

**[J-75-2007]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

|                                  |   |   |
|----------------------------------|---|---|
| IN THE INTEREST OF J.E., A MINOR | : | No. 12 WAP 2007                         |
|                                  | : |   |
|                                  | : | Appeal from the Order of the Superior   |
|                                  | : | Court entered September 8, 2006, at No. |
|                                  | : | 1042 WDA 2005, reversing the Order of   |
| APPEAL OF: COMMONWEALTH OF       | : | the Court of Common Pleas of Allegheny  |
| PENNSYLVANIA                     | : | County entered May 12, 2005, at JID No. |
|                                  | : | 65135-B, Docket No. 1793-00.            |
|                                  | : |   |
|                                  | : |   |
|                                  | : | ARGUED: September 10, 2007              |
|                                  | : |   |

**DISSENTING OPINION**

**MR. JUSTICE SAYLOR**

**DECIDED: DECEMBER 27, 2007**

Because I would conclude that the officers' search of J.E., which extended to the area within his immediate control, was justified to ensure their safety, I respectfully dissent. In this regard, the officers were legitimately on the premises to execute an arrest warrant for J.E.'s stepbrother, who was also a juvenile on probation. In the process of searching the residence for the subject of the warrant, the officers encountered J.E., a probationary juvenile, in a bedroom. In my view, the officers acted reasonably in conducting a limited personal search of J.E. to ensure that he was not armed and would not harm the officers, particularly as J.E. was shaking and Officer Willig had been informed previously that J.E. may have been involved in a shooting. See Griffin v. Wisconsin, 107 S. Ct. 3164, 3172, 483 U.S. 868, 880 (1987) (citing to "the very assumption of the institution of probation that the probationer . . . is more likely than the ordinary citizen to violate the law" to hold that information that a probationer

“had or might have guns” justified a search of the individual). Furthermore, because of J.E.’s probationary status, the scope of the weapons search was not confined solely to his person, but extended to any personal property in the minor’s possession and control or within his immediate reach. See 42 Pa.C.S. §6304(c); see also Terry v. Ohio, 392 U.S. 1, 25, 88 S. Ct. 1868, 1882 (1968) (explaining that a protective search is “limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby”). Thus, I agree with Judge McCaffery’s dissenting analysis that, under the totality of the circumstances, the search of J.E., “was the essence of reason . . . [given] the potentially catastrophic threat that the probation officers faced from [J.E.] had they simply ignored his presence and the fact of his criminal past, a potentiality graphically illustrated by the fact that [J.E.] had within his reach at the time he was searched a fully operable handgun.” In re J.E., 907 A.2d 1114, 1125 (Pa. Super. 2006) (McCaffery, J., dissenting).

Accordingly, I would reverse the order of the Superior Court.

Messrs. Justice Castille and Eakin join this dissenting opinion.