



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 291

December 22, 2004

INVESTIGATORY PAT DOWN SEARCH
OF A PERSON MUST BE JUSTIFIED OR
EVIDENCE FOUND WILL BE SUPPRESSED

Reference: John Q. Adams
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1964
P.3d
December 17, 2004

FACTS:

A police officer noticed a car parked on a dead end street near a local grade school. The officer was aware this school had been targeted by vandals, trespassers and burglars on prior occasions. The officer pulled up facing the car so his headlights illuminated it. He did not activate his emergency lights or block the car so it could not leave.

The officer contacted the man who was standing outside the vehicle. The man said he had just picked up some baleen from the airport and he stopped to check on it because it smelled bad. The officer decided to verify this story by talking to the passenger, who was later identified as Adams. Adams had exited the car and told the officer they had been to a birthday party and were just driving around. He also said that a cover for the spare tire had come off, so they pulled into the dead end street to secure it. Adams did not mention the baleen.

The officer testified that Adams appeared jittery and was constantly taking his hands in and out of his pockets. The officer decided to pat down Adams for weapons. During the

pat down, he felt a hard cylinder-shaped object that he immediately recognized as a crack pipe. When the officer reached into Adams' pocket to remove the pipe, a plastic bag containing white powder came out with the pipe. Adams was charged with possession of cocaine.

At the suppression hearing, the officer testified, among other things, that:

(1) Whereas Adams appeared to be very nervous during questioning, most people he questioned in similar generalized requests for information were nervous.

(2) He would feel the need to search about half of the people he contacted in this kind of situation.

(3) The weather was cold and the officer conceded that might explain why Adams kept taking his hands in and out of his pockets.

(4) He had never asked Adams to keep his hands where he could see them.

ISSUE:

Was the seizure of the cocaine the result of an illegal pat down search?

HELD: Yes--the right to seize temporarily is not necessarily the right to search.

REASONING:

1. Under the leading case of Coleman v. State (see Legal Bulletin No. 3), a police officer has the authority to conduct an investigative stop when he has a reasonable suspicion that imminent public danger exists or serious harm to persons or property has recently occurred.

2. A police officer can approach a private citizen and direct questions to that person without turning the encounter into an investigative stop.

3. At the time the officer patted down Adams, he had

little information which would lead a reasonable officer to conclude that imminent public danger existed or that serious harms to persons or property recently occurred.

NOTES:

Remember that two distinct and separate events take place during a stop and frisk situation. The first is the stop or seizure and the second is the frisk or the search. It is necessary to articulate and justify both events. In other words, "here is why I stopped (seized) the person" and "here is why I felt the need to frisk (search) the person."

Also remember that you can always ask the person for his or her consent to pat them down or to conduct a search.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section I, "Investigatory Seizure of Persons, Vehicles and Things," of your Contents and Text. File Legal Bulletin No. 291 numerically under Section R of the manual.