NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
KAMAL TUNNELL	:	
Appellant	:	No. 2135 EDA 2025

Appeal from the Judgment of Sentence Entered July 17, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0008328-2024

BEFORE: OLSON, J., DUBOW, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED NOVEMBER 17, 2026**

Appellant, Kamal Tunnell, appeals from the judgment of sentence imposed by the Court of Common Pleas of Philadelphia County for his convictions of one count each of possession with intent to deliver a controlled substance (PWID), knowing or intentional possession of a controlled substance by a person not registered (K&I), carrying a firearm without a license, and carrying a firearm on public streets or public property in Philadelphia.[1] Appellant challenges the denial of his pre-trial motion to suppress drugs, a handgun, and money that police recovered from his person. We affirm.

The suppression court set forth the facts of this case as follows:

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* Retired Senior Judge assigned to the Superior Court.

[1] 35 P.S. § 780-113(a)(30), 35 P.S. § 780-113(a)(16), 18 Pa.C.S. § 6106(a)(1), and 18 Pa.C.S. § 6108, respectively.

> On October 7, 2024, at approximately 5:48 p.m., Philadelphia Police Officer John Yeager was on routine patrol in the 24th district with Police Officer Corey Kelly. Both officers were in full uniform and in a marked patrol car. Officer Yeager is a nine-year veteran of the Philadelphia Police Department, having spent his entire career assigned to the 24th district. Officer Yeager parked his patrol car[] outside a corner store known for narcotics sales, on the corner of [the] 500 [block of] Hart Lane and Kensington Ave[nue]. He described the Hart Lane and Kensington Ave[nue] area as an open-air drug market, where he has personally witnessed hundreds of drug transactions and made numerous narcotics arrests.
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> While parked, Officer Yeager saw Appellant engage in three to four hand-to-hand transactions in the front vestibule area of the store. Officers Yeager and Kelly then got out of the patrol car and entered the front vestibule of the store.
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> As the police entered the vestibule, Appellant attempted to leave the store. The officers immediately stopped Appellant. Officer Kelly asked Appellant if he had anything on his person. Appellant said he had drugs in his left pocket. The officers found a bundle of heroin in Appellant's pocket and arrested him. The officers then conducted a search incident to arrest and found an additional 53 [Z]iploc baggies of heroin/fentanyl, 28 [Z]iploc baggies of meth, two Adderall pills, an unlicensed handgun, and 106 dollars cash in denominations of ones, fives, tens, and twenties, on Appellant's person.

Suppression Court Opinion, 11/20/25, 1-2 (record citations omitted).

On February 12, 2025, Appellant filed a pre-trial omnibus motion to, *inter alia*, suppress the physical evidence recovered from him on the basis both that his arrest was illegal because "(a) he was arrested without probable cause[;] (b) he was subjected to a stop and frisk on less than reasonable suspicion[; and] (c) he was arrested without a lawfully issued warrant or other legal justification," and that a warrantless search absent probable cause had occurred. Appellant's Pre-Trial Omnibus Motion, 2/12/25, ¶ 1 (unpaginated).

On May 8, 2025, the suppression court presided over a hearing on Appellant's motion. The Commonwealth presented the testimony of Officer Yeager, whose testimony was consistent with the above summary of the facts. The Commonwealth also admitted property receipts to corroborate the items recovered from Appellant's person as well as Officer Kelly's body-worn camera footage documenting the circumstances of the arrest. At the conclusion of the hearing, the court denied Appellant's motion to suppress.

Immediately following the suppression hearing, Appellant waived his right to be tried by a jury and proceeded to a stipulated bench trial where the parties agreed that all the non-hearsay evidence from the suppression hearing would be incorporated as the trial evidentiary record. ***See*** N.T. Suppression Hearing, 5/8/25, 38. After considering the stipulated record and the arguments of counsel, the trial court found Appellant guilty of all the above-referenced offenses.

On July 17, 2025, the trial court sentenced Appellant to two to four years' incarceration on the PWID charge; K&I merged for the purposes of sentencing. ***See*** Order (sentencing), 7/17/25, 1. For carrying a firearm without a license, the trial court sentenced Appellant to serve six to twelve months' incarceration to be served consecutive to the PWID sentence for a total aggregate prison term of two and one-half to five years. ***See id.*** The trial court declined to impose any further penalty for carrying firearms on public streets or public property in Philadelphia. ***See id.***

That same day, Appellant filed a post-sentence motion for reconsideration of sentence. ***See*** Appellant's Post-Sentence Motions and Motion to Reconsider Sentence, 7/17/25, 1-2. The trial court denied the motion on July 25, 2025. ***See*** Order (post-sentence motion), 7/25/25, 1. On August 6, 2025, Appellant filed a timely notice of appeal. ***See*** Notice of Appeal, 8/6/25, 1. The trial court and Appellant complied with Pennsylvania Rule of Appellate Procedure 1925. ***See*** Order (Rule 1925(b)), 8/7/25, 1; Appellant's First Extension of Time (EoT) Request, 8/28/25, 2; Order (first EoT Request), 8/29/25, 1; Appellant's Second EoT Request, 9/12/25, 2; Order (second EoT request), 9/22/25, 1; Appellant's Third EoT Request, 10/7/25, 2; Appellant's 1925(b) Statement, 10/8/25, 1; Suppression Court Opinion, 11/20/25, 1-20.

Appellant presents the following question for our review:

> Whether the trial court erred in [Appellant]'s motion to suppress physical evidence where [Appellant] was stopped and interrogated without reasonable suspicion or probable cause and then subjected to a full search without probable cause or reasonable suspicion that he was armed and dangerous?

Appellant's Brief, 2.

Appellant contends that the Commonwealth "failed to establish that Officers Yeager and Kelly possessed probable cause or reasonable suspicion when they stopped and searched" him.[2] Appellant's Brief, 7. Appellant relies

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[2] Beyond Appellant's statement that there was no probable cause when officers stopped and searched him, Appellant does not go on to develop any specific arguments concerning probable cause. We infer that his claim
(Footnote Continued Next Page)

on our Supreme Court's decision in ***Commonwealth v. Holmes***, 14 A.3d 89, 95 (Pa. 2011), that finds an officer must possess knowledge of "specific and articulable facts" to form the reasonable suspicion necessary to stop someone, as the officers stopped Appellant in the store's vestibule. ***Id.*** at 7-8. Appellant argues that the officers in the instant case did not have those facts on hand because "[n]o objects or money were observed, no conversation was overheard, and no suspected drug buyers were stopped." ***Id.*** at 11. Appellant also alleges that the record is "barren of any indication that [he] engaged in unprovoked flight or other evasive behaviors that might weigh in favor of a finding of reasonable suspicion."[3] ***Id.*** at 9. Finally, while Appellant acknowledges that Officer Yeager "had nine years of experience as a Philadelphia police officer and had observed 'hundreds' of narcotics transactions during his tenure," he alleges that the officer failed to establish a nexus between his training and experience and his ability to "distinguish a hand-to-hand drug sale from innocent conduct." ***Id.*** at 10.

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challenges the legality of the initial stop and detainment and that his conclusion that his arrest lacked probable cause derives from the alleged illegality of the stop.

[3] Appellant makes this claim while also acknowledging in his own footnote that Officer Yeager's testimony was that multiple people were trying to leave, including himself. Absent any supporting citations, he argues that the suppression court's finding that he engaged in flight cannot be supported by the record because multiple people tried to leave when the officers entered the store. ***See*** Appellant's Brief at 9 n.7.

On review of the denial of a suppression motion, our standard of review is well-settled:

> [An appellate court's] standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth 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 suppression court's factual findings are supported by the record, [the appellate court is] bound by [those] findings and may reverse only if the court's legal conclusions are erroneous. Where … the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court's legal conclusions are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the conclusions of law of the courts below are subject to [ ] plenary review.

Commonwealth v. Jones, 121 A.3d 524, 526-527 (Pa. Super. 2015), ***quoting Commonwealth v. Jones***, 988 A.2d 649, 654 (Pa. 2010) (internal citations and quotation marks omitted).

"The Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution guarantee the right of the people to be secure in their persons, houses, papers, and possessions from unreasonable searches and seizures." ***Commonwealth v. Joyner***, 348 A.3d 230, 236 (Pa. Super. 2025).

In the context of suppression review, there are three types of warrantless encounters between police and citizens: a "mere encounter," an "investigative detention," and a "custodial detention" or arrest. ***Commonwealth v. Toliver***, 355 A.3d 920, 934 (Pa. Super. 2026). To be

valid, each level of interaction requires a different level of suspicion. Specifically,

> [A] mere encounter, sometimes referred to as a consensual encounter, [ ] does not require the officer to have any suspicion that the citizen is or has been engaged in criminal activity. This interaction also does not compel the citizen to stop or respond to the officer. A mere encounter does not constitute a seizure, as the citizen is free to choose whether to engage with the officer and comply with any requests made or, conversely, to ignore the officer and continue on his or her way. The second type of interaction, an investigative detention, is a temporary detention of a citizen. This interaction constitutes a seizure of a person, and to be constitutionally valid[,] police must have a reasonable suspicion that criminal activity is afoot. The third, a custodial detention, is the functional equivalent of an arrest and must be supported by probable cause. A custodial detention also constitutes a seizure.

Id. quoting Commonwealth v. Adams, 205 A.3d 1195, 1199-1200 (Pa. 2019) (citations, brackets, and some quotation marks omitted).

The category of the investigative detention derives from ***Terry v. Ohio***, 392 U.S. 1 (1968), and a seizure for the investigative detention occurs when, based on the totality of circumstances, a reasonable person would believe that they were not free to go and were subject to police orders. ***See Commonwealth v. Clemens***, 66 A.3d 373, 378 (Pa. Super. 2013); ***see also Commonwealth v. Bennett***, 827 A.2d 469, 478 (Pa. Super. 2003).

A totality of the circumstances test is necessary to determine if a police officer had reasonable suspicion for an investigative detention. ***See Commonwealth v. Rogers***, 849 A.2d 1185, 1189 (Pa. 2004). Our Supreme Court has found that:

> In making this determination, we must give "due weight ... to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience." Also, the totality of the circumstances test does not limit our inquiry to an examination of only those facts that clearly indicate criminal conduct. Rather, "[e]ven a combination of innocent facts, when taken together, may warrant further investigation by the police officer."

Id. (internal citations omitted). The reasonable suspicion test "'is what it purports to be—it requires a *suspicion* of criminal conduct that is reasonable based upon the facts of the matter,' and potential innocent explanations for a defendant's conduct may not negate a police officer's suspicion of criminal activity." ***Toliver***, 355 A.3d at 937 (citation omitted; emphasis in original). Among relevant factors are an officer's training, their past experience with similar investigations and arrests, and their familiarity with the location the investigative detention occurred in—including whether it occurred in a "high crime area." ***Clemens***, 66 A.3d at 380. Whether the defendant exhibited nervous or evasive behavior is another relevant factor. ***See id.***

Reasonable suspicion can ripen into probable cause during an investigative detention. ***See Rogers***, 849 A.2d at 1192. An officer has probable cause "where the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed." ***Id. quoting Commonwealth v. Gibson***, 638 A.2d 203, 206 (Pa. 1994). Once an officer with probable cause makes an arrest, the search incident to arrest exception applies to permit a warrantless search of the arrested person and the area

within his immediate control. ***See Commonwealth v. Simonson***, 148 A.3d 792, 797, 799 (Pa. Super. 2016). Courts of this Commonwealth have recognized that "[t]he search incident to arrest exception permits a search of the arrestee's person as a matter of course—and without a 'case-by-case adjudication ... [of] whether a search of a particular arrestee is likely to protect officer safety or evidence.'" ***Id.*** at 799 (citation omitted).

Here, we agree with Appellant that an investigative detention occurred when Officer Kelly, Officer Yeager's partner, grabbed Appellant by the arm and stopped him from leaving the store, as, at that time, Appellant would not have felt free to leave. ***See*** Appellant's Brief, 8; ***see also*** N.T. Suppression Hearing, 5/8/25, 21; ***see also Bennett***, 827 A.2d at 478.

In viewing the totality of the circumstances, we disagree with Appellant, however, on the matter as to whether the officers had reasonable suspicion for the detention. Indeed, like the suppression court, we find that officers had reasonable suspicion to perform an investigative detention of Appellant. ***See*** Suppression Court Opinion, 11/20/25, 13. When the officers first saw Appellant, he was in the vestibule of a corner store in a part of town that Officer Yeager described as an "open-air drug market" on a block where he had made "numerous" previous narcotics arrests. N.T. Suppression Hearing, 5/8/25, 8-9. Regarding the store within which the officers first observed Appellant, Officer Yeager testified that "they sell narcotics inside," and explained that he had observed "approximately [one hundred]" prior drug transactions there during his nine years as a police officer. ***Id.*** at 8-9, 16, 25.

In support of his training and experience, Officer Yeager testified that he had received narcotics training that included surveillance training, and that he had observed hundreds of drug transactions during his tenure. ***See id.*** at 8, 25-26.

The officers observed Appellant engage in "three to four" hand-to-hand transactions in the store's vestibule. N.T. Suppression Hearing, 5/8/25, 11. It does not negate reasonable suspicion, as Appellant argues, that Officer Yeager did not observe any objects or money exchanged, as this does not prevent a trained and experienced officer from forming the reasonable suspicion that a narcotics transaction is occurring. ***See id.*** at 20; Appellant's Brief at 7-9; ***see also Clemens***, 66 A.3d at 380 (finding that an officer who testified to his experience and training had reasonable suspicion that a hand-to-hand narcotics transaction was taking place in a "'nonstop' open-air narcotics sales" area despite not seeing any particular items being passed). Moreover, we conclude that Appellant's engagement in the hand-to-hand transactions in the vestibule of the store gave rise to a reasonable inference of his involvement in illicit narcotics trading rather than some legitimate involvement in the sales of the business in which he was standing. ***See Rogers***, 849 A.2d at 1189.

Additionally, once the officers exited their patrol vehicle and entered the corner store, Appellant attempted to leave the establishment. ***See*** N.T. Suppression Hearing, 5/8/25, 11. Appellant argues that, since multiple people moved to leave in addition to him when the officers entered the store, that

the suppression court erred in characterizing this action as flight. ***See*** Appellant's Brief, 11 n.7. Existing case law does not support this argument. The spontaneous flight of four or five men from a scene of suspected gambling in an area known for its gambling after the arrival of two officers was enough for our Supreme Court to find officers had reasonable suspicion to detain the appellant in ***Commonwealth v. Lewis***, 343 A.3d 1016, 1022, 1039 (Pa. 2025). Here, as in ***Lewis***, Appellant and others, seemingly in unison, departed the store—an area known for narcotics transactions—after suspected narcotics transactions just occurred provided the officers with a reasonable basis for suspecting flight and that Appellant was engaging in criminal activity. When combined with the factors of Officer Yeager's narcotics surveillance training, and his past experiences observing narcotics transactions and making narcotics arrests in the area generally and in the subject corner store specifically, Officer Yeager had reasonable suspicion for conducting an investigatory stop as he could "reasonably conclude … that criminal activity was afoot and that the person he stopped was involved in that activity." ***Bennett***, 827 A.2d at 477.

When, during the investigative detention, Appellant informed the officers that he possessed narcotics in his left pocket, and, in fact, Officer Kelly removed heroin from the indicated pocket, reasonable suspicion ripened into probable cause. ***See*** N.T. Suppression Hearing, 5/8/25, 11; ***see also Rogers***, 849 A.2d at 1192 (finding that reasonable suspicion ripened into probable cause where, during a traffic stop, a police canine unit dog alerted

officers to the possible presence of drugs in the right rear of the stopped car); ***Commonwealth v. Kondash***, 808 A.2d 943, 948-49 (Pa. Super. 2002) (finding that appellee's affirmative response during an investigatory detention regarding whether he possessed intravenous needles on his person provided probable cause to arrest him and perform a search incident to arrest). At that point, the facts and circumstances within the officers' knowledge were "sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed," such that the officers had probable cause to arrest Appellant for illegal drug possession offenses. ***Rogers***, 849 A.2d at 1192. Specifically, Officer Yeager believed at that point that Appellant had committed PWID and arrested him. ***See*** N.T. Suppression Hearing, 5/8/25, 11, 14-15; ***see also*** 35 P.S. § 780-113(a)(30). The "additional 53 [Z]iploc baggies of heroin/fentanyl, 28 [Z]iploc baggies of meth, two Adderall pills, an unlicensed handgun, and 106 dollars cash in denominations of ones, fives, tens, and twenties," were lawfully recovered from Appellant's person as part of a valid search incident to arrest. ***See*** Suppression Court Opinion, 11/20/25, 2.

Since the officers had reasonable suspicion to stop Appellant in the store vestibule and that reasonable suspicion ripened into probable cause when Appellant admitted he possessed narcotics in his pocket, the search and recovery of all the items was valid. The suppression court appropriately denied Appellant's motion to suppress.

Judgment of sentence affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/17/2026