



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 178
July 12, 1993

INVESTIGATORY SEIZURE OF CRACK COCAINE
BASED ON "PLAIN FEEL"

Reference: Minnesota
v.
Timothy Dickerson

United States Supreme Court
61 LW 4544 (No. 91-2019)
June 7, 1993

FACTS:

During a Terry "stop and frisk" patdown, a police officer discovered no weapons, but felt a small lump in Dickerson's jacket pocket. The officer never thought the lump was a weapon, but did not immediately recognize it as cocaine. The officer determined it was contraband only after he squeezed, slid around and otherwise manipulated the pocket contents. The officer then reached into Dickerson's pocket and retrieved a small bag of cocaine. Dickerson was subsequently convicted of possession of cocaine. He appealed his conviction based on the seizure of the cocaine.

ISSUE NO. 1:

Under the Terry "stop and frisk" doctrine, is there a "plain feel" exception to the warrant requirement?

HELD: Yes.

ISSUE NO. 2:

Was the officer who conducted this search acting within the lawful bounds marked by Terry at the time he gained probable cause to believe that the lump in Dickerson's jacket pocket was contraband?

HELD: No.

REASONING:

1. The police may seize nonthreatening contraband detected through the sense of touch during a protective patdown search of the sort permitted by Terry, so long as the search stays within the bounds marked by Terry.

2. If an officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity

immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons. (emphasis added)

3. The facts of this case demonstrate that the officer conducting the search was not acting within the lawful bounds marked by Terry at the time he gained probable cause to believe that the lump in Dickerson's jacket contained contraband. The officer never thought the lump was a weapon, but did not immediately recognize it as cocaine. (emphasis added)

NOTES:

This is the first case the United States Supreme Court has interpreted Terry to allow the warrantless seizure of evidence by an officer who can articulate that the contraband seized was "immediately apparent based on plain feel." In other words, if one can plainly feel a knife or gun during a patdown, it provides probable cause to arrest and search as an incident to arrest. Here, the court states that if the contraband--crack cocaine in this case--is immediately apparent by feel during the patdown, it is subject to immediate seizure. Remember--you must be able to articulate how you knew by feel only that the item seized was contraband.

Review of Section I, "Investigatory Seizure of Persons and Things," and Section K, "Plain View," of your manual is suggested--especially the following: Terry v. Ohio, Adams v. Williams, and Ybarra v. Illinois (no Legal Bulletins) in the Text of Section I; also, Texas v. Brown (Legal Bulletin No. 68), Arizona v. Hicks (Legal Bulletin No. 110), and Brown v. State (Legal Bulletin No. 156) in Section K, "Plain View."

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section I, "Investigatory Seizure of Persons and Things," and Section K, "Plain View," of your Contents and Text. File Legal Bulletin No. 178 numerically under Section R of the manual.