



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 254

December 30, 2001

POLICE MAY ORDER A DETAINED PERSON TO UNCLENCH THEIR HAND UNDER CERTAIN CIRCUMSTANCES

Reference: Arthur Albers
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1779
_____ P.2d _____
December 28, 2001

FACTS:

A police officer observed two men, Arthur Albers and Emmanuel Rodriguez, walk into an alley. Suspecting they were involved in drug activity, the officer followed them. He saw Rodriguez light a glass crack pipe. The officer ordered both men to put their hands against the wall of a building. At first, Albers refused to obey the order. Instead, he raised his hands over his head and the officer could see that Albers kept his left hand clenched. The officer was holding both men at gunpoint and once again ordered Albers to unclench his hand. When Albers finally complied, a piece of crack cocaine dropped from his hand. Albers was subsequently charged with possession of cocaine.

Albers asked the Superior Court to suppress the evidence. He argued that police had conducted an illegal search when they ordered him to open his hand. The Superior Court judge held that the officer had the right to order Albers to open his hand.

The Court of Appeals is not sure and have sent this case back for a further hearing. Albers was not under arrest at the time of the search, so this seizure cannot be upheld as an "incident to arrest." The Court of Appeals has

instructed the Superior Court to review facts surrounding the seizure to determine if the proper criteria is present.

ISSUE:

During an investigative stop, can a police officer order or force the detained person to unclench their hand?

HELD: Yes---if the police can articulate a reason to suspect that the detained person is holding something that could endanger them.

REASONING:

1. The fact that police have sufficient justification for conducting an investigative stop does not invariably mean that they will have justification for performing a weapons pat-down.

2. The legality of the search of Albers' hand turns on whether officers had articulable reasons to apprehend some danger to their safety.

3. Pat-down searches of a detainee's clothing or, as in this case, searches of a detainee's closed hand must be limited to ensuring officer safety.

4. During an investigative stop, a pat-down search is justified whenever circumstances would warrant a reasonable prudent person in suspecting that the detainee was armed or otherwise posed a threat to the officer.

5. A search of a suspect's hand would be justified where the suspect "makes a sudden move to his pocket notwithstanding a police order to keep his hands in plain view." It is proper for an officer to grab and use force upon a suspect's hand if there is reason to believe that the suspect may have a weapon in his hand.

NOTES:

The Superior Court must review this case within ninety (90) days.

Do not confuse this search/seizure with an "incident to arrest." Albers had not been arrested at the time he was ordered to unclench his hand.

This is an investigatory seizure of a person. These types of situations are often referred to as "Terry stop-and-frisk" investigations. Remember--two separate events take place in these situations: (1) the first is the stop or seizure, and (2) the second is the frisk or search. The police officer must articulate why the stop was made and then why it was necessary to conduct the pat-down search.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section I, "Stop and Frisk (Investigatory Seizure of Persons, Vehicles and Things)," of your Contents and Text. File Legal Bulletin No. 254 numerically under Section R of the manual.