



DEPARTMENT OF PUBLIC SAFETY
TRAINING ACADEMY

LEGAL BULLETIN NO. 42
November 24, 1980

STOP AND FRISK

Reference: Jackie OZENNA
v.
State of Alaska

Alaska Supreme Court
Opinion No. 2209
619 P.2d 477
November 14, 1980

FACTS:

Around midnight on July 9, 1978, the burglary of a general store in Nome was reported to the police. Responding officers knew that a security check had been conducted on the building several hours prior to the report and that it was secure at that time. The officers were told that several handguns and some ammunition were taken. After completing their investigation, the officers decided to look around for suspects and spotted OZENNA about a block from the store. There were other people on the street, but OZENNA was walking with his right hand placed across his body under his coat at the belt line. The officers drove around the block and noticed OZENNA had progressed some distance, but his hand was still in the same position.

The officers discussed the fact that OZENNA had a criminal record. They approached OZENNA on foot and asked for his identification and briefly questioned him. He was asked why he had his hand under his coat and he mumbled an incomprehensible response. The question was repeated and the answer was still incomprehensible. OZENNA was then "patted down" and a handgun was seized. The handgun was identified as having been stolen from the store.

ISSUE:

Were the officers justified in stopping (seizing) and frisking (searching) OZENNA and can the evidence seized as a result be used against him?

HELD: Yes.

REASONING:

1. The officers knew that a burglary, in which one or more handguns were taken, had recently been committed near the area where OZENNA was walking.
2. The officers knew that OZENNA had a criminal record.
3. The hour was late, the protrusions in the shoulders and sleeves of OZENNA's coat were unusual, and OZENNA's hand was positioned in a

manner which suggested that he was carrying a handgun.

NOTES:

All "stop and frisk" situations involve the seizure of the person as well as a search, even though it is limited to a pat-down. You must be able to justify both the stopping of the person as well as the pat-down. Here, the officers were able to articulate the facts that justified their actions. They were investigating a serious property crime and it was not unreasonable to stop and question OZENNA. The court also stated, "The police record of one who is subjected to an investigative stop is a legitimate factor to be considered in determining whether there is sufficient suspicion to justify the stop."

The court cites Terry v. Ohio, 392 U.S. 1 (1968), which is the "stop and frisk" case answered by the U.S. Supreme Court. Also cited is Coleman v. State (see Legal Bulletin No. 3) where our court addressed the "investigative stop". A review of the Coleman bulletin is suggested. Also see Free v. State (Legal Bulletin No. 39) for another recent Alaska case where stop and frisk is the issue.