

**[J-114A-B-1998]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 100 M.D. Appeal Docket 1997
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court, dated December 12, 1996, at 0541
	:	PHL 1996, affirming the Order of the Court
v.	:	of Common Pleas of Bucks County, dated
	:	January 12, 1996, at No. 1007-95
	:	
E.M., A JUVENILE,	:	
	:	
Appellant	:	ARGUED: April 30, 1998

COMMONWEALTH OF PENNSYLVANIA,	:	No. 49 E.D. Appeal Docket 1997
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court, dated March 5, 1997, at 281 PHL
	:	1996, affirming the Order of the Court of
v.	:	Common Pleas of Philadelphia County,
	:	dated December 27, 1995, at No. 3144,
	:	March Term, 1991
	:	
CHRISTOPHER HALL,	:	
	:	
Appellant	:	ARGUED: April 30, 1998

**CONCURRING OPINION**

**MR. JUSTICE ZAPPALA**

**DECIDED: JULY 21, 1999**

I join the majority opinion, except for the conclusion in Commonwealth v. Hall, that Officer Kopecki possessed the reasonable suspicion necessary to justify a pat-down of Appellant-Hall. Under Terry v. Ohio, 392 U.S. 1 (1968), an investigatory stop is justified only if the "police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot ...." 392 U.S. at 30. If, during the course of a valid investigatory stop, the officer observes conduct on the part of the

suspect which leads him to reasonably believe that the suspect may be armed and dangerous, the officer may conduct a pat-down of the suspect's outer garments for weapons. Commonwealth v. Melendez, 676 A.2d 226, 228 n.5 (Pa. 1996); Commonwealth v. Berrios, 263 A.2d 342, 343 (Pa. 1970); Terry, 392 U.S. at 27.

Based on my reading of the facts of this case, I cannot agree that Officer Kopecki had the requisite reasonable suspicion to conduct an investigatory detention of Hall. The exchange of an unidentified item in a "high crime area," coupled with Hall's nervous behavior and flight in response to the appearance of Officer Kopecki, provides no reasonable basis to believe that Hall might have been engaged in the illegal sale of narcotics. See Commonwealth v. Cook, No. 98 M.D. Appeal Docket 1998 [J-256-1998] (argued November 19, 1998) (Dissenting Opinion of Zappala, J., at 1-3).

Moreover, even assuming *arguendo* that the investigatory stop was justified, the record is devoid of any evidence indicating that Officer Kopecki had reason to believe Hall was armed and dangerous. The fact that "Hall's subsequent flight forced Officer Kopecki to confront Hall alone, in an alley, approximately forty feet away from his partner" (Majority Op. at 8), states a reason why the officer might be justifiably concerned if Hall was armed. However it supplies no articulable reasons to believe that Hall was armed and dangerous.

Despite my disagreement on these points, I join the holding in Hall that where there is reasonable suspicion to believe that criminal activity may be afoot and a limited pat-down for the search of weapons is supported by a reasonable belief that the suspect is armed and dangerous, "Terry simply does not allow an officer to conduct a search in an attempt to validate a belief that the suspect is carrying non-threatening contraband." (Majority Op. at 10). Further, I join the holding in Commonwealth v. E.M., that under the plain feel doctrine adopted in Minnesota v. Dickerson, 508 U.S. 366 (1993), the evidence seized from E.M. must be suppressed because the incriminating nature of the contraband was not immediately apparent. (Majority Op. at 12-17).