

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN THE INTEREST OF: B.G., A MINOR

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF B.G., A MINOR

No. 758 WDA 2013

Appeal from the Order Dated April 4, 2013  
In the Court of Common Pleas of Allegheny County  
Juvenile Division at No.: 2156-12

BEFORE: BOWES, J., WECHT, J., and STABILE, J.

JUDGMENT ORDER BY WECHT, J.: FILED: February 7, 2014

B.G., a minor, appeals the April 4, 2013 dispositional order. B.G. challenges the pre-hearing order denying his motion to suppress drug-related evidence on the basis of, *inter alia*, the plain feel doctrine. We vacate the dispositional order, and we remand.

The history of this case is familiar to the parties, and we need not reproduce it here. For present purposes, we assume, *arguendo*, that the police officer in this case had a reasonable suspicion sufficient to justify stopping B.G. for an investigatory detention pursuant to ***Terry v. Ohio***, 392 U.S. 1 (1968). During a ***Terry*** stop, a police officer may pat down a suspect for weapons. ***Commonwealth v. Pakacki***, 901 A.2d 983, 988 (Pa. Super. 2006). However, “non-threatening contraband may be seized only if it is discovered in compliance with the plain feel doctrine.” ***Commonwealth v. Thompson***, 939 A.2d 371, 376 (Pa. Super. 2007).

Under the plain feel doctrine, a police officer may seize non-threatening contraband detected through the officer's sense of touch during a **Terry** frisk if the officer is lawfully in a position to detect the presence of contraband, the incriminating nature of the contraband is immediately apparent from its tactile impression and the officer has a lawful right of access to the object. The plain feel doctrine is only applicable where the officer conducting the frisk feels an object whose mass or contour makes its criminal character immediately apparent. Immediately apparent means that the officer readily perceives, without further exploration or searching, that what he feels is contraband.

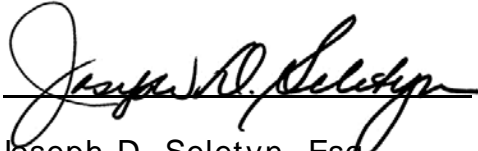
**Pakacki**, 901 A.2d at 989. "In order to remain within the boundaries [of the plain feel doctrine], an officer must be able to substantiate what it was about the tactile impression of the object that made it immediately apparent to him that he was feeling contraband." **Commonwealth v. E.M.**, 735 A.2d 654, 664 n.8 (Pa. 1999).

The suppression record is devoid of any evidence substantiating the officer's belief that the object that he felt in B.G.'s pocket was immediately apparent to him as being heroin. The record contains only the officer's response of "correct" when asked whether he "immediately identified" the object. **See** Notes of Testimony, 1/28/2013, at 11. The Commonwealth concedes, forthrightly, that the record does not support the application of the plain feel doctrine. **See** Brief for the Commonwealth at 19.

We agree that the record does not support the court's findings of fact, and that the court's legal conclusion drawn therefrom was in error.<sup>1</sup> The heroin should have been suppressed. Thus, we vacate the dispositional order, and we remand for further proceedings.

Order vacated. Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 2/7/2014

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<sup>1</sup> Our standard of review of the denial of a suppression motion is as follows:

An appellate court may consider only the Commonwealth's evidence and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the suppression court, the appellate court is bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error. It is also well settled that the appellate court is not bound by the suppression court's conclusions of law.

*In re V.C.*, 66 A.3d 341, 350-51 (Pa. Super. 2013) (quoting *Commonwealth v. Knox*, 50 A.3d 749, 746-47 (Pa. Super. 2012)).

