

# ANCHORAGE POLICE DEPARTMENT



## BUREAU BULLETIN



LEGAL BULLETIN # 39

August 1, 1980

### STOP AND FRISK

Reference: James FREE  
V.  
State of Alaska

Alaska Supreme Court  
File No. 4056  
614 P.2d 1374  
August 1, 1980

### FACTS:

A residential burglary occurred wherein several handguns were stolen. Police officers contacted a juvenile who admitted that he and FREE had committed the burglary. Both the juvenile and FREE are Alaskan natives. The juvenile indicated FREE had the guns and was attempting to sell them, but he might be able to contact him and retrieve the guns. The juvenile was transported to another area of the city to locate FREE.

One of the officers involved in the investigation was contacted by a confidential informant who said that a native male was in possession of several guns which he was attempting to sell. The informant stated further that the native said he was going to commit an armed robbery. This informant had furnished reliable information in the past.

The officers learned that FREE was staying in a house close to a Owik Stop grocery store that was open all night. Officers maintained a stakeout; around 11:00 p.m. they saw four subjects exit the house where the guns were supposed to be. One of the officers recognized FREE. The officers stopped FREE who was in the company of the aforementioned juvenile. A search revealed that each subject was carrying a gun. Both guns were later identified as having been stolen from the burglary. Both subjects were arrested for carrying a concealed weapon and the guns were used as evidence in their burglary convictions.

### ISSUE NO. 1:

Was the stop (seizure) of FREE and the juvenile and their temporary detention lawful?

HELD: Yes.

### ISSUE NO. 2:

Was the patdown search (frisk) for weapons justified?

HELD: Yes

REASONING:

1. At the time of the stop, the officers were aware of the fact that a burglary had been recently committed. FREE was the primary suspect in the burglary. In light of this knowledge, when the officer drove past the two individuals and recognized one of them to be FREE, stopping him for the purpose of questioning him regarding the burglary was reasonable.
2. The fact that the officer had received a tip from a reliable informant that an armed robbery might occur in that area, coupled with his prior knowledge that James FREE might be in the same neighborhood and planning to sell the guns taken in the burglary, provided reasonable justification for his belief that FREE and the juvenile might be armed. (emphasis added)
3. When the primary suspect in a recent felony is encountered by a police officer, it is not unreasonable for him to briefly detain that individual for questioning. Also, when the officer has reasonable cause to believe the individual may be armed, it is not unreasonable to execute an immediate patdown of his person for weapons.

NOTES:

This case is similar to the Terry v. Ohio case where the "stop and frisk" exception to the warrant requirement was acknowledged by the U.S. Supreme Court. In fact, our court cites a lot of the language used in Terry in this case. Also quoted is:

"The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work to adopt an immediate response."  
(Adams v. Williams, 407 U.S. 143)

In this case, the officer was able to articulate all the facts which justified the "investigative stop" and subsequent patdown which produced the weapons. For further reference, see Coleman v. State (A.P.D. Legal Bulletin No. 3) where the "investigative stop" is addressed.