

**[J-3-2010]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 39 EAP 2009
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court at No. 3288 EDA 2006 dated April
v.	:	18, 2008 affirming the Judgment of
	:	Sentence of the Court of Common Pleas
LEKEYIA GRAHAME,	:	of Philadelphia County dated November 9,
	:	2006 at No. CP-51-0511061-2006
Appellant	:	
	:	SUBMITTED: March 25, 2010

**CONCURRING OPINION**

**MR. JUSTICE EAKIN**

**DECIDED: November 17, 2010**

I concur with the majority's holding that the Commonwealth did not articulate reasonable suspicion, justifying a search of Appellant's purse. I write separately as I believe the proper disposition would have been to grant the appeal, vacate the Superior Court's order, and remand for a new trial.

As noted by the majority, the Commonwealth changed its position and now concedes "on the particular facts of this case, [Appellant's] suppression motion should have been granted." Brief for Appellee, at 2. The Commonwealth acknowledges:

[Appellant] was not a party to any drug transaction; she was not present when the drugs were sold or when the drug seller was arrested outside the residence, and may well have been unaware of any criminal activity; the police did not have a search warrant; they were not faced with exigent circumstances of any kind; the record fails to show that the officer who searched [Appellant's] pocketbook had any relevant prior experience; and the officer did not refer to anything about [Appellant's] appearance, movements or conduct that raised a safety concern. Under the totality of the circumstances, the suppression hearing transcript fails to show that the search was valid.

Id., at 5.

As the Commonwealth's current position renders the issue moot, there is no need to delve into the detailed "guns follow drugs" analysis. The frequency with which weapons appear in the drug trade may be a factor in determining if there is justification for a Terry search, but it is of course not the only factor in a "totality of the circumstances" analysis. In this way, it is akin to the "high crime area" analysis — presence in a high crime area alone is not sufficient to allow a search or seizure, but when combined with other factors, could establish either reasonable suspicion or probable cause. See Commonwealth v. Thompson, 985 A.2d 928, 936 (Pa. 2009) (defendant's transaction on street in high crime area at night, coupled with officer's experience involving similar drug-related transactions, provided probable cause for search and seizure); In the Interest of D.M., 781 A.2d 1161, 1164 (Pa. 2001) ("[U]nprovoked flight in a high crime area is sufficient to create a reasonable suspicion to justify a Terry stop under the Fourth Amendment.").

Accordingly, I agree with the majority that the Superior Court's order needs to be reversed; however, it is unnecessary to use a moot case as a vehicle to discuss the so-called "guns follow drugs" factor,<sup>1</sup> and an order granting, vacating, and remanding would have been more appropriate.

Mr. Justice McCaffery joins this opinion.

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<sup>1</sup> When a recurrent event gains a sobriquet such as "high crime area" or "drugs follow guns," arguments tend to give insufficient attention to the actuality justifying that shorthand, touting instead the fact it is not universally true. Focusing on situations where the inference may not be applicable does not mean there should be no consideration of the reality — that the drug trade does involve guns on a regular basis, witness our Capital Case docket, and the tautological fact it is more likely that crime is afoot in a high crime area. Constitutional analysis at the appellate level suffers when shorthand glosses over the underlying reality.