2026 PA Super 254

COMMONWEALTH OF PENNSYLVANIA Appellant v. JAMAR WILLIAMS	: : : : : : : : :	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 219 EDA 2025

Appeal from the Order Entered September 24, 2024
In the Court of Common Pleas of Delaware County
Criminal Division at No: CP-23-CR-0003011-2023

BEFORE: STABILE, J., LANE, J., and STEVENS, P.J.E.*

OPINION BY STABILE, J.: **FILED NOVEMBER 10, 2026**

The Commonwealth of Pennsylvania appeals from an order granting the motion of Appellee Jamar Williams to suppress evidence of a gun found underneath the passenger seat in Appellee's car.[1] We conclude that the police officer who searched Appellee's car had reasonable suspicion to conduct a search of the vehicle's front passenger area where he found the gun.

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* Former Justice specially assigned to the Superior Court.

[1] In its notice of appeal, the Commonwealth purported to appeal from the December 3, 2024, order denying its motion for reconsideration. We have amended the caption to state that the appeal lies from the suppression court's September 24, 2024, order granting Appellee's suppression motion. ***See Commonwealth v. Moir***, 766 A.2d 1253, 1254 (Pa. Super. 2000) (appeal does not lie from an order denying reconsideration).

We also note that the Commonwealth properly certified in its notice of appeal that the suppression court's order would terminate or substantially handicap its prosecution. ***See*** Pa.R.A.P. 311(d) ("the Commonwealth may take an appeal as of right from an order that does not end the entire case where the Commonwealth certifies in the notice of appeal that the order will terminate or substantially handicap the prosecution").

Therefore, the seizure of the gun was constitutional, and the trial court erred by granting the motion to suppress. We reverse the order granting suppression and remand for further proceedings.

Following a traffic stop, the Commonwealth charged Williams with firearms not to be carried without a license, receiving stolen property, and theft by unlawful taking. Appellee filed a motion to suppress the evidence seized during the stop. On July 19, 2024, the court convened a hearing on this motion.

Chester Police Officer Robert Brobzinski ("Officer Brobzinski") testified that on May 17, 2023, he was on routine patrol in a marked police car on the east side of Chester, a high crime area. He observed a moving silver Grand Marquis vehicle with all the windows and windshield having an "extremely dark window tint." N.T., 7/19/24, at 11. The officer performed a "registration check," which returned "no record for that tag." ***Id.*** at 11-12. He then initiated a vehicle stop with his lights and sirens activated. The vehicle continued for "five to ten seconds," travelling "about three" blocks. ***Id.*** at 12-13. When the vehicle stopped, the officer parked five to ten feet behind it and approached the passenger side. There were two occupants: the driver, Corey Phanyes ("driver"), and the front seat passenger, Appellee.

Officer Brobzinski did not initially say anything to Appellee. He described Appellee as follows in his testimony:

> He had his ID in his hand. He was kind of holding it out to me before I even asked him to…He was sitting in his seat with his t-shirt pulled up pretty much past his bellybutton. And his boxers

> underneath of his hands were scrunched up in an odd manner… as if something was retrieved from the waistband area and pulled his boxers up higher than they should sit [sic].

Id. at 14-15.

Officer Brobzinski asked the driver for his license, registration, and insurance information, and he complied. The driver told Officer Brobzinski that he had a permit to carry a firearm, provided that permit, and stated he had a gun in his waistband. Officer Brobzinski testified, "While [I was] speaking with [the driver] and collecting the information, . . . [Appellee's] chest was rising very fast. He was breathing very heavily. We weren't speaking . . . and my attention wasn't even on . . . [Appellee]. And like I said, his heart was beating very fast, he was breathing very hard." ***Id.*** at 17. Officer Brobzinski stated this was not "typical behavior of a passenger during a traffic stop." ***Id.*** He asked the driver to step out of the vehicle "and let [him] secure the gun," and the driver agreed. ***Id.*** at 16. Appellee remained in the vehicle. Officer Brobzinski asked if there were more guns in the vehicle, and the driver replied there were not. Officer Brobzinski took the driver "back to [the] patrol car." ***Id.***

As Officer Brobzinski finished talking with the driver, two or three assisting officers arrived. Officer Brobzinski explained that for "every traffic stop, [he] call[ed] for two to three assisting officers," and "they automatically come." ***Id.*** at 41. "At that point," Officer Brobzinski directed Appellee to exit the vehicle, and Appellee complied. ***Id.*** at 18.

Officer Brobzinski conducted a "wing-span" search inside the vehicle of

Appellee's "immediate area," to "check for weapons right where [he] could have reached or placed contraband." ***Id.*** at 18-19. The officer's reasons for conducting the wing-span search: the vehicle "not pulling over when [he] activated [his] lights," because it was "very common" for a driver, who is "trying to hide" something, to do a "slow roll[];" Appellee's "t-shirt being pulled up[and] underwear being scrunched up," where the officer knew through training experience "that firearms are carried in the waistband area"; and Appellee's heart rate. ***Id.*** at 19-20.

On cross-examination, Officer Brobzinski acknowledged that when he directed the driver to exit the vehicle, he did not direct Appellee to do so. Officer Brobzinski stated that he "felt comfortable leaving . . . [Appellee] in the vehicle while [he] spoke with [the driver] outside." ***Id.*** at 39. Officer Brobzinski agreed that at that time, the driver's statement that he had a firearm did not "cause any red flags," since the driver had a license to carry; and the officer did not have "any safety concerns regarding . . . [Appellee]." ***Id.*** at 38-39.

During the wing-span search in the vehicle, Officer Brobzinski discovered a firearm under the front passenger seat. He took Appellee into custody and transported him to the police station. Officer Brobzinski then provided ***Miranda***[2] warnings, and Appellee made inculpatory statements, admitting that the gun under the seat was his and that he "found the firearm

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[2] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

in a cabinet" while at a party and took it. ***Id.*** at 24-25, 30. Meanwhile, the driver consented to a search of his vehicle, and the search did not produce any contraband. Officer Brobzinski could not recall if he issued citations to the driver, but he agreed that the driver was not charged with any offenses.

Appellee also testified at the suppression hearing, explaining why he had his identification ready for Officer Brobzinski, "[The officer] came up and . . . said the car wasn't registered. So, I just knew it wasn't going to be good." ***Id.*** at 66. Appellee stated that he generally felt "uncomfortable" around police officers. ***Id.*** at 67. Appellee testified that at both the time of the vehicle stop and the suppression hearing he suffered from Bell's Palsy, a condition that affected the appearance of his face; seizures, which could be triggered by "being nervous;" and cerebral palsy, which affected his "ability to understand things." ***Id.*** at 68-69. Appellee also denied that the officers read him his ***Miranda*** rights.

On September 24, 2024, the suppression court granted Appellee's motion to suppress the gun recovered during the search, as well as his statements to police. Although the court did not state explicitly that the search violated Appellee's rights under both the Fourth Amendment and Article I, § 8 of the Pennsylvania Constitution, it referred to both provisions in its opinion. Opinion, 8/5/25, at 5. Therefore, we will assume for purposes of this decision that the suppression court found that the search violated both provisions.

The Commonwealth filed a motion for reconsideration, which the court denied on December 3, 2024. The Commonwealth filed a timely notice of appeal and a court-ordered Pa.R.A.P. 1925(b) statement of issues complained of on appeal ("concise statement").[3]

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[3] On January 31, 2025, the suppression court issued a Pa.R.A.P. 1925(b) order directing the Commonwealth to file a concise statement within twenty-one days. The docket entry for this order, however, did not state the date or manner of service on either party. ***See*** Pa.R.A.P. 108(a)(1) ("in computing any period of time . . . involving the date of entry of an order . . . the day of entry shall be the day the clerk of the court . . . mails or delivers copies of the order to the parties"); Pa.R.Crim.P. 114(C)(2)(c) ("[t]he docket entries shall contain . . . the date of service of the order or court notice").

More than four months later, on July 11, 2025, the Commonwealth filed its concise statement. On the same day, the Commonwealth also filed a motion for a *nunc pro tunc* extension of time to file the concise statement, averring that it had not received the Rule 1925(b) order. On August 1, 2025, the Commonwealth filed a second motion for an extension of time.

On August 5, 2025, the suppression court issued an opinion that did not discuss the timeliness of the concise statement but addressed the merits of the issue raised. Three days later, the court filed an order stating that "in light of [its] filing of a responsive opinion," it "dismiss[ed] as moot" the Commonwealth's motion for an extension of time. Order, 8/8/25.

On appeal, Appellee argues that because the suppression court "dismissed" the Commonwealth's motion for an extension of time, this Court should deem the statement untimely filed and deem all issues waived. Appellee's Brief at 11 n.7; ***see also*** Pa.R.A.P. 1925(b)(4)(vii) ("[i]ssues . . . not raised in accordance with the provisions of this paragraph (b)(4) are waived").

We decline to find waiver because the docket entry for the suppression court's Rule 1925(b) order did not state the date and manner of service. ***See*** Pa.R.A.P. 108(a)(1); Pa.R.Crim.P. 114(C)(2)(c). We deem this omission a breakdown in the suppression court's operations that excuses the untimeliness of the Commonwealth's statement. It is similar to other clerical errors that we have deemed a breakdown in the operations of the court. ***See***, ***e.g.***,
(Footnote Continued Next Page)

The Commonwealth raises one issue in this appeal:

> Did the suppression court err in granting [Appellee's] motion to suppress when it determined that: (1) [Appellee] had a reasonable expectation of privacy in the car that he did not own and in which he was a passenger; (2) the police lacked reasonable suspicion and proper timing to conduct a safety/wingspan search of the passenger compartment of the car; and (3) [Appellee's] post-arrest statements were inadmissible based on the court's finding that the initial search and detention were unlawful, notwithstanding unresolved factual and legal questions relevant to their admissibility?

Commonwealth's Brief at 9.

In an appeal from an order granting a motion to suppress,

> an appellate court is required to determine whether the record supports the suppression court's factual findings and whether the inferences and legal conclusions drawn by the suppression court from those findings are appropriate. [Where the defendant] prevailed in the suppression court, we may consider only the evidence of the defense and so much of the evidence for the Commonwealth 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, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error. However, where the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court's conclusions of law are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts.

Commonwealth v. Mancuso, 357 A.3d 957, 972 (Pa. Super. 2026) (breakdown in operations of court took place when clerk failed to enter order denying post-sentence motions by operation of law for two months after it was required to enter order under Rules of Criminal Procedure; thus, appeal filed within thirty days after tardy order was deemed timely). Furthermore, although the suppression court's order purported to "[d]ismiss as moot" the Commonwealth's request for an extension of time, the court stated in the same sentence that it filed "a responsive memorandum opinion," Order, 8/8/25, in effect granting the Commonwealth's motion.

Commonwealth v. Cartagena, 63 A.3d 294, 298 (Pa. Super. 2005) (*en banc*).

The Commonwealth first argues that the suppression court erred in finding, under the totality of the circumstances, that Appellee had a reasonable expectation of privacy in the vehicle. The Commonwealth maintains: (1) Williams was "a mere passenger in a vehicle he neither owned nor controlled;" and (2) his permission to be in the car and his attempt to secrete evidence of a crime did not confer upon him an expectation of privacy. Commonwealth's Brief at 24. The Commonwealth suggests that a passenger may have a reasonable expectation of privacy in the contents of luggage placed inside a vehicle, but here, the firearm was not inside any container, and instead, "the floorboard beneath the front passenger seat was open, unsecured, and fully accessible to all occupants." ***Id.*** at 24-25. We disagree and hold that Appellee had a reasonable expectation of privacy in the area of the vehicle that Officer Brobzinski searched.

It is axiomatic that a defendant seeking suppression must demonstrate a reasonable expectation of privacy that was violated. ***See Commonwealth v. Millner***, 888 A.2d 680, 692 (Pa. 2005) ("[A] defendant cannot prevail upon a suppression motion unless he demonstrates that the challenged police conduct violated his own, personal privacy interests."). While the Commonwealth has the burden of going forward with evidence and of establishing at the suppression hearing that the challenged evidence was not

obtained in violation of the defendant's rights, "the defendant still must meet a burden of persuasion that his or her expectation of privacy was violated."[4] ***Enimpah***, 62 A.3d at 1032.

"[A] defendant must show that he had a privacy interest in the place invaded or thing seized that society is prepared to recognize as reasonable." ***Id.*** "The expectation of privacy is an inquiry into the validity of the search or seizure itself; if the defendant has no protected privacy interest, neither the Fourth Amendment nor Article I, § 8 is implicated." ***Id.*** at 699.

In determining whether an individual's expectation of privacy is legitimate or reasonable, we must consider the totality of the circumstances and the determination "ultimately rests upon a balancing of the societal interests involved." ***Commonwealth v. Peterson***, 636 A.2d 615, 619 (Pa. 1993). "The constitutional legitimacy of an expectation of privacy is not dependent on the subjective intent of the individual asserting the right but on whether the expectation is reasonable in light of all the surrounding circumstances." ***Commonwealth v. Burton***, 973 A.2d 428, 435 (Pa. Super. 2009) (*en banc*).

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[4] In addition, the defendant must demonstrate that he has standing to seek suppression of evidence. In this case, the Commonwealth concedes that Appellee has such standing because he is charged with a possessory offense. ***See Commonwealth v. Enimpah***, 106 A.3d 695, 698 (Pa. 2014) (individual charged with possessory offense has "automatic standing" to pursue suppression motion).

"A person who is authorized to use a vehicle may have a reasonable expectation of privacy in the vehicle…Additionally, a reasonable expectation of privacy in a searched vehicle extends not just to the drivers, but also passengers." ***Commonwealth v. Pearsall***, —A.3d—, 2026 WL 799268, *3 (Pa. Super., Mar. 23, 2026)[5] (citing ***Commonwealth v. Powell***, 994 A.2d 1096, 1104 (Pa. Super. 2009)).

The Commonwealth cites ***Commonwealth v. Viall***, 890 A.2d 419 (Pa. Super. 2005), for the proposition that Appellee lacked a reasonable expectation of privacy in the area under the passenger seat. In ***Viall***, police recovered drugs and drug paraphernalia from the backseat of a vehicle in which the appellant was a passenger after the driver of the vehicle consented to a search. ***Id.*** at 421. This Court held that "an ordinary passenger in an automobile does not by his mere presence have a legitimate expectation of privacy in the entire passenger compartment of that vehicle." ***Id.*** at 423. We reasoned that "it would be unreasonable to maintain a subjective expectation of privacy in locations of common access to all occupants." ***Id.*** We emphasized, however, that "passengers in an automobile may maintain a reasonable expectation of privacy in the contents of luggage they placed inside an automobile." ***Id.*** Ultimately, we concluded that "the drugs and drug paraphernalia were recovered from a common area in the backseat of the

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[5] ***See*** Pa.R.A.P. 126(b) (non-precedential memorandum decisions of this Court filed after May 1, 2019 may be cited for their persuasive value).

vehicle," and "it would be unreasonable for [the appellant] to have expected to maintain a privacy interest in objects which were placed inside the car and not shielded from the view of the many others occupying the same small space." ***Id.***

We have distinguished ***ViallI*** in three recent memorandum decisions. ***See Commonwealth v. Lawrence***, 2026 WL 2068269 (Pa. Super., May 26, 2026) (non-precedential memorandum); ***Commonwealth v. Cruz,*** 324 A.3d 1203, 2024 WL 3252289 (Pa. Super., Jul. 1, 2024) (non-precedential memorandum); ***Pearsall***, ***supra***, 2026 WL at 799268. In ***Cruz***, officers initiated a traffic stop for a "tag cover violation" and discovered the driver was lawfully using the car as a cab. ***Id.***, 2024 WL at 3252289, *1. There were two men in the back seat; Cruz and another man named Roundtree. Roundtree appeared nervous; Cruz did not. Cruz presented what appeared to be a fake ID, after which officers frisked the vehicle's occupants and performed a protective search during which they found a "Christmas-style" gift bag on the floor of the back seat between where Cruz and Roundtree were sitting. ***Id.*** An officer "initially stated that he looked inside the gift bag and saw twenty racks of heroin," and later clarified that inside the gift bag was another bag, a "white plastic bag that was knotted at the top," that the officer opened. ***Id.*** After peeling back the paper of the drug packaging, he discovered the bag contained heroin, after which officers arrested Cruz and charged him with several offenses, including PWID.

The suppression court granted Cruz's motion to suppress, concluding in relevant part that Cruz had a reasonable expectation of privacy in the closed bag on the floor at his feet. The Commonwealth appealed, and this Court affirmed. We explained, "[P]olice did not recover drugs that were sitting out in the open in the backseat of the car; rather [they] recovered the drugs from a tied-off plastic bag that was inside a Christmas gift bag, which was situated at Cruz's feet." ***Id.*** at *5. Thus, the record supported the suppression court's finding that "Cruz intended to keep the contents of the plastic bag, which was tied off and sitting inside a Christmas style gift bag, private," and thus had a reasonable expectation of privacy.[6] ***Id.***

In ***Pearsall***, Pearsall was a passenger in a car rented to the driver. Police Officer Cruz and his partner stopped the car because the driver failed to use a turn signal. Pearsall was sitting in the front passenger seat. While Officer Cruz was running the vehicle's tag, he observed Pearsall using his right arm to attempt to reach around the center console into the back seat. Officer Cruz and his partner approached the car. Officer Cruz approached the passenger side and asked Pearsall for identification. Pearsall began reaching

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[6] The Commonwealth also argued in ***Cruz*** that the officer's search satisfied the plain view doctrine. We held that the suppression court correctly determined that the drugs were not in plain view and that the officer did not have probable cause to search the contents of the plastic bag. ***Id.*** at *6. In the present case, the Commonwealth does not raise any issue other than the argument that Appellee lacked a reasonable expectation of privacy in the area under the passenger seat.

into the backseat again, and Officer Cruz told him to stop. Pearsall explained that he had dropped his identification under the seat. Officer Cruz opened the back passenger door, reached under the passenger seat and located the dropped identification. Officer Cruz's partner ran the identification and told Officer Cruz that there was an open warrant for Pearsall's arrest. The officers removed Pearsall from the car and placed him in the police vehicle. Officer Cruz returned to the car, searched under the passenger seat without a warrant, and found a bag containing a firearm. Pearsall was arrested for firearms offenses. He filed a motion to suppress, which the suppression court granted, and the Commonwealth appealed to this Court.

We affirmed, reasoning as follows:

> [S]imilar to ***Cruz***, Pearsall was a lawful passenger inside of the vehicle, which in this case was rented by the driver, and, accordingly, while he did not have a reasonable expectation of privacy in the entire vehicle, he had a reasonable expectation of privacy in the bag he placed inside the vehicle. The following facts support the trial court's finding that Pearsall had a reasonable expectation of privacy in the bag: he was in the passenger seat of the vehicle, and was observed reaching around the center console behind the seat he was occupying; and his identification was located under the seat where the black plastic bag was located. The fact that the bag was ***under*** the seat Pearsall occupied where his identification was located, rather than out in the open and accessible to any and all occupants of the vehicle, indicates that Pearsall intended to keep the contents of the bag private, and, accordingly, he had a reasonable expectation of privacy in the area under his seat including the bag. See Trial Court Opinion at 12 (concluding Pearsall "clearly did have a privacy interest in his bag that he placed under his seat near his identification card," and that he had a legitimate expectation of privacy); ***Cruz***, 324 A.3d 1203 at *5-*6; ***accord Commonwealth v. Rivera***, 273 A.3d 1032 (Pa. Super. 2022) (unpublished memorandum at *5) (providing that a passenger in a vehicle maintains a reasonable

> expectation of privacy in luggage that "he or she places inside a vehicle provided, however, that the passenger, by his or her conduct, exhibits an actual or subjective expectation of privacy in the backpack as determined by the totality of the circumstances and that expectation is one that society is prepared to recognize as reasonable"). As such, the trial court's findings are supported by the record and its legal conclusions appropriate.

Id., 2026 WL at 799268, *5.

Finally, in ***Lawrence***, relying on ***Cruz*** and ***Pearsall***, we held that a passenger had a reasonable expectation of privacy in a firearm found in a bag underneath the passenger seat of a car, since the bag was not out in the open or accessible to the other occupant of the vehicle (the driver), indicating that the passenger intended to keep its contents private. ***Id.***, 2026 WL at 2068269, *5.

Although ***Cruz***, ***Pearsall***, and ***Lawrence*** are non-precedential memoranda, we consider them persuasive authority, as we are entitled to do under Pa.R.A.P. 126(b). Accordingly, we hold that Appellee had a reasonable expectation of privacy in the firearm that Officer Brobzinski found under the passenger seat. The firearm was not sitting out in the open, accessible to the driver. It was underneath Appellee's seat, which suggests that he intended to keep it private, an expectation that society is prepared to recognize as reasonable. The Commonwealth's first argument thus fails.

Next, the Commonwealth contends that Officer Brobzinski had reasonable suspicion to search the area of the car in which Appellee was sitting for weapons. We agree.

Pennsylvania courts recognize three categories of interactions between citizens and the police: "a mere encounter (or request for information);" an "investigative detention"; and "an arrest or custodial detention." ***Commonwealth v. Raglin***, 178 A.3d 868, 871-72 (Pa. Super. 2018). The present case involves an investigative detention at the scene of a traffic stop. A police officer's investigation detention, or a ***Terry***[7] stop, of an individual "must be supported by a reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest." ***Id.*** at 872. ***Raglin*** elaborates that under ***Terry***,

> A police officer may detain an individual in order to conduct an investigation if that officer reasonably suspects that the individual is engaging in criminal conduct. This standard, less stringent than probable cause, is commonly known as reasonable suspicion. In order to determine whether the police officer had reasonable suspicion, the totality of the circumstances must be considered.

Id. at 872 (cleaned up).[8]

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[7] ***Terry v. Ohio***, 392 U.S. 1 (1968).

[8] Although ***Terry*** is a Fourth Amendment case, "Pennsylvania courts have consistently followed ***Terry*** in stop and frisk cases, including those in which the appellants allege protections pursuant to Article I, § 8 of the Pennsylvania Constitution." ***In re D.M.***, 566 Pa. 445, 781 A.2d 1161, 1163 (2001); ***see also Commonwealth v. Jefferson***, 853 A.2d 404 (Pa. Super. 2004) (accord). "Thus, Article I, § 8 provides citizens no greater protections from ***Terry*** stops than the Fourth Amendment." ***Commonwealth v. Jackson***, 271 A.3d 461, 464 (Pa. Super. 2021).

"The totality of circumstances test does not limit our inquiry to an examination of only those facts that clearly indicate criminal conduct. Rather, even a combination of innocent facts, when taken together, may warrant further investigation by the police officer." ***Commonwealth v. Lewis***, 343 A.3d 1016, 1029 (Pa. 2025). Reasonable suspicion "allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." ***Id.***

Importantly, the reasonable suspicion test requires an *objective* analysis that focuses on "whether the facts available to the officer at the time of the intrusion warrant a man of reasonable caution in the belief that the action taken was appropriate." ***Commonwealth v. Morrison***, 166 A.3d 357, 364 (Pa. Super. 2017). Thus, the officer's *subjective* opinion is irrelevant.

While a "mere hunch" does not create reasonable suspicion, ***Commonwealth v. Lewis***, 343 A.3d 1016, 1038 (Pa. 2025), "the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause." ***Id.*** (cleaned up). In other words, "the reasonable suspicion inquiry falls considerably short of 51% accuracy." ***Id.*** (cleaned up). "Courts cannot reasonably demand scientific certainty ... where none exists" but "rather must permit officers to make commonsense judgments and inferences about human behavior." ***Id.*** at 1038-39 (cleaned up).

If law enforcement temporarily detains an individual based on reasonable suspicion of unlawful activity, they may also conduct a "***Terry*** frisk" for officer safety if they have reasonable suspicion that the individual is armed and dangerous. ***See Commonwealth v. Cooper***, 994 A.2d 589, 592 (Pa. Super. 2010). "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or the safety of others was in danger." ***Id.*** Like the suspicion supporting the stop itself, the suspicion that the suspect is armed and dangerous must be objectively reasonable and based on the totality of the circumstances, considering the officer's training and experience. ***Commonwealth v. Grahame***, 7 A.3d 810, 814, 816 (Pa. 2010). While certain factors might not individually give rise to reasonable suspicion, they may do so in combination. ***See Commonwealth v. Garcia***, 311 A.3d 1138, 1145 (Pa. Super. 2024).

These principles extend to searches of passenger compartments of automobiles. When the police have properly stopped a vehicle for a moving violation, they may, incident to the stop, also investigate information such as the driver's name, vehicle registration, and "any information necessary to enforce provisions of the motor vehicle code." ***Commonwealth v. Mack***, 953 A.2d 587, 589 (Pa. Super. 2008); ***see also Commonwealth v. Brown***, 654 A.2d 1096, 1102-03 (Pa. Super. 1995). During such an investigation, the police may also order the vehicle's occupants to exit the vehicle "as a matter

of right." ***Mack***, 953 A.2d at 589. Furthermore, and most importantly for purposes of the present case,

> [a] search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant" the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons…[T]he issue is whether a reasonably prudent man would be warranted in the belief that his safety or that of others was in danger.

Michigan v. Long, 463 U.S. 1032, 1049-50 (1983).[9] If a police officer has reasonable suspicion that the detainee has a weapon in the vehicle, he may conduct a search of the areas of the vehicle where weapons may be readily accessible. ***Morris***, 644 A.2d at 723 (citing ***Long***). He may conduct this search even if the detainee cannot access the vehicle during the investigation, because the detainee will presumably be permitted to reenter the vehicle afterwards and have access to any weapons inside. ***See Commonwealth v. Buchert***, 68 A.3d 911, 913 (Pa. Super. 2013). "If, while conducting a legitimate ***Terry*** search of the interior of the automobile, the officer should…discover contraband…,he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression in such circumstances." ***Long***, 463 U.S. at 1050.

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[9] Our Supreme Court has held that "***Long's*** reasoning is also applicable to Article I, § 8 [of the Pennsylvania Constitution]." ***Commonwealth v. Morris***, 644 A.2d 721, 724 n.3 (Pa. 1994).

In this case, multiple factors, viewed in their totality, create reasonable suspicion that Appellee was armed and dangerous. First, the vehicle stop took place in a high crime area. To demonstrate that an area is high in crime, more is necessary than conclusory buzzwords that characterize an area in broad generalities. ***Commonwealth v. Foster***, 356 A.3d 747, 760-61 (Pa. 2026) (officer's testimony claiming area was "hot spot" at some undefined time "in the past" did not constitute evidence that this area was high-crime area at time of seizure). The evidence herein meets this test. Officer Brobzinski testified that in the past two years, he has responded in a patrolman capacity "probably twenty to thirty times" to "homicides, shootings, rapes, robberies, et cetera" in this area. N.T., 7/19/24, at 9. He has made five to ten narcotics arrests in this area, ***id.***, and maybe five to ten firearms arrests "with additional five from over the two years." ***Id.*** at 9-10. Two weeks before the suppression hearing, he responded to a homicide "at the corner there."[10] ***Id.*** at 10.

Second, Officer Brobzinski's reason for stopping the vehicle was that its windows were excessively tinted. We have recognized that a vehicle's tinted windows can be a factor giving rise to reasonable suspicion that the vehicle

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[10] Although this was a high-crime area, the Commonwealth claims incorrectly that the stop took place at night. The stop took place before sunset at 8:00 p.m. on May 17, 2023. ***See*** timeanddate.com (Chester, PA, May 17, 2023); ***see also*** Pa.R.E. 201(b)(2) (court may take judicial notice of fact that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned).

occupant is armed and dangerous. ***Commonwealth v. Murray***, 936 A.2d 76, 79-80 (Pa. Super. 2007).

Third, when Officer Brobzinski activated his overhead lights, the vehicle "slow rolled" for several blocks before pulling over. N.T., 7/19/24, at 5, 44-45, 53, 55; ***see also Commonwealth v. Cartegena***, 63 A.3d 294, 303 (Pa. Super. 2013) (failure to immediately stop can be factor giving rise to reasonable suspicion that vehicle occupant is armed and dangerous); ***In Re O.J.***, 958 A.2d 561, 566 (Pa. Super. 2008) (same).

Fourth, Officer Brobzinski observed that Appellee's t-shirt was "pulled up pretty much past his bellybutton" and that "his boxers underneath of his hands were scrunched up in an odd manner." N.T., 7/19/24, at 15; ***see also id.*** (Appellee's boxers were "up higher than they should sit"). Appellee's clothing was positioned in a manner that suggested to the officer that something had been removed from Appellee's waistband. We consider this evidence analogous to cases in which we have held that furtive movements by a vehicle occupant during a traffic stop indicate that he is concealing a weapon. ***Commonwealth v. Simmons***, 17 A.3d 399, 401 (Pa. Super. 2011); ***O.J.***, 958 A.2d at 566.

Fifth, while speaking with the vehicle driver, Officer Brobzinski observed that Appellee's "chest was rising very fast," that his "heart was beating very fast," and that he was "breathing very heavily." N.T., 7/19/24, at 17. The officer asked the driver why Appellee was so nervous, and the driver answered

that he did not know. ***Id.*** at 17-18. A vehicle occupant's nervous demeanor, in conjunction with other factors, may give rise to reasonable suspicion that he is armed and dangerous. ***Commonwealth v. Arrington***, 233 A.3d 910, 916 (Pa. Super. 2020).

Viewed collectively and objectively, these five factors, all of which were available to Officer Brobzinski at the time of the vehicle stop, "warrant a man of reasonable caution in the belief that the action taken was appropriate." ***Morrison***, 166 A.3d at 364. It bears emphasis that the reasonable suspicion standard is not as demanding as the preponderance of the evidence test; indeed, "the reasonable suspicion inquiry falls considerably short of 51% accuracy." ***Lewis***, 343 A.3d at 1038. The totality of factors discussed above, viewed under these standards, convince us that Officer Brobzinski had reasonable suspicion to conduct a wingspan search of the front passenger seat. The officer's discovery and seizure of the gun underneath the front passenger seat was valid under both the Fourth Amendment and Article I, § 8 of the Pennsylvania Constitution.

We also reject the trial court's decision to suppress Appellee's custodial statement admitting that the gun under the seat belonged to him. The court suppressed this statement as the fruit of the poisonous tree (*i.e.*, the direct

result of the wingspan search of the front passenger seat).[11] Since the wingspan search was constitutional, the fruit of the poisonous tree doctrine does not apply here. Nor does the record furnish any other reason for suppressing Appellee's statement.

The dissent argues that the search of the passenger compartment was unconstitutional based on the suppression court's conclusion that the traffic stop was completed "once Officer Brobzinski discovered that no law had been broken by the driver, and the officer had not issued any citation to the driver." Dissent at 4 (citing Suppression Court Opinion at 4). The driver, said the dissent, "demonstrated he was authorized to operate a motor vehicle[,] the motor vehicle was registered and insured," and the driver "demonstrated he had been issued a license to carry a firearm." ***Id.*** (citing Suppression Court Opinion at 4). At this point, the dissent continues, the officer had no legal basis to detain Appellee further. ***Id.*** In further support of this position, the dissent cites Officer Brobzinski's testimony that (1) the driver's statement he had a firearm did not "cause any red flags," (2) the officer did not "have any safety concerns" about Appellee, and (3) the officer "felt comfortable leaving [Appellee] in the vehicle while he spoke to [the driver] outside." Dissent at 7.

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[11] The fruit of the poisonous tree doctrine generally requires exclusion of evidence obtained from, or acquired as a consequence of, illegal searches. ***Commonwealth v. Gatlos***, 76 A.3d 44, 63 (Pa. Super. 2013).

We respectfully disagree. Viewed objectively, the facts available to Officer Brobzinski *before* concluding his investigation of the driver's registration, insurance, and right to carry a firearm gave the officer reasonable suspicion to extend the traffic stop and perform the wingspan search of the passenger compartment.

The dissent overlooks several important principles. During a legitimate traffic stop, "additional suspicion may arise before the initial stop's purpose has been fulfilled; then, detention may be permissible to investigate the new suspicions," so long as the new detention "is supported by reasonable suspicion." ***Commonwealth v. Sloan***, 303 A.3d 155, 163, 164 (Pa. Super. 2023). Moreover, the question whether reasonable suspicion supports the new detention is an *objective* inquiry, not an inquiry into the officer's subjective thoughts. We made this point clear in ***Commonwealth v. Johnson***, 202 A.3d 125 (Pa. Super. 2019) (*en banc*). There, we emphasized that when considering whether a police officer's actions violated the Fourth Amendment,

> [t]he proper analysis…is an objective one. In ***Brigham City, Utah v. Stuart***, 547 U.S. 398 (2006), the United States Supreme Court held that the Utah Supreme Court erred when it "considered the officers' subjective motivations relevant" in an exigent circumstances case. ***Id.*** at 404. "Our cases have repeatedly rejected this approach. An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed objectively, justify the action." ***Id.*** (quoting ***Scott v. United States***, 436 U.S. 128, 138 (1978)) (emphasis added in ***Stuart***). In ***Maryland v. Macon***, 472 U.S. 463 (1985), a case assessing the validity of a seizure of obscene magazines, the Supreme Court wrote: "Whether a Fourth

> Amendment violation has occurred 'turns on objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time' [...] and **not on the officer's actual state of mind at the time the challenged action was taken**." ***Id.*** at 470-71 (quoting ***Scott***, 436 U.S. at 136) (emphasis added).
>
> The courts of this Commonwealth have employed the same approach. In ***Commonwealth v. Martin***, 101 A.3d 706 (Pa. 2014), a warrantless arrest case, our Supreme Court wrote that "[i]n the Fourth Amendment context, 'the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.'" ***Id.*** at 721 (quoting ***Whren v. United States***, 517 U.S. 806, 813 (1996)), cert. denied, 136 S. Ct. 201 (2015). Further:
>
> > Fourth Amendment reasonableness is predominantly an objective inquiry. We ask whether the circumstances, viewed objectively, justify the challenged action. If so, that action was reasonable whatever the subjective intent motivating the relevant officials. **This approach recognizes that the Fourth Amendment regulates conduct rather than thoughts**....
>
> ***Id.*** (quoting ***Ashcroft v. al-Kidd***, 563 U.S. 731, 736 (2011)) (emphasis added).

Id. 202 A.3d at 128.

These principles demonstrate that the dissent's focus on Officer Brobzinski's subjective opinion that he had no safety concerns about Appellee is misplaced. The critical question is whether the officer had an *objective* basis to search the area in which Appellee was sitting. ***Id.*** The five factors discussed above demonstrates that he did—and since all five factors arose before he completed his investigation of the driver's registration, insurance, and right to carry a firearm, he was authorized to extend the traffic stop in

order to search for a firearm where Appellee was seated. ***See Sloan***, 303 A.3d at 163, 164.

For these reasons, we reverse the order granting Appellee's motion to suppress and remand for further proceedings.

Order reversed. Case remanded for further proceedings in accordance with this opinion. Jurisdiction relinquished.

President Judge Emeritus Stevens joins the opinion.

Judge Lane files a dissenting opinion.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/10/2026