The "Plain View" Doctrine and Drones

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April 2025
Agricultural Law and Taxation Blog, by Roger McEowen: https://lawprofessors.typepad.com/agriculturallaw/
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Overview

The advent of drone technology has ushered in a new era for various government inspection processes, offering unparalleled aerial perspectives and efficiencies. However, this technological leap intersects with established legal principles, most notably the "plain view" doctrine. Understanding this intersection is crucial as drones become increasingly integrated into routine inspections, particularly within the insurance industry, where the potential to identify code and regulatory violations is significant. The issue is a big one for farming and ranching operations, considering the amount of farm and ranch property that is out in the open.

The" plain view" doctrine and drones – it's the topic of today's post.

Background of the "Plain View" Doctrine

The plain view doctrine is a significant and well-established exception to the Fourth Amendment's warrant requirement, which protects individuals from unreasonable searches and seizures. It originated with the Supreme Court's opinion in *Coolidge v. New Hampshire, 403 U.S. 443 (1971).* The doctrine allows law enforcement officers to seize evidence of a crime without a warrant if three conditions are met: (1) the officer is lawfully in a position to observe the item in plain view and has a lawful right of access to the object itself; (2) the incriminating nature of the item is immediately apparent; and (3) the evidence was discovered inadvertently. In 1990, the Supreme Court paired the doctrine back a bit. In *Horton v. United States, 496 U.S. 128 (1990),* the Court eliminated the inadvertence requirement because the Fourth Amendment's "particularity requirement" already barred general exploratory searches and the inadvertence rule was difficult to apply in practice.

Drones and Inspections

When drones are utilized for inspections, the application of the plain view doctrine becomes more complex. The legality of the drone's vantage point is paramount. If a drone is flying in navigable airspace (the airspace at or above the minimum altitudes of flight, including the airspace needed to ensure safety in the takeoff and landing of aircraft), or over property with the owner's consent, its presence is generally considered lawful. However, flights at lower levels over private property without consent raise significant Fourth Amendment concerns and any observations made during such flights would likely not fall under the plain view exception.

The second prong, the immediately apparent incriminating nature of the observed item, also requires careful consideration. If a drone captures imagery that clearly depicts some sort of legal violation

(administrative regulation or statute), such as unsafe structural modifications; the storage of hazardous materials in an unapproved manner; or illegal "baiting" of game, this could potentially fall under the plain view doctrine if the initial drone flight was lawful. Clearly, this requires that the operator have expertise in identifying such violations and understanding the scope of the plain view doctrine is key to this determination.

The third prong, lawful right of access, presents a unique challenge with drone-based observations. Even if a violation is spotted in plain view from a lawful vantage point, physically accessing the property to further investigate or seize evidence may still require a warrant or consent from the property owner. The aerial observation itself does not automatically grant the right to trespass.

Insurance Inspections by Drone

Many farming operations are covered by a comprehensive farm liability insurance policy and also participate in the federal crop insurance program or similar programs that cover livestock. In recent years, the insurance industry has increasingly utilized drone technology for property inspections. Drones are particularly useful for inspecting damage after natural disasters like hail, storms, or fires to roofs, buildings, and other structures. They are also used to assess crop health, identifying potential issues like pests or diseases, and even monitoring the well-being and location of livestock. Insurance companies are also using drones to evaluate the overall condition of the property for underwriting purposes, identifying potential hazards like overgrown vegetation or structural issues. Drones offer insurance companies a safer, faster, and more comprehensive way to assess risks, evaluate damage after a loss, and potentially identify code and regulatory violations that might be missed during traditional ground-level inspections. It is this ability to efficiently survey vast farm and ranch lands that would be time-consuming and labor-intensive to inspect manually that could also involve remote or hazardous areas that make drone usage attractive.

Note: Aside from the plain view doctrine, there are state and federal regulations that also apply to drone usage.

This all means that it's not hard to imagine a future where insurance companies routinely deploy drones to conduct initial and periodic inspections of insured properties. Equipped with high-resolution cameras and potentially even specialized sensors like thermal imaging, these drones could capture detailed imagery of roofs, foundations, landscaping and other structural elements; livestock; crops; and other activities on farm and ranch land. Drones could easily spot additions, structural changes, or outbuildings that were not disclosed to the insurer and may not comply with local building codes. They could also spot roof damage, foundation cracks, or unsafe wiring that could indicate potential hazards and code violations related to maintenance and safety. This could be a particular issue for confinement livestock operations. Also, the improper storage of chemicals, inadequate drainage systems leading to water damage, or the presence of unpermitted waste disposal could be identified. Likewise, the use of a property for purposes not permitted by local zoning ordinances could be evident from aerial imagery.

Note: Discrepancies between reported property conditions and aerial observations can help identify potential fraudulent claims.

Critical Points

Insurers must take care to operate drones within all applicable federal, state, and local regulations, including those related to airspace, privacy, and data collection.

Obtaining consent from property owners for drone inspections will likely become a standard practice to avoid potential legal challenges related to privacy and trespass. Transparency about the purpose and scope of the drone inspection is essential in building trust with policyholders.

The admissibility of drone-captured imagery as evidence of code or regulatory violations will depend on factors such as the legality of the flight, the clarity and reliability of the imagery, and the expertise of the individuals interpreting the data.

Conclusion

The integration of drone technology into inspection processes, particularly within the insurance industry, holds immense potential for enhanced efficiency and the identification of previously unseen risks and violations. However, this progress must be carefully balanced with established legal principles, especially the plain view doctrine and the right to privacy. As drones become more common in the skies, a clear understanding of the legal framework governing their use will be essential to ensure both effective inspections and the protection of individual rights. The future of insurance inspections will likely involve a sophisticated interrelationship between aerial observation and established legal boundaries.

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