individual in sight. The absence of an affirmative indication that the arrestee might reach for a weapon, destroy evidence, or flee does not vitiate that authority. See Pennsylvania v. Mimms, 434 U.S. 106, 109-110 (1977); United States v. Robinson, 414 U.S. 218, 234-236 (1974). Here, the officer did not, upon his arrival, under-

* Although Art. I, §7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law," the court never cited that provision. It did repeatedly refer to the Fourth Amendment and cases construing it; therefore it is clear the court did not rest its decision on an independent state ground.

take a complete search of the room, including areas completely out of reach of the arrestee. Cf. Chimel v. California, 395 U.S. 752, 763 (1969). Rather, with appropriate restraint, he remained at the open doorway, entering no farther than was necessary to keep the arrested person in view. It was only by chance that the officer from this vantage point--where he was lawfully present--observed on a table what he believed was contraband.

Nothing in the Fourth Amendment prohibited the officer from being where he was when he made the critical observation in this case. Accordingly, we grant the petition for a writ of certiorari, vacate the judgment of the Supreme Court of Washington, and remand the case for further proceedings not inconsistent with this opinion.⁵

It is so ordered.

⁵Because the Supreme Court of Washington held that the officer had no right to keep Overdahl in sight, it did not examine any other requirements for a lawful seizure under these circumstances. These issues are for the state courts to resolve in the first instance.

Then in the University of Washington
dormitory room case that C J & B R W
df1 10/26/81 handled over last Term.

There is a simple case.

I agree with David's analysis
& will vote in accord with his
alternative recommendation # 2 (p 16)

See particularly pp 10 + 12

BENCH MEMORANDUM

To: Mr. Justice Powell

October 26, 1981

From: David Levi

No. 80-1349: State of Washington v. Chrisman

Question Presented

Whether an Officer who is standing in the doorway of
an arrestee's room may enter the premises when he observes
contraband lying in plain view and when he is keeping the
arrestee in sight?

Introduction

The Court granted this petition after it was unable to agree on a summary reversal. You joined a percuriam prepared by the Chief. Justice White first circulated a dissent then a concurrence. Ultimately Justices Stevens, Brennan, White, and Marshall voted to grant and set for argument. The case has already received far more analysis and attention from the Court than I fear it deserves.

I. Facts and Decision Below

A. Facts

On the evening of January 21, 1978, a campus police Officer saw defendant Overdahl walk out of a dormitory at Washington State University carrying a half-gallon bottle of gin. Because state law forbids possession of alcohol by a minor, and because Overdahl appeared to be under 21, the Officer stopped him and asked for identification. Overdahl replied that he would have to go upstairs to his room to get the identification. The Officer stated that he would have to accompany him to the room.

Upon arriving at the 11th floor of the dorm, the Officer followed Overdahl down the hallway to his room. Overdahl pushed open the slightly ajar door and entered the room while the Officer remained in the doorway.

3.
Overdahl's roommate, Neil Chrisman, respondent here, was in the room and became visibly nervous at the sight of the Officer.

After watching the two students for a few minutes, the Officer observed seeds and a small pipe lying on a desk. Suspecting that the seeds were marijuana and the pipe of the type used to smoke marijuana, the Officer walked to the table to investigate more closely. The pipe smelled of marijuana.

From this point on, the facts are not essential. Briefly, the Officer read the two roommates their rights, received their permission to search the room, and discovered more marijuana and a quantity of LSD. The trial court denied a motion to suppress this evidence, and Chrisman was convicted on a two count indictment. The court of appeals upheld the search and affirmed.

B. Decision By the Supreme Court of Washington

The supreme court of Washington reversed. The court found that the plain view exception to the warrant requirement would not justify the seizure of the pipe and seeds in this case. The "plain view exception" is available in two sorts of situations: first, it permits the warrantless seizure of incriminating evidence discovered in a search of an area for other specified items pursuant to a valid warrant; second, it permits the warrantless seizure of items discovered inadvertently after an intrusion otherwise excepted from the

warrant requirement. Coolidge v. New Hampshire, 403 U.S. 443 (1971). In either of the two situations, the Officer must have a prior justification for intrusion.

The court found no justification for the Officer's intrusion into the room:

The record is in conflict as to whether [the officer] stood in the doorway and then entered the room or whether, while in the doorway, he was in fact in the room. We need not, however, let the result be determined by such niceties. The police Officer was in the room at the time he observed the seeds and pipe. The question is: Did he have a right to be there?

Although Overdahl was placed under arrest outside of the dorm and continued to be under arrest when accompanied by the Officer to the room, the fact of arrest alone did not give the Officer the right to enter the room without a warrant. Nor were there exigent circumstances requiring the Officer to enter the room: there was no evidence that the Officer was in any danger, that the bottle of gin was about to be destroyed, or that Overdahl was about to flee. Had the Officer not been "in" the room--i.e. in the doorway--he would not have seen the pipe and seeds, and the evidence must be suppressed. Under this extreme holding, the Officer should have remained outside the room with his back to the door.

*Analysis
of
Washington
S/C*

The three dissenters attacked the majority for failing to "explain convincingly ... why the Officer was not

entitled to keep the arrested person within his sight." It is well established that if a defendant is arrested at his dwelling and asks to go to another room the police may search that room before or after granting the request. United States v. Mason, 523 F.2d 1122, 1126 (D.C. Cir. 1975). If the Officer could have searched the room, he certainly had the right to enter it. Similarly, it is well established that if a defendant is arrested at his dwelling, and is permitted to go to another part of the dwelling for some purpose, the police may accompany him and any evidence inadvertently observed is admissible under the plain view doctrine. United States v. Di Stefano, 555 F.2d 1094, 1101 (CA2 1977).

Yes

In sum, the disagreement within the court below may be stated as follows: Absent exigent circumstances, does an Officer have the right to accompany a person who has just been arrested onto the arrestee's premises?

The
Q

II. Analysis

A. The Colloquy Between the Chief and Justice White

The Chief's first draft held that:

the Fourth Amendment does not deny a police Officer who lawfully has taken a person into custody the authority to keep that individual in sight. The absence of an affirmative indication that a particular arrestee might reach for a weapon or attempt to escape does not vitiate that authority.

See Pennsylvania v. Mims, 434 U.S. 106, 109-110 (1977) ... The Officer did not undertake a complete search of the room ... Rather, with appropriate restraint, he remained at the door... It was only by chance that the Officer observed on a table what he recognized at once to be contraband. This is a classic case of evidence found in plain view when a police Officer, for unrelated and entirely legitimate reasons, obtains access to someone's private area."

Thus, the Chief proposed to adopt the position of the dissent below: An Officer may keep an arrestee in sight, and may enter the premises in order to do so. Justices Powell, Stewart, and Rehnquist joined.

Justice White dissented. He argued that the Officer had a right to stand in the doorway and had a right to observe the seeds and pipe from that vantage. But having seen the drugs, the Officer did not have a right "to enter the dormitory room without a warrant to examine and seize those items." He characterized the Chief's per curiam as holding that a "warrantless entry and seizure was justified by the 'plain view' doctrine." Justice White's concern was that the Court's holding would permit a police Officer who passes by the open door of a dwelling and witnesses contraband to enter the home and seize the evidence without a warrant.

Justice White's dissent is noteworthy for two points--I would say for two errors. First, unlike the court below, he argues that the Officer was not "in" the room when he observed the drugs. Whereas the court below did not

DAW
in sketchy
argued
officer was
not in the
room

yes

believe that the case should turn on such a "nicety," Justice White insists that indeed it should. Second, Justice White appears to mischaracterize the holding of the per curiam opinion. That opinion does not hold that the plain view doctrine justifies a warrantless entry; it holds that the Officer's need to maintain control of person who has been arrested justifies entry.

The Chief's P.C.

In response to Justice White's dissent, the Chief added a footnote (footnote 5) to the effect that the Officer was "in the room" when he stood in the doorway and second that "exigent circumstances" justified the seizure since had the Officer left to get a warrant, Chrisman might well have destroyed the evidence.

After the Chief was unable to get a sixth vote, he re-wrote the per curiam in an effort to allay Justice White's fear that the plain view doctrine was being extended. In the revision, the Court holds only that the Officer had a right to keep a lawfully arrested person in sight regardless of whether exigent circumstances existed. Thus the Officer properly observed the pipe and seeds. Whether he then properly seized the pipe--because he was already "in the room" or because exigent circumstances existed--would be for the state courts to determine on remand.

Justice White was not mollified. He had suggested the following language which the Chief had not been willing to include:

"If the Officer was "in" the room we are quite sure he was legally there; and if from that vantage point he reasonably believed that what he saw on the table was contraband, he could seize that material without a warrant. On the other hand, if he was not "in" the room, the plain view doctrine would not itself justify his entry into the room even if he had probable cause to believe that what he saw was contraband. A warrantless entry would be proper only if there were exigent circumstances, which may or may not have been present in this case."

The Chief would not include this paragraph because he did not wish to decide on the peculiar facts here whether the plain view doctrine would or would not authorize a warrantless entry when an Officer sees contraband inside a dwelling through an open door or window.

Justice White did shift his position, however, to *BRW*
the point of concurring in the judgment. In his concurrence he argued that the Officer was properly in the doorway and had properly observed the pipe and seeds. But he argued the Officer had not entered the room by simply standing in the doorway and his warrantless entry into the room could not be justified by the plain view doctrine. The only justification would be if the Officer had probable cause to believe that the items were contraband and if exigent circumstances justified an immediate seizure of the items. Justice White opposed the majority's holding that "as a matter of law ... any police Officer who stands in the open doorway of a home has "entered" the home" because under such a rule the Officer might then

"intrude into a home without a warrant to seize any incriminating evidence or contraband that he is able to see while standing in the doorway." As the Court stated in Coolidge: "plain view alone is never enough to justify the warrantless seizure of evidence." Justice White would remand for a determination whether the exigent circumstances existed in this case.

B. Resolving the Difference

The Court is very close to an agreement on this case. Apparently all of the Justices agree that the Officer properly stood in the door and that he properly saw the seeds and the pipe. Significantly, even Justice White would apparently agree that had it been necessary for the Officer to take a couple of steps into the room in order to maintain Overdahl within sight, the Officer could have then picked up the items under the plain view doctrine.

The Court may not be in agreement as to whether the plain view doctrine itself permits a warrantless entry as, for example, when an Officer sees contraband inside of a dwelling through an open door. At the least, the Chief is reluctant to decide this question on these facts and in the setting of a college dormitory. And the Court is not in agreement as to whether an Officer is "in" the room when he stands in the doorway. Justice White fears that under such a view a

policeman who sells raffle tickets from the doorway will then be able to march into the residence if he sees contraband from the doorway without first obtaining a warrant and without any exigent circumstances.

But I doubt that either of these two disagreements ^{is} ~~are~~ significant in the context of the facts of this case. Here the Officer was accompanying a person whom he had lawfully arrested. As the dissent below argued, had the Officer arrested Overdahl in his home and had Overdahl asked to go to another room in the house, the Officer could have accompanied him, could have seized anything in plain view, and could have searched the room both before and after the defendant was permitted to go into it. For his safety, the Officer must be able to maintain an arrestee in sight and must be able to control the area around the arrestee. The officer in this case apparently believed that he could best maintain control of the room and its two occupants by standing in the doorway. In this setting, I think that the officer is "in" the room--whether he is in the doorway or two steps into the room--and anything the officer sees is subject to the plain view exception. Certainly one's expectation of privacy in a room is considerably lessened following an arrest and after an officer has taken up a position from which he may view the arrestee's every move and from which he may intervene if need be.

*We need not
decide this type of case*

This does not mean that an officer who sees contraband through an open doorway or who stands in the doorway of a house would be given the same leeway to enter the dwelling and seize items in plain view. I think one can make a strong argument that an officer who sees contraband--as opposed to incriminating evidence--is seeing the perpetration of a crime and may enter a dwelling to seize the contraband. But the Court does not need to decide that question on this case.

To accept Justice White's approach would involve the Court in making the sort of artificial distinctions so common already to the fourth amendment. Thus if the officer had taken one step forward when accompanying Overdahl, Justice White would decide the case differently. Had the officer needed to peer around a corner and so had come forward into the room, or had the table been by the door, the case might be different. In this way the architecture of the room and the placement of the furniture would determine application of the fourth amendment.

One could argue in response that when an officer steps into a room for the purpose of examining what he suspects are drugs the matter should be treated differently than when the officer steps in to maintain control of the arrestee and then sees the drugs. But there are at least three problems with adopting such a rule. First, the rule won't be of any effect in reality: the officer will simply

testify that he came into the room to keep any eye on the arrestee. Second, such a rule "penalizes" officers who show restraint and do not come barging into the room. In the future officers will simply act in a more intrusive fashion to begin with. And finally, the distinction hinges on the fact that the officer was standing at the entrance of the room rather than just inside the threshold when he saw the suspicious items. That the case should turn on this difference seems to make little sense. If the Officer was content to stand at the doorway it was because he could maintain control from that vantage and could see the arrestee's every move. In these circumstances the officer is every bit as much "in" the room as if he had taken a couple of steps forward. In either case the intrusion has occurred, and has occurred lawfully, while the expectation of privacy has been destroyed.

In sum, it is the "factor of a lawful arrest" that so distinguishes this case. By holding that an officer who has placed a person under arrest may accompany that person into his dwelling and into any room in to which he goes, and by holding that the officer may then seize anything in plain view, I do not think that the Court is creating an exception to the warrant requirement that should trouble Justice White. Such a holding comports with commonsense and the purposes of the plain view exception, and does not decide the case in which an officer sees contraband through an open door but

yes

where no arrest has been made. That question can wait for a less idiosyncratic set of facts.

Of course the Court could hold simply that the officer could stand at the doorway and look into the room. That was the Chief's approach in his second effort and such a holding is enough to vacate and remand. It would then be left to the state courts on remand to decide if there were exigent circumstances justifying the seizure of the items or whether the fact that the officer was maintaining watch over an arrestee permitted him to enter the room without a warrant and regardless of whether exigent circumstances existed.

III. Arguments of the Parties

A. Chrisman

Chrisman makes many of the arguments Justice White has made. In addition, he suggests that the decision below can be understood to rely on the state constitution and therefore rests upon an independent and adequate state ground. But Chrisman has no evidence of such a basis except for a few citations in the opinion to state cases. By contrast, the opinion relies heavily upon decisions of this Court and nowhere indicates that its holding is one of state law.

Chrisman also argues that the officer had no right to ask Overdahl for identification without first advising him of his rights. The act of giving the identification to the

officer would have been a testimonial act relevant to the offense of possession of alcohol by a minor. But this argument does not appear to have been raised below; if the argument has any validity, and if Chrisman has standing to make it, it can be offered on remand.

Finally, Chrisman argues that there were no exigent circumstances requiring the officer to act immediately without a warrant. The room was under control; the officer was in communication via walkie-talkie with other officers who could have aided him in maintaining the status quo while a warrant was obtained.

B. The State

In addition to arguing that the fact of an arrest permitted the officer to enter the room, the state argues that there were exigent circumstances requiring the officer to enter the room and seize the contraband. The state agrees with Justice White that at the time the officer made his observation of the drugs, he was not "in" the room. But Overdahl had left the door open, giving the officer a view of the room and removing any expectation of privacy. The room was in "open view" and the officer was entitled to look in. Seeing the drugs, and in view of Chrisman's nervousness and the likelihood that the contraband would be destroyed, the officer properly entered the room under the exigent circumstances exception. The officer could not have left to obtain a warrant in these circumstances. Moreover, the

suggestion that the officer should have called for help and
blow toward a gained testimony and to further maintain
that going to witness' maintenance a danger was likely
to occur. The officer's negligence by failing to also blow
and has been shown that the officer was not even blown
depending on a light. Further, the officer's negligence
for the fourth reason, the officer's negligence for
protecting the evidence and for the officer's negligence
immediately.

It may well be that on a search the state could
successfully show that there were exigent circumstances
justifying the seizure. The intermediate appellate court so
held, although the state supreme court did not reach the
question since it found that the officer should not have been
at the doorway looking into the room in the first place.

IV. Conclusion

The Court may vacate and remand this case on either
of two grounds:

1. The Court may hold that an officer may accompany
an arrested person to his dwelling and keep the arrested
person in his dwelling at night. This was the Chief's approach in his second per
curiam. On remand the court must now deal with the question of
whether the officer's negligence in failing to immediately

seizure of the items or whether the fact that Overdahl was under arrest justified the officer's entry into the room.

2. The Court may hold that when an officer accompanies an arrested person to his dwelling, and takes up a position from which he can watch the arrestee and maintain control of the situation, he may seize any contraband items that he can see from his vantage point. This was the Chief's approach in his first opinion.

may
view

I think either approach would be proper. The first has the advantage of caution; the second of providing more guidance.

There is case involving an officer who observed marijuana in a student's room while standing at the door - after accompanying another student there whom he had lawfully ~~and~~ arrested.

The C.J. & B.R.W. wrote, respectively, a P.C. & a dissent before we finally granted. The difference bet. them turned on whether the officer was "in" the room or "out" looking in - when the marijuana was "in plain view." They agreed that in either case there was "probable cause" because officer had seen a controlled substance. The Q is whether a warrant was then necessary. Apparently the circumstances were not "exigent."

There should not have been viewed as a controlling difference.

Decisive fact: there was a "lawful arrest"

80-1349 Chrisman (11/5)

Reveries

Decisive fact is that officer, having made a lawful arrest of Overdahl, had right (duty) to follow him to room. Chose to remain at door.

These contraband in plain view could have been seized.

Overdahl
Overdahl & Chrisman, after being ~~was~~ warned, consented to search.

Miranda warnings of Overdahl not requested. He was never interrogated.

The Chief Justice Rev.

Officer, having arrested the student, could have gone "in" room. This immaterial that officer stopped at door-way.

No Miranda issue

Critical fact is that officer elected not to enter home.

Justice Brennan Remand to determine "exigent circumstances" issue

Entry of "home" implicates strongest force of 4th Amend.

Arrest was lawful. But Overdahl was released from custody when officer stopped at door. Plain view doctrine of Coolidge doesn't apply unless arrest is in the residence (here, the room).

Agree with what BRW wrote last Term. Analysis of Wash. S/K was wrong. We should Remand.

Justice White Rev & Remand

for reasons stated last Term

Justice Marshall *Rev. & Remand*

Agree with B R W & W J B

Justice Blackmun *Rev.*

Still with C J.

The

Justice Powell *Rev.*

See my notes

*Can't draw a line between the
door-jam & the "inside" & "outside"*

Justice Rehnquist Rev.

Should overrule Mapp

But given Mapp, the officer has right to remain with a suspect lawfully arrested. Plain view applies. Agree with LFP.

The contra-brand was only 6 or 7 feet from the officer.

Justice Stevens Rev.

Plain view doctrine doesn't apply.

Officer had ~~the~~ right to enter room because of his authority following arrest. The custody is controlling.

Same rule would apply if this were a private home.

Justice O'Connor Rev.

Our opinion should emphasize right of officer to retain custody of an arrestee.

Sandra & TM debated whether this is applicable to arrestee for a misdemeanor.

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

L.F.P.

081349A, 11-231-81, rev. Drb

From: The Chief Justice

Circulated: NOV 24 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1349

WASHINGTON, PETITIONER v.
NEIL MARTIN CHRISMAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF WASHINGTON

[November —, 1981]

Reviewed
11/24

Join

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to consider whether a police officer
may, consistent with the Fourth Amendment, accompany an
arrested person into his residence and seize contraband
discovered there in plain view.

I

On the evening of January 21, 1978, Officer Daugherty of
the Washington State University police department ob-
served Carl Overdahl, a student at the University, leave a
student dormitory carrying a half-gallon bottle of gin. Be-
cause Washington law forbids possession of alcoholic bever-
ages by persons under 21, Wash. Rev. Code § 66.44.270, and
Overdahl appeared to be under age,¹ the officer stopped him
and asked for identification. Overdahl said that his identifi-
cation was in his dormitory room and asked if the officer
would wait while he went to retrieve it. The officer an-
swered that under the circumstances he would have to ac-

¹ In addition, University regulations prohibit possession of alcoholic bever-
ages on University property. Tr. 4, 34. At the suppression hearing,
Officer Daugherty testified that, because of these regulations, he would
have stopped Overdahl without regard to his age. Tr. 10.

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WASHINGTON v. CHRISMAN

company Overdahl, to which Overdahl replied "O.K."

Overdahl's room was approximately 11 by 17 feet and located on the 11th floor of the dormitory. Respondent Chrisman, Overdahl's roommate, was in the room when the officer and Overdahl entered. The officer remained in the open doorway, leaning against the doorjamb while watching Chrisman and Overdahl. He observed that Chrisman, who was in the process of placing a small box in the room's medicine cabinet, became nervous at the sight of an officer.

Within 30 to 45 seconds after Overdahl entered the room, the officer noticed seeds and a small pipe lying on a desk 8 to 10 feet from where he was standing. From his training and experience, the officer believed the seeds were marijuana and the pipe was of a type used to smoke marijuana. He entered the room and examined the pipe and seeds, confirming that the seeds were marijuana and observing that the pipe smelled of marijuana.

The officer informed Overdahl and Chrisman of their rights under *Miranda v. Arizona*, 384 U. S. 426 (1966); each acknowledged that he understood his rights and indicated that he was willing to waive them. Officer Daugherty then asked whether the students had any other drugs in the room. The respondent handed Daugherty the box he had been carrying earlier, which contained three small plastic bags filled with marijuana and \$112 in cash. At that point, Officer Daugherty called by radio for a second officer; on his arrival, the two students were told that a search of the room would be necessary. The officers explained to Overdahl and Chrisman that they had an absolute right to insist that the officers first obtain a search warrant, but that they could voluntarily consent to the search. Following this explanation, which was given in considerable detail, the two students conferred in whispers for several minutes before announcing their consent; they also signed written forms consenting to the search of the room. The search yielded more marijuana and a quantity of lysergic acid diethylamide (LSD), both controlled substances.

Respondent was charged with one count of possessing more than 40 grams of marijuana and one of possessing LSD, both felonies under Wash. Rev. Code § 69.50.401 (c) (current version at Wash. Rev. Code § 69.50.401 (d) (Supp. 1981)). A pretrial motion to suppress the evidence seized in the room was denied; respondent was convicted of both counts. On appeal, the Washington Court of Appeals affirmed the convictions, upholding the validity of the search. 24 Wash. App. 385, 600 P. 2d 1316 (1979).

The Supreme Court of Washington reversed. 94 Wash. 2d 711, 619 P. 2d 971 (1980). It held that, although Overdahl had been placed under lawful arrest and "there was nothing to prevent Officer Daugherty from accompanying Overdahl to his room," the officer had no right to enter the room and either examine or seize contraband without a warrant. The court reasoned there was no indication that Overdahl might obtain a weapon or destroy evidence, and, with the officer blocking the only exit from the room, his presence inside the room was not necessary to prevent escape. Because the officer's entry into the room and his observations of its interior were not justified by "exigent circumstances," the seizure of the seeds and pipe were held not to fall within the plain view exception to the Fourth Amendment's warrant requirement. The court went on to hold that because the students' consent to the subsequent search of the room was the fruit of the officer's initial entry, the contraband found during that search should also have been suppressed.²

Three Justices dissented. They concluded it was reasonable for a police officer to keep an arrested person in sight at all times; accordingly, the officer had a legitimate reason for

² Although Art. I, § 7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law," the court never cited that provision. It did repeatedly refer to the Fourth Amendment and cases construing it. While respondent urges that we "treat the case as having been decided under the Washington Constitution," it is clear that the court did not rest its decision on an independent state ground.

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WASHINGTON v. CHRISMAN

being in the place where he discovered the contraband, and was entitled, under the plain view doctrine, to seize it.

We granted certiorari, — U. S. — (1981), and reverse.

II

A

The “plain view” exception to the Fourth Amendment warrant requirement permits a law enforcement officer to seize what clearly is evidence or contraband when it is discovered in a place where the officer has a right to be. *Coolidge v. New Hampshire*, 403 U. S. 443 (1971); *Harris v. United States*, 390 U. S. 234 (1968). Here, the officer had placed Overdahl under lawful arrest, and was therefore authorized to accompany him to his room for the purpose of obtaining identification.³ The officer had a right to remain literally at Overdahl’s elbow at all times; nothing in the Fourth Amendment is to the contrary.

The central premise of the opinion of the Supreme Court of Washington is that Officer Daugherty was not entitled to ac-

³The trial court found that it was Overdahl who proposed to retrieve the identification, and, after being informed that Officer Daugherty would have to accompany him, agreed to the officer’s presence. Respondent nevertheless claims that Overdahl was “coerced” to return to the room in violation of the Fifth Amendment, because he was in custody and had not yet been advised of his rights under *Miranda v. Arizona*, 384 U. S. 426 (1966). He argues that since identification would serve as proof of Overdahl’s age—an element of the offense for which he had been arrested—the officer could not ask him for this “incriminating” evidence without first advising him of his rights to counsel and to remain silent.

Assuming, *arguendo*, that Overdahl’s Fifth Amendment rights were violated in some fashion, this does not vitiate the legality of his arrest, nor does it undercut the officer’s right to maintain custody over an arrested person. The failure to give “*Miranda* warnings” might preclude introduction of incriminating statements made by Overdahl while in custody; but no such statements are even peripherally involved in this case. The act of going to the room was neither “incriminating” nor a “testimonial communication.” *Cf. Fisher v. United States*, 425 U. S. 391, 408–414 (1976).

company Overdahl from the public corridor of the dormitory into his room, absent a showing that such "intervention" was required by "exigent circumstances." We disagree with this novel reading of the Fourth Amendment. The absence of an affirmative indication that an arrested person might have a weapon available or might attempt to escape does not diminish the arresting officer's authority to maintain custody over the arrested person. See *Pennsylvania v. Mimms*, 434 U. S. 106, 109-110 (1977); *United States v. Robinson*, 414 U. S. 218, 234-236 (1974). Nor is that authority altered by the nature of the offense for which the arrest was made.

Every arrest must be presumed to present a risk of danger to the arresting officer. Cf. *United States v. Robinson*, *supra*, at 234 n. 5. There is no way for an officer to predict reliably how a particular subject will react to arrest or the degree of the potential danger. Moreover, the possibility that an arrested person will attempt to escape if not properly supervised is obvious. Although the Supreme Court of Washington found little likelihood that Overdahl could escape from his dormitory room, an arresting officer's custodial authority over an arrested person does not depend upon a reviewing court's after-the-fact assessment of the particular arrest situation. Cf. *New York v. Belton*, — U. S. —, — (1981); *United States v. Robinson*, *supra*, at 235.

We hold, therefore, that it is not "unreasonable" under the Fourth Amendment for a police officer, as a matter of routine, to monitor the movements of an arrested person, as his judgment dictates, following the arrest. The officer's need to ensure his own safety—as well as the integrity of the arrest—is compelling. Such surveillance is not an impermissible invasion of the privacy or personal liberty of an individual who has been arrested.⁴

⁴ Indeed, were the rule otherwise, it is doubtful that an arrested person would ever be permitted to return to his residence, no matter how legitimate the reason for doing so. Such a rule would impose far greater re-

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WASHINGTON v. CHRISMAN

It follows that Officer Daugherty properly accompanied Overdahl into his room, and that his presence in the room was lawful. With restraint, the officer remained in the doorway momentarily, entering no farther than was necessary to keep the arrested person in his view. It was only by chance that, while in the doorway, the officer observed in plain view what he recognized to be contraband. Had he exercised his undoubted right to remain at Overdahl's side, he might well have observed the contraband sooner.

B

Respondent nevertheless contends that the officer lacked authority to *seize* the contraband, even though in plain view, because he was "outside" the room at the time he made his observations. The Supreme Court of Washington noted that "[t]he record is in conflict as to whether Officer Daugherty stood in the doorway and then entered the room or whether, while in the doorway, he was in fact in the room." It concluded, however, that it "need not . . . let the result be determined by such niceties," and assumed for purposes of its decision that the officer "was in the room at the time he observed the seeds and pipe." We agree that on this record "such niceties" are not relevant. It is of no legal significance whether the officer was in the room, on the threshold, or in the hallway, since he had a right to be in any of these places as an incident of a valid arrest.

Respondent's argument appears to be that, even if the officer could have stationed himself "inside" the room had he done so immediately upon Overdahl's entry, his 30- to 45-second hesitation was fatal; and that having chosen to remain in the doorway, the officer was precluded from proceeding further to seize the contraband. We reject this contention. Respondent's argument, if accepted, would have the perverse effect of penalizing the officer for exercising more re-

strictions on the personal liberty of arrested individuals than those occasioned here.

straint than was required under the circumstances. Moreover, it ignores the fundamental premise that the Fourth Amendment protects only against unreasonable intrusions into an individual's privacy. *Cf. Katz v. United States*, 389 U. S. 347 (1967).

The "intrusion" in this case occurred when the officer, quite properly, followed Overdahl into a private area to a point from which he had unimpeded view of and access to the area's contents and its occupants. His right to custodial control did not evaporate with his choice to hesitate briefly in the doorway rather than at some other vantage point inside the room. It cannot be gainsaid that the officer would have had unrestricted access to the room at the first indication that he was in danger, or that evidence might be destroyed—or even upon reassessment of the wisdom of permitting a distance between himself and Overdahl.

We therefore conclude that, regardless of where the officer was positioned with respect to the threshold, he did not abandon his right to be in the room whenever he considered it essential. Accordingly, he had the right—and duty—to act as soon as he observed the seeds and pipe.⁵ This is a classic instance of evidence found in plain view when a police officer, for unrelated but entirely legitimate reasons, obtains access to an individual's area of privacy. The Fourth Amendment does not prohibit seizure of evidence of criminal conduct found in these circumstances.⁶

III

⁵ The circumstances of this case distinguish it totally from one in which an officer, chancing by an open doorway to a residence, observes what he believes to be contraband inside. We therefore need not consider what, if any, added constraints are placed on an officer's ability to enter a residence to seize contraband in such a situation.

⁶ In light of our disposition, we need not decide whether, as the Washington Court of Appeals held, the likelihood that the contraband would be destroyed constituted an "exigent circumstance" independently justifying the officer's entry into the room.

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WASHINGTON v. CHRISMAN

Since the seizure of the marijuana and pipe was lawful, we have no difficulty concluding that this evidence and the contraband subsequently taken from respondent's room was properly admitted at his trial. Respondent voluntarily produced three bags of marijuana after being informed of his rights under *Miranda v. Arizona*, 384 U. S. 426 (1966). He then consented, in writing, to a search of the room, after being advised that his consent must be voluntary and that he had an absolute right to refuse consent and demand procurement of a search warrant. The seizure of the drugs pursuant to respondent's valid consent did not violate the Fourth Amendment.¹

The judgment of the Supreme Court of Washington is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

So ordered.

¹ We reject as utterly frivolous the respondent's contention that, on the facts presented here, Officer Daugherty was required to knock and announce his presence at the doorway prior to entering the room.

November 24, 1981

80-1349 Washington v. Chrisman

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

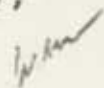
November 25, 1981

Re: No. 80-1349 Washington v. Chrisman

Dear Chief:

Please join me in your opinion for the Court.

Sincerely,



The Chief Justice

Copies to the Conference



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

✓

December 3, 1981

No. 80-1349 Washington v. Chrisman

Dear Chief,

Please join me in your opinion in the
referenced case.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

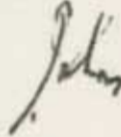
December 7, 1981

Re: 80-1349 - Washington v. Chrisman

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 9, 1981

Re: No. 80-1349 - Washington v. Chrisman

Dear Chief:

The suggestions that John has made and that you have accepted help me with this case. If you could make one other change, you have my joinder. The change is in footnote 5 on page 7. Would you be willing to eliminate the second sentence of that footnote and insert in its place: "See, e.g., Payton v. New York, 445 U.S. 573, 585-589 (1980); Johnson v. United States, 333 U.S. 10, 14-15 (1948)."

Sincerely,

Harry


The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 23, 1981

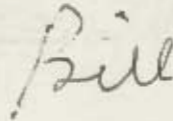


RE: No. 80-1349 Washington v. Chrisman

Dear Byron:


Please join me.

Sincerely,



Justice White

cc: The Conference



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 28, 1981

Re: 80-1349 - Washington v. Chrisman

Dear Byron:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 29, 1981

Re: No. 80-1349 - Washington v. Chrisman

Dear Chief:

Please join me in your second draft circulated
December 22.

Sincerely,

HAB.

The Chief Justice

cc: The Conference

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[illegible]