



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 273
November 20, 2003

PAT-DOWN SEARCH FOR WEAPONS DURING INVESTIGATORY STOP

<u>Reference:</u>	State of Alaska	Alaska Supreme Court
	v.	Opinion No. 5750
	Donald Wagar	_____P.2d_____
		November 7, 2003

FACTS:

A security manager for a liquor store observed a pickup drive into the store's parking lot. The pickup was occupied by a male and female. The security officer saw the male get out of the truck and go to the truck's bed, where he removed some beer from a cooler. He also saw the female passenger repeatedly putting her hand to her nose, covering a nostril, and leaning down as if she were snorting cocaine. The security officer called police.

When officers arrived, the driver, Donald Wagar, and his passenger were getting out of the truck. The officers could smell alcohol. Wagar put his hands in his jeans pockets; the officer told him not to do that. Wagar then turned away from the officer, an action the officer described as "blading," and "kind of a danger sign that a person may be attempting to hide something...or positioning their body in some type of fighting posture." The officer, feeling at risk, frisked Wagar for weapons.

The officer felt a pack of cigarettes, a lighter and an unknown hard object approximately three inches long in Wagar's T-shirt pocket. He asked Wagar what the object was and Wagar said he did not know. The officer testified that he became "very nervous," because he thought the object might be a weapon. The officer manipulated the object with his fingers, looked into the pocket and saw a glass vial with a white powdery substance that looked like cocaine.

The vial was seized; it tested positive for cocaine and Wagar was charged with possession of a controlled substance.

ISSUE:

Can an officer, while conducting a pat-down search for weapons during an investigatory stop, examine an object to confirm it is not a potential weapon?

HELD: Yes--officer safety is better served by permitting searches for potential weapons.

REASONING:

1. In the context of this case, the relevant question was whether the object the police officer felt in Wagar's T-shirt pocket could, based on "specific and articulable facts," reasonably be believed to be a potential weapon, not as the Court of Appeals held, whether it was indeed a weapon. "Certainly it would be unreasonable (quoting Terry v. Ohio) to require that police officers take unnecessary risks in the performance of their duties."

2. The appropriate legal standard is that an object felt in a pat-down search can be examined if the officer reasonably believes that it might be used as a weapon against the officer or others nearby.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section I, "Investigatory Seizure of Persons and Things," of your Contents and Text. File Legal Bulletin No. 273 numerically under Section R of the manual.