

COMMONWEALTH v. WILSON
441 Mass. 390 (2004)

Roosevelt Wilson was charged with possession of marijuana with the intent to distribute within 1000 feet of a school zone. Wilson was arrested when a State Trooper Walls responded to a call from a pizza shop that a person was being beaten or stabbed in the middle of a group of ten people. When Trooper Walls approached the group of men, he made eye contact with Wilson, at which point Wilson turned and walked away, placing his hand to his waist area. Trooper Walls then took Wilson by the back of his shirt and felt the area where Wilson's hand had just been. After Trooper Walls felt what he recognized to be dime bags of marijuana in Wilson's waist, he removed the bags and placed Wilson in handcuffs. During pat frisk Trooper Walls recovered a pager, a cell phone, and \$476 in cash.

Wilson filed a pretrial motion to suppress the marijuana, claiming that Walls lacked reasonable suspicion to stop and frisk him, and that the frisk itself exceeded what is constitutionally permissible. The trial judge denied the motion, and Wilson was convicted of possession of marijuana with intent to distribute and of committing an offense within 1,000 feet of a school. Wilson appealed, and the SJC transferred the case on its own initiative from the Appeals Court.

In Wilson, the Supreme Judicial Court addressed the "plain feel" doctrine as a matter of first impression and concluded that the doctrine comports with the requirements of Article 14 of the Massachusetts Declaration of Rights. According to the Court, the "plain feel" doctrine permits an officer to seize items where, due to the officer's training and experience, it is immediately apparent that the concealed item is contraband. The "plain feel" must occur in the context of a lawful pat-frisk of the person, and the officer is not permitted to make a "general exploratory search." The contraband nature of the item must be immediately apparent on touch.

In reaching this conclusion, the Court noted that the "plain feel" doctrine was neither an extension of current law nor a violation of Article 14 of the Massachusetts State Constitution. The Court analogized the "plain feel" doctrine to the "plain view" doctrine, and reiterated that both relied on the lawfulness of the initial seizure. The Court opined that the only difference was in the use of different senses to perceive the nature of the object at issue and was no more susceptible to abuse than the "plain view" doctrine.

Applying the "plain feel" doctrine to the case at hand, the SJC found that Walls did not exceed the scope of the search because he could plainly feel the marijuana when he touched Wilson's waist. They found that Walls was capable of determining that the object was marijuana due to his experience and training and affirmed the trial court's denial of the Motion to Suppress.