

You Can Judge a Container by Its Cover: The Single-purpose Container Exception and the Fourth Amendment

Allison M. Lucier[†]

INTRODUCTION

The Fourth Amendment requires that all searches be reasonable. The Supreme Court has interpreted this reasonableness requirement as balancing an individual's right to privacy against the interests of the government. Most searches require a warrant; however, there are well-delineated exceptions to the warrant requirement. One such exception is the single-purpose container exception for warrantless searches, which is a derivative of the plain view doctrine for warrantless seizures. The single-purpose container exception allows for the warrantless search of a container that is so distinctive that its contents are a foregone conclusion and can therefore be said to be in plain view. Because these containers are thought to reveal their contents to the world, they cannot sustain a reasonable expectation of privacy. Courts have used this exception to permit the warrantless search of gun cases, lock-picking sets, and wrapped bundles of cocaine.

A circuit split has developed over *how* the determination of the single-purpose container should be made. The Ninth and Tenth Circuits have held that the determination of whether something constitutes a single-purpose container should be made from the objective viewpoint of a reasonable person, excluding the qualities not intrinsic to the container itself. The Fourth and Seventh Circuits have held that this determination should be made from the subjective viewpoint of the officer conducting the search, including the circumstances surrounding the search. Resolving this issue requires balancing the privacy rights of suspects against the need for law enforcement officers to do their jobs.

This Comment argues that a two-step approach should be adopted for the single-purpose container exception. First, the officer should determine whether a container qualifies as a single-purpose container. This determination should be made from a reasonable person's viewpoint, but it should also include the surrounding circum-

[†] BA 2004, Cornell University; MS 2006, New York University; JD Candidate 2010, The University of Chicago Law School.

tances. Second, the requirements of the plain view doctrine—that the officer has a legal right to see and access the container and that the criminal nature is immediately apparent—should be applied to the single-purpose container exception. This is a practical solution that properly balances the competing privacy and governmental interests at stake.

Part I chronicles the evolution of the single-purpose container exception for warrantless searches, beginning with a brief history of the Fourth Amendment. It then documents the evolution of the plain view doctrine for warrantless seizures, ultimately ending with a description of the single-purpose container exception and how it has been applied in circuit courts. Part II details the current circuit split over whose viewpoint should be used for determining whether an item constitutes a single-purpose container and over whether the surrounding circumstances should be considered. Part III offers an alternative approach to the single-purpose container exception, describing a two-step test. As the first step of the test, courts would make an objective determination as to whether the container qualifies as a single-purpose container. As the second step, courts would apply the requirements of the plain view doctrine to the situation. Part III applies the two-step test to several fact patterns in order to illustrate how the test would work in practice.

I. DEVELOPMENT OF THE SINGLE-PURPOSE CONTAINER EXCEPTION

A. History of the Fourth Amendment

The text of the Fourth Amendment reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹

The Fourth Amendment is divided into two separate clauses: one involving unreasonable searches and seizures, and the other involving probable cause for warrants. Although it is plausible to conclude that “nothing in the Fourth Amendment itself requires that searches be conducted pursuant to warrants,”² courts have read the two clauses in

¹ US Const Amend IV.

² *Robbins v California*, 453 US 420, 438 (1981) (Rehnquist dissenting), overruled on other grounds by *United States v Ross*, 456 US 798 (1982).

conjunction and held that a search or seizure is presumed unreasonable without a warrant based on probable cause.³

As a threshold question, courts must first determine whether a “search” or “seizure” occurred, as not all searches and seizures qualify for Fourth Amendment protection.⁴ Some actions of law enforcement officers invade no legitimate privacy interest and therefore do not constitute a search or a seizure under the Fourth Amendment.⁵ To determine whether a legitimate privacy interest exists, the Supreme Court adopted the two-pronged approach from the concurring opinion in *Katz v United States*:⁶ (1) the person must exhibit a subjective expectation of privacy and (2) the expectation must be one that “society is prepared to recognize as reasonable.”⁷ For example, a conversation in a crowded public street is not protected because even though the speaker may have subjectively expected the conversation to remain private, society does not consider such an expectation of privacy to be reasonable. Therefore, an officer overhearing the conversation is not conducting a search under the Fourth Amendment.⁸

After determining whether a search or seizure took place, courts must then ask if the search or seizure was reasonable. Courts balance two factors to determine whether a search or seizure is reasonable: the degree to which the search or seizure intrudes upon an individual’s privacy is balanced with the degree to which the search or seizure is needed for the promotion of legitimate governmental interests.⁹ These factors help courts decide what level of suspicion the officers must have to justify the search, and whether the intrusion requires a warrant or falls under one of

³ *Katz v United States*, 389 US 347, 357 (1967).

⁴ See *United States v Jacobsen*, 466 US 109, 113 (1984) (“A ‘search’ occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. A ‘seizure’ of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.”).

⁵ See *Katz*, 389 US at 350–51.

⁶ 389 US 347 (1967).

⁷ *Id.* at 361 (Harlan concurring) (quotation marks omitted). Though the *Katz* majority opinion did not adopt the two-prong approach, it has since become the law. See *California v Greenwood*, 486 US 35, 39 (1988) (noting that “warrantless search and seizure . . . would violate the Fourth Amendment only if respondents manifested a subjective expectation of privacy . . . that society accepts as objectively reasonable”). See also *Minnesota v Carter*, 525 US 83, 97 (1998) (Scalia concurring) (noting that the “benchmark” *Katz* test “has come to mean the test enunciated by Justice [John Marshall] Harlan’s separate concurrence in *Katz*”). It should also be noted that the subjective prong of the *Katz* formulation has faded away, since the defendant can always claim that he had a subjective expectation of privacy. See, for example, Nickolas J. Bohl, Note, *Unsheathing a Sharp Sword: Why National Security Letters are Permissible under the Fourth Amendment*, 86 BU L Rev 443, 459 (2006).

⁸ See *Katz*, 389 US at 361.

⁹ *Illinois v McArthur*, 531 US 326, 331 (2001).

the well-delineated exceptions to the warrant requirement.¹⁰ Exceptions to the warrant requirement and deviations from the probable cause standard have been made for searches and seizures involving “special law enforcement needs, diminished expectations of privacy, minimal intrusions, [and] the like.”¹¹ The rationales for these exceptions to the warrant requirement are explored in Part II.C.

Of particular relevance to this Comment is the plain view exception, which allows for the warrantless seizure of illegal contraband that is in plain view of an officer.¹² Circuit courts have extended this doctrine to include the warrantless search of a closed container that so “proclaims its contents” to the world as if the container is transparent.¹³ In other words, these single-purpose containers are of such a character that it is as if the contents are in plain view—and therefore the contents are subject to the plain view doctrine. Courts struggle, however, with what qualifies as a single-purpose container.¹⁴

B. The Plain View Exception

The single-purpose container exception for warrantless searches was derived from the plain view doctrine for warrantless seizures. The plain view doctrine allows for the warrantless seizure of goods in plain view on the theory that “[t]he seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity.”¹⁵ Since a plain view seizure does not infringe on any privacy interest, it is not a search under the Fourth Amendment.¹⁶ Additionally, there is a governmental concern of destruction of evidence.¹⁷ This

¹⁰ See, for example, *Katz*, 389 US at 357.

¹¹ *McArthur*, 531 US at 330. See, for example, *Pennsylvania v. Labron*, 518 US 938, 940–41 (1996) (allowing a warrantless search of an automobile); *Terry v. Ohio*, 392 US 1 (1968) (permitting a warrantless search based on reasonable suspicion during a temporary stop); *Ker v. California*, 374 US 23, 40 (1963) (upholding a warrantless seizure to prevent imminent destruction of evidence).

¹² See *Horton v. California*, 496 US 128, 135 (1990) (discussing the scope and the limits of the plain view doctrine).

¹³ *United States v. Eschweiler*, 745 F2d 435, 440 (7th Cir 1984).

¹⁴ Compare *United States v. Gust*, 405 F3d 797, 803 (9th Cir 2005) (holding that “courts should assess the nature of a container primarily with reference to general social norms rather than solely . . . by the experience and expertise of law enforcement officers”) (quotation marks omitted) with *United States v. Williams*, 41 F3d 192, 196–97 (4th Cir 1994) (holding that a detective’s experience could be used in assessing the character of a container).

¹⁵ *Texas v. Brown*, 460 US 730, 738 (1983), quoting *Payton v. New York*, 445 US 573, 586–87 (1980).

¹⁶ *Horton*, 496 US at 133.

¹⁷ See *Arizona v. Hicks*, 480 US 321, 327 (1987).

minimal privacy intrusion, coupled with the legitimate law enforcement interest, is the justification given for allowing the warrantless seizure of goods in plain view.

In some circumstances, the plain view doctrine extends to opaque containers. Containers that are unsealed and open are subject to the plain view exception to the extent that the contents are visible. In some cases, sealed containers may even be seized under the plain view exception. If a sealed container filled with contraband has been previously opened by another law enforcement officer, the items inside the container are said to be in plain view of the officer.¹⁸ Thus, any reopening does not constitute a search “because it would [produce] no additional invasion of [a] privacy interest,” so long as the officer does not exceed the examination done by the third party and so long as there is not a substantial likelihood that the contents have changed.¹⁹

In order for an object to qualify under the plain view doctrine: (1) the officer must be “lawfully located in a place from which the object can be plainly seen,” (2) the officer must have “lawful right of access to the object,” and (3) the criminal nature of the object must be “immediately apparent.”²⁰ These requirements are meant “to supplement the prior justification . . . and permit[] the warrantless seizure . . . only where it is immediately apparent to the police that they have evidence before them.”²¹ The doctrine is not meant to be “used to extend a general exploratory search from one object to another until something incriminating at last emerges.”²² Each requirement is tailored towards minimizing the privacy intrusion and maximizing the officer’s ability to seize contraband.

1. The officer must be lawfully located in a place from which the object can be plainly seen.

The first requirement of the plain view doctrine is that an officer must make the plain view observation from a place where the officer is legally permitted to be.²³ In other words, the doctrine “is perhaps

¹⁸ *Illinois v Andreas*, 463 US 765, 770 (1983) (holding that a container that had been previously seized by a customs agent could lawfully be resealed by law enforcement officers).

¹⁹ *Hicks*, 480 US at 325. See also *Andreas*, 463 US at 773; *Walter v United States*, 447 US 649, 656 (1980) (holding that the officers overstepped the bounds of the plain view exception by viewing the film found inside a sealed container when the third party had only opened the container to reveal the film).

²⁰ *Horton*, 496 US at 136–37 (quotation marks omitted).

²¹ *Coolidge v New Hampshire*, 403 US 443, 466 (1971).

²² *Id.*

²³ *Horton*, 496 US at 137.

better understood . . . not as an independent ‘exception’ to the Warrant Clause, but simply as an extension of whatever the prior justification for an officer’s ‘access to an object’ may be.”²⁴ Typically, the circumstances that lead an officer to be in plain view of an object must be supported by a valid search warrant for that location, an exigent circumstance obviating the need for a warrant, or an otherwise legitimate reason to be present.²⁵ In *Coolidge v New Hampshire*,²⁶ a plurality of the Supreme Court reasoned that by tying the plain view exception to a situation where the initial intrusion is justified, the doctrine would be minimally invasive to the Fourth Amendment requirement that a “magistrate’s scrutiny is intended to eliminate altogether searches not based on probable cause.”²⁷ The Court determined that eliminating this “needless inconvenience” of obtaining a warrant to seize objects in plain view would be justified by a “major gain in effective law enforcement.”²⁸

2. The officer must have lawful right of access to the object.

The second requirement for the plain view doctrine is that the officer must have “a lawful right of access to the object itself.”²⁹ This requirement simply means that there cannot be a legal constraint on an officer’s physical act of seizing, as opposed to simply viewing, an object. In *Coolidge*, for example, officers seized cars that were parked in the defendant’s driveway.³⁰ The Court held that this seizure violated the Fourth Amendment since the officers did not have a warrant.³¹ In *Horton v California*,³² the Court suggested that the outcome in *Coolidge* may have rested on the fact that the officers could legally view the cars

²⁴ *Brown*, 460 US at 738–39.

²⁵ For some examples of these exigent circumstances and legitimate reasons, see *Payton*, 445 US at 587 (holding that under the Fourth Amendment an officer may need no justification to access an item left in a public place); *Michigan v Tyler*, 436 US 499, 509 (1978) (holding that a burning building is a sufficiently exigent circumstance to support warrantless entry and the subsequent seizure of evidence found in plain view); *Warden v Hayden*, 387 US 294, 310 (1967) (Fortas concurring) (holding that evidence found while in “hot pursuit” of the suspect did not violate the Fourth Amendment).

²⁶ 403 US 443 (1971).

²⁷ *Id.* at 467.

²⁸ *Id.* at 468, 515.

²⁹ *Horton*, 496 US at 137.

³⁰ 403 US at 448.

³¹ *Id.* at 472–73.

³² 496 US 128 (1990).

from the street but had to perform an illegal trespass to seize them.³³ This requirement prevents the plain view exception from becoming overly intrusive upon privacy interests by precluding more serious invasions like trespass without some other Fourth Amendment justification.

As a note, the plain view doctrine previously required that the evidence must be discovered inadvertently. In *Coolidge*, the Court's plurality concluded that to allow the warrantless seizure of objects that officers knew would be in plain view would violate the Fourth Amendment and "fly in the face of the basic rule that no amount of probable cause can justify a warrantless seizure."³⁴ However, in *Horton* the Court removed the inadvertence requirement, on the basis that "evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer."³⁵ If a seizure falls within one of the recognized exceptions to the warrant requirement, there is no reason why the officer's knowledge of the item should invalidate it.³⁶

3. The criminal nature of the object must be immediately apparent.

The last requirement for the plain view doctrine is that the criminal nature of the object must be immediately apparent. In *Arizona v Hicks*,³⁷ the Supreme Court decided that an officer needs probable cause in order to seize an object under the plain view doctrine.³⁸ The Court reasoned that because the plain view doctrine was meant to spare police the inconvenience of obtaining a warrant, there should be no reason "why an object should routinely be seizable on lesser grounds, during an unrelated search and seizure, than would have been needed to obtain a warrant for that same object if it had been known to be on the premises."³⁹ Therefore, since probable cause is required to obtain a warrant, probable cause is required for a warrantless seizure under the plain view doctrine.

Articulating exactly what probable cause entails is quite difficult. Probable cause is a "commonsense, nontechnical conception[] that deal[s] with 'the factual and practical considerations of everyday life

³³ Id at 137 ("Justice Harlan's vote in *Coolidge* may have rested on the fact that the seizure of the cars was accomplished by means of a warrantless trespass on the defendant's property.")

³⁴ 403 US at 471.

³⁵ 496 US at 138.

³⁶ See id at 138-39.

³⁷ 480 US 321 (1987).

³⁸ Id at 326.

³⁹ Id at 327.

on which reasonable and prudent men, not legal technicians, act.”⁴⁰ Doctrinally, probable cause “merely requires that the facts available to the officer would ‘warrant a man of reasonable caution in the belief,’ that certain items may be contraband or stolen property or useful as evidence of a crime.”⁴¹ It is something less than preponderance of the evidence,⁴² but it is something more than a mere suspicion.⁴³ Courts have moved away from the viewpoint of the reasonable man, and toward the viewpoint of an objectively reasonable police officer when determining whether probable cause exists, giving “due weight to inferences” made by the officers.⁴⁴ This has held true in determining probable cause for plain view seizures.

The Supreme Court has taken into account an officer’s experience in determining whether there was probable cause to believe that the criminal nature was immediately apparent. In *Texas v Brown*,⁴⁵ during a routine traffic stop an officer seized a party balloon filled with heroin that was located on the passenger seat.⁴⁶ The balloon was tied with a knot, so its contents could not be seen.⁴⁷ In upholding the warrantless seizure, the Court noted that the balloon’s distinctive character “spoke volumes . . . to the trained eye of the officer,” indicating that an officer could use his experience to determine whether the criminal nature was immediately apparent.⁴⁸ Furthermore, Justice Lewis Powell remarked in his concurrence that it has long been “recognized that a law enforcement officer may rely on his training and experience to draw inferences and make deductions that might well elude an untrained person.”⁴⁹

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⁴⁰ *Ornelas v United States*, 517 US 690, 695 (1996), quoting *Illinois v Gates*, 462 US 213, 231 (1983).

⁴¹ *Brown*, 460 US at 742, quoting *Carroll v United States*, 267 US 132, 162 (1925).

⁴² *Brown*, 460 US at 742. (“A ‘practical, nontechnical’ probability that incriminating evidence is involved is all that is required.”).

⁴³ *Gates*, 462 US at 231 (noting that probable cause is a difficult standard to define, and relies upon a common sense assessment based on the experience of an officer).

⁴⁴ *Ornelas*, 517 US at 690.

⁴⁵ 460 US 730 (1983).

⁴⁶ *Id.* at 733–35.

⁴⁷ *Id.*

⁴⁸ *Id.* at 743. See also *Washington v Chrisman*, 455 US 1, 4 (1982) (emphasizing the officer’s “training and experience” in upholding the plain view seizure).

⁴⁹ *Brown*, 460 US at 746 (Powell concurring).

Courts have established these requirements to balance governmental interests with privacy concerns. Requiring that the officer have probable cause and legal authority to be in a position to view and seize the contraband minimizes the potential intrusiveness of a plain view seizure, while removal of the inadvertence requirement no longer unnecessarily impedes law enforcement officers. As a derivative of the plain view exception, the single-purpose container exception incorporates these rationales into its doctrine.

C. The Single-purpose Container Exception

In general, an object that has been placed inside a “closed, opaque container” maintains a reasonable expectation of privacy, regardless of the container’s contents.⁵⁰ These “[e]xpectations of privacy are established by general social norms.”⁵¹ In *Arkansas v Sanders*,⁵² however, the Supreme Court declared in a footnote that some containers so obviously betray their contents that there can be no reasonable expectation of privacy:

Not all containers and packages found by police during the course of a search will deserve the full protection of the Fourth Amendment. Thus, some containers (for example a kit of burglar tools or a gun case) by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance. Similarly, in some cases the contents of a package will be open to “plain view,” thereby obviating the need for a warrant.⁵³

In *Robbins v California*,⁵⁴ the Supreme Court interpreted this footnote to mean that “unless the container is such that its contents may be said to be in plain view, those contents are fully protected by the Fourth Amendment.”⁵⁵ The Court reasoned that by comparing these single-purpose containers to containers that were literally open, thereby displaying their contents, the *Sanders* Court was implying that only the most obvious containers qualify as single-purpose containers. Therefore, any container that does not “so clearly announce its con-

⁵⁰ *Robbins*, 453 US at 426 (“Once placed within such a container, a diary and a dishpan are equally protected by the Fourth Amendment.”).

⁵¹ *Id.* at 428.

⁵² 442 US 753 (1979), overruled on other grounds by *California v Acevedo*, 500 US 565 (1991).

⁵³ *Sanders*, 442 US at 764 n 13.

⁵⁴ 453 US 420 (1981), overruled on other grounds by *Ross*, 456 US at 798.

⁵⁵ *Robbins*, 453 US at 427.

tents, whether by its distinctive configuration, its transparency, or otherwise, [so] that its contents are obvious to an observer” is something less than a single-purpose container and deserves the full protection of the Fourth Amendment.⁵⁶

The Supreme Court used similar reasoning in *Brown* to uphold a warrantless seizure of a balloon containing drugs;⁵⁷ however, the Court did not mention the *Sanders* footnote. The Court held that the warrantless seizure was constitutional, despite the fact that no drugs were visible, because “the distinctive character of the balloon itself spoke volumes as to its contents—particularly to the trained eye of the officer.”⁵⁸ In other words, the drugs were essentially in plain view, and thus could be seized without a warrant under the plain view exception.

Circuit courts have upheld the single-purpose container exception,⁵⁹ despite the fact that both *Sanders* and *Robbins* were overruled.⁶⁰ Courts have held that “when a container is ‘not closed,’ or ‘transparent,’ or when its ‘distinctive configuration . . . proclaims its contents,’ the container supports no reasonable expectation of privacy and the contents can be said to be in plain view.”⁶¹ These courts held that since the warrantless searches in *Sanders* and *Robbins* were later upheld due to the reduced expectation of privacy one has inside a vehicle, this reasoning should be extended to other containers that could not maintain a reasonable expectation of privacy.⁶²

In general, labeling a container will qualify it as a single-purpose container.⁶³ A labeled container “unequivocally reveal[s] its contents,”

⁵⁶ Id at 428.

⁵⁷ *Brown*, 460 US at 743.

⁵⁸ Id (emphasis added).

⁵⁹ See, for example, *United States v Banks*, 514 F3d 769, 775 (8th Cir 2008); *United States v Meada*, 408 F3d 14, 23 (1st Cir 2005).

⁶⁰ See *Acevedo*, 500 US at 577 (overruling *Sanders* because “the Fourth Amendment does not compel separate treatment for an automobile search that extends only to a container within the vehicle”); *Ross*, 456 US at 824:

The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found.

⁶¹ See, for example, *United States v Donnes*, 947 F2d 1430, 1437 (10th Cir 1991) (noting that while *Sanders* and *Robbins* were overruled because they involved the searches of automobiles, the reasoning behind the cases remains compelling).

⁶² See, for example, id at 1438 (declining to extend the plain view container exception to a camera lens case).

⁶³ See, for example, *Banks*, 514 F3d at 775 (holding that a gun case labeled “Phoenix Arms” “is obviously a gun case”); *Meada*, 408 F3d at 23 (holding that a search of a gun case labeled “Gun Guard” was constitutional under the single-purpose container exception); *Eschweiler*, 745

and as such is “transparent in the contemplation of the law.”⁶⁴ That the container may not actually contain what it proclaims to the world is “irrelevant,” so long as the presumed contents of the container give the officer cause to search.⁶⁵ For example, in *United States v Meada*⁶⁶ the defendant was carrying a gun case and, as a convicted felon, was forbidden from doing so.⁶⁷ The court found that the gun case was a single-purpose container, despite “the fact that, upon opening and careful inspection, the gun case might turn out to contain something other than a gun.”⁶⁸

The single-purpose container exception, however, is limited by the plain view exception, and is therefore subject to the same requirements. This means that the criminal nature of the container must be immediately apparent—it is not enough that a container be designed for a single purpose. For example, in *United States v Villarreal*,⁶⁹ the court held that drums labeled as phosphoric acid but actually filled with marijuana could not be searched without a warrant under the single-purpose container exception because phosphoric acid is not incriminating.⁷⁰ The court did note that the case may have been different if the drums were labeled “marijuana.”⁷¹

Under the rationale of the plain view exception, it seems very logical that any container that reveals its contraband to the world would be searchable without a warrant—after all, it is as if the contraband is in plain view and is therefore subject to the same requirements as objects that are in plain view. But courts disagree over the proper way to determine what qualifies as a single-purpose container.

II. THE CIRCUIT SPLIT

Although the single-purpose container exception is widely recognized, circuit courts are split over two issues: (1) from whose viewpoint to consider whether or not a container is a single-purpose container and (2) whether the circumstances surrounding the search can

F2d at 440 (holding that a warrantless search of an envelope containing the key to a safe-deposit box and labeled as such was constitutional).

⁶⁴ *Eschweiler*, 745 F2d at 440.

⁶⁵ *Meada*, 408 F3d at 24.

⁶⁶ 408 F3d 14 (1st Cir 2005).

⁶⁷ *Id* at 24.

⁶⁸ *Id*.

⁶⁹ 963 F2d 770 (5th Cir 1992).

⁷⁰ *Id* at 776.

⁷¹ *Id*.

be considered in making the determination.⁷² The Ninth and Tenth Circuits have held that the determination of a single-purpose container is determined from the viewpoint of an objective layman, excluding the circumstances surrounding the search. The Fourth and Seventh Circuits, however, have held that the determination is made from the viewpoint of the officer, including the circumstances surrounding the search. This inquiry includes any experience and subjective knowledge that the officer may have regarding the container. This Part describes the methods and the justifications used by the courts on each side of the circuit split.

A. The Ninth and Tenth Circuits' Approach

The Ninth and Tenth Circuits have taken the approach that a single-purpose container is determined from the viewpoint of a layman, excluding the surrounding circumstances of the search. In 1985, the Ninth Circuit tackled this issue in *United States v Miller*.⁷³ In *Miller*, DEA agents opened, without a warrant, a plastic bag containing an opaque, fiberglass container of cocaine after the white powder on the outside of the bag tested negative for cocaine.⁷⁴ The court held that since the bag was not transparent and did not have a distinctive shape or odor, it did not “announce to the observer that it contained a controlled substance.”⁷⁵ In doing this, the court disregarded the government’s contentions that the DEA agent knew from the appearance and circumstances of the bag’s discovery that it contained cocaine.⁷⁶ The Ninth Circuit read *Robbins* as narrowing the single-purpose container exception in *Sanders*.⁷⁷ The court stated:

Because this rationale [in *Sanders*] focuses upon the individual’s reasonable expectation of privacy, which is established by “general social norms [according to *Robbins*],” the extent to which a container’s exterior reveals its contents should not be solely de-

⁷² Compare *United States v Gust*, 405 F3d 797, 803 (9th Cir 2005) (holding that “courts should assess the nature of a container primarily with reference to general social norms rather than solely . . . by the experience and expertise of law enforcement officers”) (quotation marks omitted), quoting *United States v Miller*, 769 F2d 554, 560 (9th Cir 1985) with *United States v Williams*, 41 F3d 192, 196–97 (4th Cir 1994) (holding that a detective’s experience could be used in assessing the character of a container).

⁷³ 769 F2d 554 (9th Cir 1985).

⁷⁴ *Id.* at 560.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Miller*, 769 F2d at 559.

terminated either by the circumstances of its discovery, or by the experience and expertise of law enforcement officers.⁷⁸

Furthermore, the court distinguished the issue here of single-purpose container *searches* from the issue in *Brown*, which relied on an officer's expertise to permit the warrantless *seizure* of a balloon filled with drugs.⁷⁹ In *Brown*, the Court held that the contraband was in plain view because it was inside a single-purpose container, and thus could be seized under the plain view exception.⁸⁰ The *Miller* court reasoned that the *Sanders* single-purpose container exception referred to searches, while *Brown* used the single-purpose container theory to justify a warrantless seizure.⁸¹ The court seemed to imply with this distinction that the *seizure* of a single-purpose container can be based on an officer's experience, while the *search* of a single-purpose container cannot be based on an officer's experience. The court may have been distinguishing between the act of determining whether a container is a single-purpose container and the act of deciding whether the criminal nature is immediately apparent—a requirement of the plain view doctrine. This distinction eliminates the need to account for the officer's experience in a search case.

The Ninth Circuit also listed practical concerns about why the determination of a single-purpose container is made from the layman's objective viewpoint.⁸² It noted that allowing officers to use their subjective knowledge “would increase significantly the risk of erroneous police decisions on whether there is sufficient certainty to permit a warrantless search.”⁸³ Moreover, in *United States v Gust*,⁸⁴ the Ninth Circuit reasoned that basing the single-purpose container determination on an officer's subjective knowledge would swallow the warrant requirement.⁸⁵ Such a standard would have allowed warrantless searches to be performed on harmless containers “based solely on probable cause derived from the officers' subjective knowledge and the

⁷⁸ *Id.* at 560.

⁷⁹ *Id.*

⁸⁰ See *id.* at 559 (“The defendant in *Brown* challenged only the seizure . . . and the Supreme Court addressed only the seizure issue Consequently, we do not apply the *Brown* rule here.”).

⁸¹ *Id.*

⁸² *Miller*, 769 F2d at 560.

⁸³ *Id.*, quoting Wayne R. LaFare, 2 *Search and Seizure: A Treatise on the Fourth Amendment* § 7.2(e) at 245 (Supp 1978 & 1985 Pocket Part).

⁸⁴ 405 F3d 797 (9th Cir 2005).

⁸⁵ *Id.* at 802.

circumstances.”⁸⁶ This would go against the longstanding belief that probable cause alone should not justify a warrantless search or seizure.⁸⁷

The Tenth Circuit has also read *Sanders* as requiring the determination of a single-purpose container to be made from the objective perspective of a layman, though it gave no reasoning.⁸⁸ In *United States v Bonitz*,⁸⁹ the defendant was arrested pursuant to a warrant.⁹⁰ In conducting the arrest, the officers came across a “closed, hard plastic case” containing a rifle alongside other “soft-sided gun cases.”⁹¹ The court held that while the soft-sided gun cases could “self-reveal” their contents, the hard plastic case could not.⁹² It reasoned that although a firearms expert may have recognized the container as a gun case, the container did not so “reveal its contents” and “from its outward appearance, might have contained camera equipment or technical instruments instead.”⁹³ The court also cited historical reasons, fearing that an expansion of warrantless searches would lead to abuse.⁹⁴

The Tenth Circuit approached the issue again in *United States v Donnes*,⁹⁵ when, during an arrest, an officer noticed a “bulging” glove on the floor with a syringe and a camera lens case peeking out.⁹⁶ In holding that the warrantless search of the camera lens case was unconstitutional, the court declined to extend the single-purpose container exception to “a container as ambiguous as a camera lens case,” despite the fact that the lens case was found in a glove with a syringe.⁹⁷ The court feared that expanding the single-purpose container exception to include the qualities independent of the container surrounding the search would permit officers to conduct a “warrantless search of any container found in the vicinity of a suspicious item.”⁹⁸ This expansion of the single-purpose container exception would lead to more warrantless searches based solely on probable cause.

⁸⁶ Id (quotation marks omitted).

⁸⁷ Id.

⁸⁸ See *United States v Donnes*, 947 F2d 1430, 1438 (10th Cir 1991); *United States v Bonitz*, 826 F2d 954, 957 (10th Cir 1987).

⁸⁹ 826 F2d 954 (10th Cir 1987).

⁹⁰ Id at 955.

⁹¹ Id at 955–56.

⁹² Id at 957.

⁹³ *Bonitz*, 826 F2d at 956.

⁹⁴ Id at 958 (“Deeply troubled by police searches of homes and offices, and realizing the inherent temptations and persistent dangers of abuse, the Founding Fathers placed the fourth amendment into the Constitution.”).

⁹⁵ 947 F2d 1430 (10th Cir 1991).

⁹⁶ Id at 1433–34.

⁹⁷ Id at 1438.

⁹⁸ Id.

B. The Fourth and Seventh Circuits' Approach

The Fourth and Seventh Circuits, on the other hand, have taken the approach that the determination of a single-purpose container is made from the viewpoint of the officer, including the circumstances surrounding the search. In *United States v Williams*,⁹⁹ the Fourth Circuit held that if the contents of a container are a “foregone conclusion” either because it is not closed, transparent, or of such a “distinctive configuration” that it proclaims its contents, then there is no expectation of privacy in the container.¹⁰⁰ The court then added that “the circumstances under which an officer finds the container may add to the apparent nature of its contents.”¹⁰¹ In *Williams*, officers accidentally opened a suitcase to reveal two packages wrapped in brown material and cellophane.¹⁰² They seized the suitcase, and a detective opened the cellophane-wrapped package to reveal cocaine.¹⁰³ The court upheld the search of the cellophane package as constitutional.¹⁰⁴ In doing so, the court cited the detective’s ten years of narcotics experience and the fact that the suitcase contained fewer items than a person would typically carry when travelling.¹⁰⁵ The court also cited *Brown*, in which the Supreme Court referred to the officer’s “trained eye” to justify a warrantless seizure.¹⁰⁶ The Fourth Circuit later held that any legally seized container for which the contents are a foregone conclusion can be searched under the “plain view container doctrine.”¹⁰⁷ While this seems confusing, the court may have been relying on Justice John Paul Stevens’s concurrence in *Brown* to justify this proposition. In *Brown*, Justice Stevens remarked that if the balloon were of the kind only used to transport drugs, viewing it could give “the officer a degree of certainty that is equivalent to the plain view of the heroin itself.”¹⁰⁸ He further stated that if that fact were true, “the plain view doctrine [would] support[] the search as well as the seizure even though the contents of the balloon were not actually visible to the officer.”¹⁰⁹ Here, the court used

⁹⁹ 41 F3d 192 (4th Cir 1994).

¹⁰⁰ *Id.* at 197 (quotation marks omitted).

¹⁰¹ *Id.*

¹⁰² *Id.* at 194 (describing how a baggage service agent found the packages after opening a suitcase to match its contents with the contents described in a lost baggage report).

¹⁰³ *Williams*, 41 F3d at 195.

¹⁰⁴ *Id.* at 198.

¹⁰⁵ *Id.* at 197–98.

¹⁰⁶ *Id.* at 197.

¹⁰⁷ *Williams*, 41 F3d at 198.

¹⁰⁸ 460 US at 751 (Stevens concurring).

¹⁰⁹ *Id.*

the detective's experience to assert that he knew to a degree of certainty that the cellophane-wrapped packages contained cocaine, and thus upheld the warrantless search.

In 2008, the Seventh Circuit noted the split between the circuit courts, but declined to choose a side.¹¹⁰ In an earlier case, however, the court alluded to the fact that the circumstances under which a container is seized may justify a warrantless search, although ultimately deciding the case on other grounds.¹¹¹ The court noted:

Several Justices—almost certainly a majority—believe however that if the shape or other characteristics of the container, *taken together with the circumstances in which it is seized* (from a suspected drug dealer, or a harmless old lady?), proclaim its contents unambiguously, there is no need to obtain a warrant.¹¹²

* * *

In summary, circuit courts disagree over how to determine whether an object constitutes a single-purpose container. The Ninth and Tenth Circuits use a reasonable person standard when determining whether a container is a single-purpose container. They do not include any of the qualities not intrinsic to the container itself. The Fourth and Seventh Circuits, on the other hand, use the officer's subjective viewpoint to determine whether a container is a single-purpose container. They also take into account the surrounding circumstances.

III. RESOLUTION

The origin of the single-purpose container exception—a footnote in *Sanders*—provides little guidance as to its application. It does not indicate from whose viewpoint single-purpose container determinations should be made, nor does it say anything about the surrounding circumstances. To determine the appropriate standard under the Fourth Amendment, the privacy interests must be balanced with the governmental interests.¹¹³ Therefore, the best interpretation of the sin-

¹¹⁰ See *United States v Tejada*, 524 F3d 809, 813 (7th Cir 2008).

¹¹¹ See *United States v Cardona-Rivera*, 904 F2d 1149, 1156 (7th Cir 1990) (holding that while the “kilo brick of cocaine wrapped in plain brown paper fastened with tape is not as revealing of its contents as the examples [of a single-purpose container] we have given,” the defendant's answer that cocaine was inside of the package “stripped the cloak of secrecy from the package”).

¹¹² *Id.* at 1155 (emphasis added).

¹¹³ *McArthur*, 531 US at 331.

gle-purpose container exception should balance the degree to which the search intrudes upon an individual's privacy interests with the degree to which the search is needed for the promotion of legitimate governmental interests. The single-purpose container exception, however, is improperly characterized as an exception to the warrant requirement for searches. It requires an initial determination of whether the container is a single-purpose container. Without this initial inquiry into expectations of privacy, the balance tilts too far toward accommodating government interests.

This Comment proposes a two-step process for the single-purpose container determination. First, courts should apply a *reasonable person* standard to determine whether a container qualifies as a single-purpose container. This standard should include the qualities independent of the container. Because a single-purpose container is one that "cannot support any reasonable expectation of privacy,"¹¹⁴ the courts should follow the *Katz* test for reasonable expectation of privacy—that is: (1) the person must exhibit a subjective expectation of privacy, and (2) the expectation must be one that "society is prepared to recognize as reasonable."¹¹⁵ This test includes the circumstances as a reasonable person would see them. This step determines whether the contents of the container are in plain view at all, because if a container is a single-purpose container it is essentially displaying its contents to the world. Second, courts should determine whether the single-purpose container meets the requirements of the plain view exception—that is, the officer must be in a position to lawfully view and access the object, and the criminal nature must be immediately apparent. The most relevant requirement to the single-purpose container exception is whether the criminal nature is immediately apparent. As with the plain view exception, law enforcement officers can use their experience and knowledge to determine whether the criminal nature is readily apparent. This would include any particularized information that the officer has, such as the individual's prosecution history and knowledge of the drug trade.

A. The Single-purpose Container Determination Should Be Made from the Reasonable Person's Perspective

The two-step process for the single-purpose container first requires a determination of (1) whether the container is a single-

¹¹⁴ *Sanders*, 442 US at 764 n 13.

¹¹⁵ 389 US at 361 (Harlan concurring).

purpose container followed by (2) an application of the plain view doctrine to the single-purpose container. The single-purpose container determination can be made from three viewpoints: the reasonable person, the reasonable officer, or the subjective officer. Part III.A argues that the reasonable person viewpoint should be used for the single-purpose container determination because it aligns better with the Fourth Amendment and reasonable expectations of privacy. Additionally, Part III.A argues that the reasonable officer's and the subjective officer's viewpoints present problems to the Fourth Amendment because they allow for uneven enforcement of the law and present problems at trial.

The Fourth Circuit uses the officer's subjective point of view to determine whether a container is a single-purpose container. In *Williams*, the court reasoned that if the contents of the container are a foregone conclusion to the officer, it is as if they are in plain view of the officer and as such should be subject to the plain view exception.¹¹⁶ Though the court offers no other reasons for using the officer's subjective viewpoint, there are many obvious advantages to it—particularly in the promotion of legitimate governmental interests. If it is a foregone conclusion to the officer that the container is filled with contraband, there is a legitimate governmental interest that the officer should not have to turn her back on crime. Officers are asked to make various judgments on a daily basis, and this situation is no different. More importantly, officers are equipped with information meant to detect and prevent crimes, many involving drugs or gun violence. It seems counterintuitive to provide officers with this information and experience, while not allowing them to take advantage of this information when it comes to warrantless searches. But, the reasonableness test of the Fourth Amendment relies on more than legitimate governmental interests, and using a subjective viewpoint for the single-purpose container determination significantly intrudes on an individual's privacy interests.

1. Determination from the reasonable person's viewpoint aligns better with the *Katz* formulation of the expectation of privacy.

By definition, a single-purpose container “cannot support any reasonable expectation of privacy,” and therefore it is as though the container's contents are in plain view.¹¹⁷ Under *Katz*, there is no search

¹¹⁶ *Williams*, 41 F3d at 198.

¹¹⁷ *Sanders*, 442 US at 764 n 13.

if society does not recognize an individual's privacy expectation as reasonable.¹¹⁸ Therefore, the examination of a single-purpose container would not qualify as a search under the Fourth Amendment. Because of this result, the proper inquiry to be made when determining whether a container qualifies as a single-purpose container is to determine whether the container supports a reasonable expectation of privacy under *Katz*—that is, whether there exists a subjective expectation of privacy that society is prepared to recognize as reasonable.

Exactly what constitutes a reasonable expectation of privacy is a difficult question, but Fourth Amendment case law indicates that it is framed by social norms and by third-party actions.¹¹⁹ The fact that access is available to the general public, and not simply to officers, is a strong indication that there is no reasonable expectation of privacy.¹²⁰ Moreover, the Court in *Katz* emphasized that “[w]hat a person *knowingly* exposes to the public . . . is not a subject of Fourth Amendment protection.”¹²¹ This indicates that the single-purpose container determination should be made from the viewpoint of the reasonable person. While an officer may recognize a shapeless black bag as a gun case, the reasonable person may not. The reasonable person loses Fourth Amendment protection despite the fact that he did not knowingly expose his goods to the public if an officer can determine, from his viewpoint, that the gun case is a single-purpose container.

It is for this reason that the Fourth Circuit's use of the officer's subjective viewpoint is erroneous. In *Williams*, the court held that if the contents of a container are a foregone conclusion to an *officer*, the *defendant's* expectation of privacy is unreasonable.¹²² Under *Katz*, however, a reasonable expectation of privacy is a subjective expectation of privacy that *society* is prepared to recognize as reasonable. This reasonableness requirement is a reasonable person test, not a subjective test. Because the reasonable person viewpoint more closely aligns with the *Katz* reasonable expectation of privacy test, it should be used for making the single-purpose container determination.

¹¹⁸ 389 US at 361 (Harlan concurring).

¹¹⁹ See, for example, *Florida v Riley*, 488 US 445, 450 (1989) (holding that because the airways were open to the general public, there was no reasonable expectation of privacy in the backyard greenhouse); *California v Greenwood*, 486 US 35, 40 (1988) (holding that individuals do not have a reasonable expectation of privacy in their garbage bags, as their contents are “readily accessible to animals, children, scavengers, [and] snoops”).

¹²⁰ *Riley*, 488 US at 451 (noting that the officer “did no more” than any member of the public could have done).

¹²¹ 389 US at 351 (emphasis added).

¹²² 41 F3d at 198.

2. Using the officer's viewpoint would have different results in similar situations because it would be officer dependent.

The Fourth Circuit's use of the officer's subjective viewpoint presents another problem because it would lead to uneven enforcement of the law. Using the officer's subjective viewpoint to make the determination of a single-purpose container means that the reasonableness of a search depends on that officer's expertise, which can lead to different results in the exact same situation, depending on which officer is in the room. For example, if an officer recognizes a gun case in one situation, but another officer would not, that container would not consistently be a single-purpose container. These differing results pose many problems for an individual's privacy rights.

Perhaps most importantly, a subjective determination means that individuals can never be sure of their Fourth Amendment rights with respect to closed containers. Accordingly, individuals would have no way to adjust their behavior. It would be difficult to know whether a container is a single-purpose container in advance, because that determination would not be made until the officer steps into the room with the subjective knowledge necessary to make that determination. Extending this to the extreme, it would be difficult for an individual to maintain an expectation of privacy in a container because there is always the chance that it may be deemed a single-purpose container later.

One response to these problems would be to use the reasonable officer, and not that particular officer, when determining whether or not a container is a single-purpose container. This poses several problems. First, this would not solve the fact that the reasonable officer's viewpoint does not line up with society's formulation of reasonable expectation of privacy. Second, courts have noted the difficulty in defining a reasonable officer.¹²³ Police practices vary by geographic location, officer rank, and from situation to situation. There could be as many "reasonable officers" as there are individual officers.

Lastly, it is not clear that the reasonable officer would be all that different from the subjective officer. Presumably, courts would decide whether the officer was acting as a reasonable officer based on precinct training. For instance, if officers were trained to recognize duct tape covered blocks as cocaine, courts would hold that the reasonable officer would recognize duct tape covered blocks as a single-purpose

¹²³ See *Whren v United States*, 517 US 806, 815 (1996) (responding to the petitioners' arguments that a reasonable officer would not have made a stop by noting that the reasonable officer standard is difficult to define because police enforcement practices vary by locale and time).

container. It seems highly unlikely that there would ever be a circumstance where the officer was not trained to recognize the object that was searched. This would reduce single-purpose containers to merely suspicious containers. In reality, the reasonable officer would almost always be the same as the individual officer, and therefore the two viewpoints should be treated as one.¹²⁴

3. The defendant could never disprove the officer's state of mind at trial if the officer's viewpoint were used for the single-purpose container determination.

An officer's subjective determination for a single-purpose container also poses some practical concerns. If the determination is made from the officer's subjective point of view, it would be very hard for the defendant to ever prevail in court, since the defendant would be forced to disprove the officer's state of mind. At a trial to exclude evidence from a warrantless search, the burden is on the government to prove that the warrantless search falls within one of the exceptions under the Fourth Amendment.¹²⁵ If the determination of a single-purpose container is based on "specialized experience and training," an officer would merely have to show that his training and experience led him to believe that the container was a single-purpose container.¹²⁶ Given that the officer did find contraband, and given that the officer did search the container, it seems unlikely that the court would find that the officer did not correctly identify the container as a single-purpose container.¹²⁷ As the dissent in *United States v Prandy-Binett*¹²⁸ said, "This is a sham."¹²⁹ Using a subjective determination allows officers to act on a hunch, and when "the hunch proves to be correct and the arrest bears fruit, the court will hold . . . that 'the record firmly supports the detective's inference.'"¹³⁰ This system will reinforce itself and work against the defendant. Using the reasonable person's viewpoint would solve this problem. Instead of being linked to an officer's expectation of privacy, and therefore to the officer's training and experience, the single-purpose container determination would be linked

¹²⁴ Consider *id* (noting that determinations of how a "reasonable officer" would act based on police manuals and standard procedures would be "reduced to speculati[ons] about the hypothetical reaction of a hypothetical constable—an exercise that might be called virtual subjectivity").

¹²⁵ *McDonald v United States*, 335 US 451, 456 (1948).

¹²⁶ *United States v Prandy-Binett*, 995 F2d 1069, 1074 (DC Cir 1993) (Edwards dissenting).

¹²⁷ See, for example, *Florida v White*, 526 US 559, 570 (1999) (Stevens dissenting).

¹²⁸ 995 F2d 1069 (DC Cir 1993).

¹²⁹ *Id* at 1071 (Edwards dissenting).

¹³⁰ *Id*.

to the reasonable person's expectation of privacy, and therefore to general social norms.

This is not to say that using the layman's perspective to determine a single-purpose container is without its flaws. In many circumstances, requiring an officer to obtain a warrant for a search may prove to be a hassle at best, or a danger at worst. In almost all circumstances that an officer wishes to search a suspected single-purpose container, the officer would be able to get a warrant to search and seize the object. Given that officers may use their training and experience to establish probable cause under the plain view doctrine and to obtain a warrant, many of the objects seized would easily be granted a warrant. From a law enforcement perspective, it makes sense to dispense with the warrant requirement for searches under the plain view doctrine, as it would be a mere formality. But, this is more than a mere formality to the defendant whose container is being seized. The objective point of view allows an individual to form an expectation of privacy in the container, so she can realize her Fourth Amendment rights. Because of the relatively large intrusion on an individual's privacy interests, the reasonable person viewpoint should be used instead of the officer's subjective viewpoint when making a single-purpose container determination.

B. Applying the Single-purpose Container Doctrine in Practice

The single-purpose container exception should be applied in two steps: (1) a determination of a single-purpose container, and (2) the application of the single-purpose container to the plain view requirements. It is difficult to grasp the differences between this single-purpose determination and this application of the single-purpose container to the plain view exception without concrete examples. Part III.B clarifies how the single-purpose container exception would be applied in practice, while Part III.C discusses why this two-step process should be used.

1. Transparent containers.

A transparent container is the quintessential single-purpose container. Because it is transparent, the container quite literally announces its contents to the world, and therefore can support no reasonable expectation of privacy. But, this does not mean that a container is instantly subject to the plain view exception; the criminal nature must also be readily apparent. It does not follow that because a container is a single-purpose container it is also subject to the plain view exception. For instance, inside of a nursery, a glass container filled with

white powder qualifies as a single-purpose container. There is no reasonable expectation of privacy. However, this container may not be seized under the plain view doctrine, as the criminal nature is not immediately apparent. If the circumstances were changed slightly, the criminal nature would be immediately apparent. If this glass container were located in a crackhouse, the officer could use his experience with drugs as a basis for probable cause that the powder is cocaine. This is one example of how not all single-purpose containers qualify for warrantless seizure under the plain view doctrine.

2. The *Brown* balloon.

In *Brown*, the Supreme Court upheld the warrantless seizure of a party balloon filled with cocaine.¹³¹ In doing so, the Court noted that the balloon's distinctive character "spoke volumes . . . to the trained eye of the officer."¹³² Circuit courts have used this rationale to justify making the single-purpose container determination from the officer's viewpoint.¹³³ Under the new framework, the reasonable person viewpoint reaches the same result as the *Brown* Court. In *Brown*, the heroin-filled balloon was located next to small plastic vials, loose white powder, and an open bag of balloons.¹³⁴ Using a reasonable person's point of view, it is clear that the balloon was filled with the loose white powder. Because the balloon was located next to empty balloons and a white powder, it is a "foregone conclusion" that the balloon contained the white powder. It does not matter that the balloon may not have actually contained white powder, because the image the balloon was presenting to the world was that it did contain white powder.¹³⁵ Therefore, the balloon qualifies as a single-purpose container. In determining whether there was probable cause to believe that the criminal nature was immediately apparent, the officer can take into account his experience and training. Because the officer was familiar with narcotics, the officer could infer that there was probable cause to believe that the combination of white powder and balloons meant that drugs were involved.¹³⁶

¹³¹ *Brown*, 460 US at 733–35.

¹³² *Id.* at 743.

¹³³ See, for example, *Williams*, 41 F3d at 197.

¹³⁴ 460 US at 734.

¹³⁵ See *Meada*, 408 F3d at 24 (explaining that a search of a gun case was justified because the case reasonably appeared to contain a gun).

¹³⁶ Consider *Brown*, 460 US at 734 (describing the officer's previous experience with how narcotics are packaged).

The situation would have been different had there been no white powder or vials next to the filled balloon. In that circumstance, a filled balloon would not qualify as a single-purpose container—the balloon would give no indication of what was located inside of it. This is one example of how circumstances can influence the expectation of privacy. Moreover, it shows how the reasonable person viewpoint correctly balances privacy and governmental interests. Also, an officer may then use his experience and training to determine whether there is probable cause to seize a container, ensuring that the balance is not tipped too far in favor of individual privacy interests.

3. The cellophane-wrapped package from *Williams*.

The next situation involves a container that would pass the requirements of the plain view exception, but would not satisfy the initial no-expectation-of-privacy hurdle. Since this initial step is not satisfied, it does not matter that the probable cause prong is satisfied. In *Williams*, officers found a square-shaped, cellophane-wrapped package inside a suitcase.¹³⁷ The only other objects inside the suitcase were towels, blankets, and one shirt.¹³⁸ The court held that because the officer recognized the circumstances as one in which drugs were often involved, the container was a single-purpose container and did not require a search warrant.¹³⁹

Under the two-step single-purpose container method, this would not fall under the single-purpose container exception. First, a single-purpose container determination must be made from the viewpoint of the reasonable person. Although the suitcase contained only towels, these circumstances shed no light on what is inside the container. It merely looks suspicious, not single-purpose. One possibility was that the package contained drugs; another possibility was that it was something fragile that was packaged for travel. These suspicious circumstances do not rise to the level where the contents of the package are such a “foregone conclusion” to the reasonable person that the package could not support a reasonable expectation of privacy. Although the criminal nature of the package may have been immediately apparent to the officer, and it is likely the officer could have obtained a search warrant for the package, the contents of the container were not in plain view because the container was not a single-purpose contain-

¹³⁷ 41 F3d at 195.

¹³⁸ *Id.*

¹³⁹ *Id.* at 198.

er. Therefore, it is not necessary to move onto step two and determine whether the requirements of the plain view doctrine were met.

C. The Surrounding Circumstances Should Be Included in the Single-purpose Container Determination because the Situation Affects the Reasonable Person's Expectations of Privacy

The last consideration in the single-purpose container determination is whether the surrounding circumstances should be included. Because of the interest in balancing privacy interests with governmental interests, the surrounding circumstances should be included in the single-purpose container determination.

Courts have declined to include the surrounding circumstances on the grounds that the circumstances of discovery should not affect an individual's reasonable expectation of privacy, which are based on general social norms.¹⁴⁰ But, individuals do not live in a bubble. Social norms include not only what society thinks of that container, but what society thinks of that container in context. Short of being transparent, one can never truly know what is inside a single-purpose container. A gun case could easily carry candy; a violin case could easily carry a gun. The privacy interest comes from what the individual is presenting to society—a violin case is pronouncing to the world that a violin is inside, whether or not there is a violin inside. In that same vein, an individual carrying a case labeled “guns” knows that society will think guns are inside of the case. Thus, the individual forms an expectation of privacy based on what image the container is presenting to the world.

Similarly, the context affects a reasonable person's certainty as to what lies inside a container. For example, “[o]ne might actually see a white powder without realizing that it is heroin, but be virtually certain a balloon contains such a substance in a particular context.”¹⁴¹ Logically, if the determination of a single-purpose container is made from a reasonable person's point of view because it more closely aligns to an individual's expectations of privacy, the determination should also include the surrounding circumstances as a reasonable person would see them. While a gun case may not look like a gun case to the average person, a gun case next to a box of bullets would begin to look more like a gun case to the average person. There is no reason

¹⁴⁰ *Miller*, 769 F2d at 560.

¹⁴¹ *Brown*, 460 US at 751 n 5 (Stevens concurring) (using the example that a visible white powder may less clearly reveal drugs than a balloon filled with an invisible substance).

why circumstances should not be included, so long as they are judged from the reasonable person's view based on social norms.

This is not without precedent. Circumstances and locations often play a part in determining whether a reasonable expectation of privacy exists. For example, the area immediately surrounding a house (or "curtilage") may receive Fourth Amendment protection, while the area a mere fifty yards away may not, depending on the circumstances.¹⁴² Similarly, garbage bags inside of a house are protected while garbage bags outside of the house are not.¹⁴³ Because location plays a part in analyzing whether or not a reasonable expectation of privacy exists, it should be included in deciding whether the container qualifies as a single-purpose container.

A reason to include the circumstances in the single-purpose container determination is that the circumstances surrounding the container are well within the control of the individual. An individual can choose to place the gun next to the box of bullets, or to place the drugs next to drug paraphernalia. Moreover, since an interpretation of the circumstances would be based on the reasonable person's viewpoint, an individual can gauge what sort of expectation of privacy would accompany certain circumstances.

Courts that have declined to include the circumstances have also done so out of concern that the single-purpose container exception would permit officers to conduct a "warrantless search of any container found in the vicinity of a suspicious item."¹⁴⁴ This overstates the case. Not all containers lose their expectation of privacy when placed in the vicinity of a suspicious item. For example, a nondescript cardboard box inside of a drug den has the same reasonable expectation of privacy as a cardboard box located inside of a preschool does, even though it is in the vicinity of drugs. Although it is more likely to contain drugs, nothing in the character of the cardboard box changes from location to location. The circumstances would only change the character of the container when the reasonable person would perceive a change in the character of the box. This limitation means that the single-purpose container exception will not simply allow for the warrantless search of any container in suspicious circumstances; it will only allow the warrantless search of those containers that can no longer

¹⁴² *United States v Dunn*, 480 US 294, 304 (1987) (holding that a barn sixty yards from a house was not within the curtilage).

¹⁴³ *Greenwood*, 486 US at 37 (holding that under the third party doctrine, privacy is lost when information is exposed to any third party).

¹⁴⁴ *Donnes*, 947 F2d at 1438.

sustain a reasonable expectation of privacy by virtue of their character. Moreover, the circumstances are as a reasonable person would see them, not as an officer would see them. Because social norms include context, and because expectations of privacy can vary depending on location, the surrounding circumstances should be included when making the single-purpose container determination.

CONCLUSION

The Fourth Amendment requires that all searches be reasonable; accordingly, courts have interpreted the Fourth Amendment as balancing an individual's right to privacy with the interests of the government. Given the nature of crime in our society, resolution of the single-purpose container doctrine is very important. If we follow the Ninth and Tenth Circuits' interpretation and make the single-purpose container determination from the layman's perspective, individuals will have a better idea of their privacy rights, and their constitutional rights will be better protected. But, if we follow the Fourth and Seventh Circuits' interpretation and allow officers to use their knowledge and experience, we give police greater discretion to enforce our laws. Any resolution must balance these competing interests. This Comment's solution allows police to use their experience when determining if the criminal nature of the single-purpose container is readily apparent, while at the same time protecting the constitutional rights of suspected criminals by clarifying what a single-purpose container is and conforming to the suspects' reasonable expectations of privacy.