IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, *Plaintiff*, vs. **STEVEN GENE FAITH** *Defendant*.	)	Case No. **CRF 2004 678** **MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS**

I. INTRODUCTION.

Hearing on defendant's Motion to Suppress was held on March 10, 2004. Officers Mason and Dewitt testified. The Court has read the briefs submitted on March 16, 2004. The issue is whether a small metal box (an Altoids box) can be opened in a patdown search as a result of the "plain feel" doctrine. *Minnesota v. Dickerson,* 508 U.S. 366, 113 S.Ct. 2180 (1993). This Court determines that it may be opened. Defendant's Motion to Suppress is denied.

II. FACTS.

Post Falls Officer John Mason testified he was on routine patrol approximately 0200 hours on January 15, 2004 in Post Falls, Idaho when he drove into the parking lot of the Riverbend Motel. He saw a car not fully parked in a marked parking spot. The car was damaged and had cracked windshield and a dog beside the car. He looked through the windows and no one was inside the vehicle at that time. Officer Mason, thinking the car might be abandoned, ran a check on the vehicle's (a 1990 Olds Delta) registration. The check revealed the registered owner was Raymond Flynn, who had existing warrants outstanding.

Officer Mason, joined by Officer Dewitt, checked with the motel office and learned Flynn was not registered at the hotel and that no other guest had checked in using the vehicle

license number on the 1990 Olds Delta. Going back to the car, the officers saw a female walking away from the car. As they approached the car they found a male slumped over in the front seat "pretending" to be sleeping. The officers testified they felt the male was "pretending" to be asleep, because five minutes earlier the vehicle was unoccupied. Believing he could be Raymond Flynn, Officer Mason ordered the male out of the car and immediately detained him with handcuffs while ascertaining his identity. Just after the male (later identified as the defendant Steven Faith) exited the car, Officer Mason notice a knife with an eight inch fixed blade on the ground on top of the snow at the foot of a snow berm, near where Faith had exited the car and where they were standing.

Officer Mason mentioned the knife to Officer Dewitt. As Officer Mason recovered the knife, Officer Dewitt performed a patdown search of Faith, and felt what seemed to be a metal tin container in a pocket of a vest the defendant wore under a coat. Officer Dewitt testified it felt like a metal container and that he could hear metal items inside it as he shook it while still on Faith's person.

The metal container was an "Altoids" box, approximately the diameter of a baseball and ½ to ¾ inches thick. Officer Dewitt handed the time to Officer Mason and continued his search. Officer Mason opened the box and found several small baggies with powder inside the baggies. Both officers testified they had seen similar metal containers associated with illegal substances, as well as containing dangerous items such as razor blades, needles, and pen knives.

Faith was then arrested and the vehicle then searched incident to arrest. A black leather bag was found on the car's seat, directly under where the defendant has been laying on the front seat. It contained drug paraphernalia (straw and pipe) with a powder residue. Laboratory testing confirmed methamphetamine in one of the baggies found in the Altoids tin and methamphetamine residue on a plastic straw found in the leather bag.

III. ANALYSIS.

The parking lot of the Riverbend Motel in Post Falls, Idaho, is open to the public. The police had a legitimate reason to patrol there. The car's position and appearance raised reasonable suspicion the car was abandoned. As such the open view doctrine is applicable. The car was in a parking lot open to the public. The police were not trespassing. *State v. Christensen,* 131 Idaho 143, 953 P.2d 583 (1998). There was no reasonable expectation of privacy in the interior portion of the 1990 Olds Delta, when Officer Mason first looked into it and about five minutes later when he saw the defendant in the front seat area. *State v. Ramirez,* 212 Idaho 319, 824 P.2d 894 (Ct. App. 1991).

The check through dispatch which revealed outstanding warrants for the registered owner, justified a brief detention of Faith once he was ordered out of the car. *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct 1868 (1968); *United States v. Hensley,* 469 U.S. 221, 105 S.Ct. 675 (1985). Faith argues "there was nothing to indicate that Faith was the registered owner other than the fact he was in the car." Points and Authorities in Support of Motion to Suppress, p. 4. This argument has no merit. Either the individual was likely the registered owner, who had outstanding warrants, or he was someone other than the true owner, who suddenly appears in the car pretending to be asleep. Either scenario, coupled with a large knife being found on the ground near Faith's feet, gave the officers probable cause to proceed further. Officer Mason had reasonable suspicion the male inside the car was the registered owner of the car. *United States v. Robinson,* 536 F.2d 1298 (9th Cir. 1976).

The frisk (or protective patdown search) was justified due to the knife seen on the ground in the area where Officer Mason and Faith were standing, immediately after the defendant stepped out of the car. *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct 1868 (1968); *Michigan v. Long*, 463 U.S. 1032, 1047-50, 103 S.Ct. 3469, 3480-81, 77 L.Ed.2d 1201, 1218-19 91983); *Adams v.*

Williams, 407 U.S. 143, 92 S.Ct. 1921 (1972). In the present case the scope of the frisk was reasonably related to the protective purpose of the locating weapons and other hidden instruments which threaten the safety of the officers. *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct 1868 (1968). Faith argues an illegal search took place because he was already handcuffed at the time the tin was opened. Points and Authorities in Support of Motion to Suppress, p. 4. This argument fails for two reasons. The first is, both officers testified from experience that razor blades, needles and pen-knives can be stored in such a container. *State v. Homolka,* 131 Idaho 172, 173, 953 P.2d 612, 613 (1998), discussed below, supports the fact that such concealment occurs. Officer Dewitt could tell from shaking the container while still on Faith's person, that it contained a metal object or objects, and thus, not likely Altoids mints. The only way any officer can tell if in fact it does contain such a weapon, is to open the container. The second reason is as noted in *Iowa v. Finch,* 674 N.W.2d 682, 687 (Ct.App. Iowa 2003), discussed in detail below. In *Finch,* the Iowa Court of Appeals held: "Here the exigent circumstances requirement was readily satisfied by the portability and concealability of the Altoid tin and its contents and the likelihood they would not be found again if released to Finch until a warrant was obtained."

The metal Altoids box was discovered during Officer Dewitt's pat-down search. If an initial stop is lawful, an officer has the right to conduct a patdown search of the detainee for the officer's safety and to remove anything that feels like a weapon. *State v. Harris,* 130 Idaho 444 (Ct.App. 1997), *citing Terry.* Under the "plain feel" doctrine, Officer Dewitt was lawfully allowed to feel the metal tin. Under the "plain feel" doctrine, the item's incriminating character must be immediately apparent. *Minnesota v. Dickerson,* 508 U.S. 366, 375-76, 113 S.Ct. 2180 (1993). Officer Dewitt testified he felt a metal tin and pulled it out because he was concerned about what it might contain. He heard something inside it. He gave it to Officer Mason, who opened it. Both Officers Mason and Dewitt testified that in their work they had experienced tins

similar to this one containing dangerous items such as penknives, razor blades, and needles. This is consistent with *State v. Homolka,* 131 Idaho 172, 173, 953 P.2d 612, 613 (1998), where the search of an Altoid peppermint tin produced a razor blade. Officer Dewitt testified he was not going to give the container back to the defendant until it was determined what was inside. *Dickerson* deals with "plain feel" and is cited by the defendant in his argument for suppression of the evidence. That case dealt with a different factual scenario where a police officer tried to identify an object by manipulating and squeezing the contents of a suspect's pocket after determining that it did not contain a weapon. The Court in *Dickerson* ruled the search exceeded the scope of the protective search. That case is distinguishable. In the present case Officer Dewitt immediately felt a metal tin in the defendant's vest pocket, pulled it out and gave it to Officer Mason who then opened it. Both Officers testified from their own experience metal boxes such as this have in the past contained items which could be used as weapons. In the present case, no "continued manipulation" occurred. Officer Dewitt had probable cause to believe the metal box contained items that could be used as weapons. Thus, the search did not exceed the scope of a protective frisk.

Other Courts have come to similar conclusions regarding small metal boxes on a pat down search under the "plain feel" doctrine. In *Iowa v. Finch,* 674 N.W.2d 682, 686 (2003), the arresting officer found an Altoids tin containing methampetamine in Finch's pocket. The Iowa Court of Appeals held:

> In the course of conducting the lawful pat-down search of Finch's outer clothing for additional weapons Officer Schneider came across the bulge he had previously noticed in Finch's front pants pocket. Schneider asked Finch what it was and Finch said it was a packet of gum. Schneider testified he could tell the object was obviously not a packet of gum but he was unsure what it was and so he emptied Finch's pockets. On cross-examination Schneider testified that he believed the bulge could have been one of many new weapons that have been found by police officers. Pagers with guns in them. Pagers with knives in them or razor blades. Cell phones with guns in them. Lighters that carry a single .22 cartridge. Several things.
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> We conclude Officer Schneider did not exceed the scope of a *Terry* weapons search here because he had probable cause to believe the object in Finch's pocket was a

weapon or contained a weapon. The scope of a lawful weapons search is exceeded where

> the officers continued exploration of respondents pocket *after having concluded that it contained no weapon* was unrelated to "[t]he sole justification the search [under *Terry:*] ... the protection of the police and others nearby." It therefore amounted to the sort of evidentiary search that *Terry* expressly refused to authorize, and that we have condemned in subsequent cases.

Minnesota v. Dickerson, 508 U.S. 366, 378, 113 S.Ct. 2130, 2138-39, 124 L.Ed.2d 334, 347-48 (1993) (emphasis added) (citations omitted); *see also State v. Scott,* 518 N.W.2d 347, 349 (Iowa 1994).

Here, Officer Schneider could not identify with certainty the object in Finch's pocket. However, he could tell it was not a packet of gum as Finch claimed when Schneider asked him what it was, [footnote omitted] he already knew Finch had lied about having weapons on his person and in fact had a knife on him, and he was aware based on his training that pagers, cell phones, and cigarette lighters could contain weapons such as guns, knives, or razor blades.

Therefore, based on the facts and circumstances in the record we conclude Officer Schneider did not overstep the bounds of the strictly circumscribed search for weapons allowed under *Terry* because he had probable cause to believe the item in Finch's pocket was a weapon or contained a weapon before he seized it. *See Dickerson,* 508 U.S. at 378, 113 S.Ct. at 2138, 124 L.Ed.2d at 347. The objects contour and mass, together with Finch's lie that he had no weapon and his lie that the object in his pocket was a pack of gum, made it reasonable for Schneider to believe the object in Finch's pocket was a weapon or contained a weapon. Thus, the removal of the item was not an invasion of Finch's privacy beyond that already authorized by the officers lawful search for weapons and the warrantless seizure of the tin was justified by the same practical considerations that inhere in the plain-view context. *Id.* at 375-76, 113 S.Ct. at 2137, 124 L.Ed.2d at 346.

Id., pp. 687-88. Obviously in this case, Faith didn't lie to the officer about the contents of the tin, because he wasn't asked. However, with the presence of the knife on the ground, the Altoid tin's contour and mass, Officer Dewitt's experience with such containers in the field, the sound it made upon shaking, made it reasonable for Dewitt to believe it contained a weapon.

In *State v. Hartz,* 113 Wash.App. 1025 (Wash.App. 2002) (not reported in Pacific Reporter), 2002 WL 1999733, the Washington Court of Appeals upheld the denial by the trial court of a motion to dismiss where Oxycodone was found in an Altoids box. The Altoids box was found in Hartz' pocket in a patdown weapons search.

> The scope of an officer's frisk is limited to that necessary to preserve officer safety, i.e. a risk for weapons. *Collins,* 121 Wn.2d at 173. If an officer feels an object that may be a weapon, he or she may withdraw it for examination. *Miller,* 91 Wn.App. at 185, *State v. Hudson,* 124 Wn.2d 107, 113, 874 P.2d 160 (1994). In some cases, 'reaching into the clothing is the only reasonable course of action for the police officer to follow.' *Hudson,* 124 Wn.2d at 112.
> Here, when Wulick pulled the tin and cellophane bundle from Hartz's right front pocket, he 'felt both of the items together and ... wasn't sure what {he} was feeling.' RP at 54. Wulick perceived the tin to be a weapon or to contain a weapon, possibly a razor blade. In Miller (also involving possession of a controlled substance), we held that evidence was admissible when a frisk for weapons following an investigatory stop revealed a canister three inches by four inches, and a half-inch deep. The officer suspected that the canister contained a weapon, but instead he found methamphetamine and marijuana inside. Miller, 91 Wn. App 183. [footnote omitted]. Similarly here, removing the tin from Hartz's pocket and opening it to check its contents for weapons were reasonable.

113 Wash.App. 1025 at 1029.

After the lawful arrest of Faith, the search of the car in which Faith was pretending to sleep, was proper as a search incident to arrest. *New York v. Belton,* 453 U.S. 454, 101 S.Ct. 2860 (1981); *State v. Newsom*, 132 Idaho 698, 979 P.2d 100 (1999), cert. denied, 526 U.S. 1158, 119 S.Ct. 2048 (1999). During this search, the small black leather bag was found on the front seat, right under where the defendant had been slumped over, pretending to be asleep.

IV. CONCLUSION AND ORDER

IT IS HEREBY ORDERED the evidence found both on Faith's person and inside the vehicle in which he was found is not suppressed. Faith's Motion to Suppress is DENIED. This case will proceed to trial on March 29, 2004.

Entered this 18th day of March 2004.

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John T. Mitchell, District Judge