



## DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 290

December 5, 2004

### INVESTIGATIVE SEIZURE/PAT-DOWN SEARCHES OF PERSONS PRESENT DURING SEARCH FOR FUGITIVE

**Reference:** J. Lee Way  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1956  
P.3d  
November 12, 2004

#### **FACTS:**

State Troopers and the North Pole Police raided a residential apartment because they had received a tip that a wanted fugitive, Richard Noriega, was attending a social gathering there. Officers ordered everyone out of the apartment. Next officers ordered all of the men to lie facedown on the ground and submit to handcuffing. After this was accomplished, officers entered the apartment and, with the aid of a police dog, searched the apartment. Noriega was not there.

When it became clear that the fugitive, Noriega, was not present, the officers began to release the handcuffed people. Before each man was released from his handcuffs, police searched him for weapons and demanded he identify himself. One of the subjects was J.Lee Way.

Trooper Pat Johnson, one of the officers involved in this operation, was already acquainted with Way from a traffic stop the week before. During that stop (see Legal Bulletin No. 288), components for a methamphetamine lab and a loaded handgun were found inside the van Way was driving. Whereas Way was not arrested during that traffic stop, he was informed that he would be facing felony charges.

Based on that earlier traffic stop, Trooper Johnson concluded that Way might be armed and might be under the influence of drugs. For this reason, Way was pulled aside

and subjected to special questioning. During the questioning, Way's jacket pocket gapped open and Trooper Johnson saw a syringe inside. The syringe was removed and appeared to have blood on its barrel. A further pat-down search of Way's clothing yielded a glass pipe, which field-tested positive for cocaine. Based on these discoveries, Way was arrested and later convicted of possession of a controlled substance.

**ISSUE:**

Did officers have sufficient reason to believe that Way was armed and presently dangerous?

**HELD:** Yes--Way's apparent involvement with drug trafficking, and the discovery of the weapon in his vehicle in the earlier traffic stop, provided a sufficient basis to authorize officers to perform a protective frisk of Way's outer clothing before releasing him.

**REASONING:**

1. Based on the U.S. Supreme Court's decision in Michigan v. Summers, Legal Bulletin No. 49, the officers were authorized to restrain occupants in some fashion during their search of an apartment.

2. Way's earlier encounter with police yielded evidence that Way was involved in drug trafficking and a firearm was found in his vehicle.

3. Police officers are sometimes advised to proceed under the assumption that every person they deal with may be armed. This may be prudent advice, especially in Alaska where people are generally free to carry concealed weapons. (emphasis added)

**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. 290 numerically under Section R of the manual.