

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

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| IN THE INTEREST OF: J.S., A MINOR | : | IN THE SUPERIOR COURT OF |
|                                   | : | PENNSYLVANIA             |
|                                   | : |                          |
| APPEAL OF: J.S., MINOR            | : |                          |
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|                                   | : | No. 811 EDA 2026         |

Appeal from the Dispositional Order Entered February 18, 2026  
In the Court of Common Pleas of Philadelphia County Juvenile Division at  
No(s): CP-51-JV-0001132-2025

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

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED OCTOBER 23, 2026**

Appellant, J.S., appeals from the dispositional order entered by the Court of Common Pleas of Philadelphia County, Juvenile Division, after the juvenile court adjudicated him delinquent of possession of firearm by a minor and placed him on probation with conditions.<sup>1</sup> The juvenile court adjudicated Appellant delinquent subsequent to denying Appellant's motion to suppress the firearm that police recovered from his person. Appellant challenges the denial of his motion to suppress. We affirm.

We glean the following facts from the suppression record. At 6:24 p.m., on October 1, 2025, Officer Brendan McCauley of the Philadelphia Police Department, and his partner, were on patrol in a marked vehicle in the 600

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S. § 6110.1(a).

block of West Bristol Street in the 25<sup>th</sup> police district of Philadelphia. **See** N.T. Suppression Hearing, 2/18/26, 6, 10. Officer McCauley saw sixteen-year-old Appellant standing on the street with a group of other male youths, licking a “blunt” wrapper and holding a “marijuana container.”<sup>2</sup> **Id.** at 10-13, 18. Officer McCauley exited the vehicle and approached the group of four young men, saying, “No weapons, right?” to which Appellant responded, “No weapons.” Commonwealth Suppression Exhibit C-2 (Officer McCauley Body Worn Camera Footage), 1:02. Officer McCauley went on to ask how old Appellant was. **See id.** at 1:05. Appellant stumbled and stuttered a non-answer: “Uh—this—this was—They just passed me this. I[ a]m not with them.” **Id.** at 1:07; **see also** N.T. Suppression Hearing, 2/18/26, 12. As Officer McCauley again asked whether anyone had any weapons and everyone again denied it, Appellant started to move away, and two other youths moved

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<sup>2</sup> Appellant objected during the suppression hearing to Officer McCauley and the Commonwealth’s characterization of the items as a blunt and a marijuana container, instead terming the former a “wrapper” or “cigar” and the latter an “empty container” or “green plastic container.” N.T. Suppression Hearing, 2/18/26, at 10, 18, 25, 27-28, 29-30, 46-48. By Officer McCauley’s own admission, there was not any marijuana in the cigar, nor was there anything but an untested residue in the bottom of the container, which was not described in the property receipt when the item was logged into police evidence. **See id.** at 27-29; Defense Suppression Exhibit D-1 (property receipt). The juvenile court specifically found that Officer McCauley had the experience to identify both the cigar/wrapper as a blunt and the plastic container as a container for marijuana, but also referred to the items as “cigar” and “green plastic container” respectively, in its written opinion. N.T. Suppression Hearing, 2/18/26, at 18; Juvenile Court Opinion, filed 3/31/26, 3.

to stand in between Appellant and Officer McCauley. **See** Commonwealth Suppression Exhibit C-2 (Officer McCauley Body Camera Video), 1:11; N.T. Suppression Hearing, 2/18/26, 12, 18. Appellant paused a couple feet away as Officer McCauley moved around the other youths and grabbed him by the arm. **See** N.T. Suppression Hearing, 2/18/26, 13, 18-19. Appellant tried to pull away, saying, "Get off me," and "No consent," as Officer McCauley detained him against the side of the vehicle, while his partner was exiting the vehicle. **Id.** Officer McCauley patted Appellant's waistband area as he moved Appellant closer to his vehicle and felt a firearm there. **See id.** at 19-20. He removed the firearm, a loaded black Taurus nine-millimeter handgun, and the officers took Appellant into custody. **See id.** at 19, 24, 42-43.

The Commonwealth filed a juvenile delinquency petition on October 2, 2025, seeking to have Appellant adjudicated delinquent of three firearms charges.<sup>3</sup> On October 23, 2025, Appellant filed a motion to suppress, *inter alia*, the recovered firearm, alleging that the evidence was unlawfully obtained because, among other reasons, he was arrested without probable cause and he was subjected to a **Terry**<sup>4</sup> stop and frisk on less than reasonable suspicion. **See** Suppression Motion, 10/23/25, ¶ 2.

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<sup>3</sup> The charges included carrying a firearm without a license 18 Pa.C.S. § 6106(a)(1), possession of a firearm by a minor, 18 Pa.C.S. § 6110.1(a), and carrying a firearm on public streets or public property in Philadelphia, 18 Pa.C.S. § 6108.

<sup>4</sup> **Terry v. Ohio**, 392 U.S. 1 (1968).

A suppression hearing was held on February 18, 2026. The Commonwealth presented testimony from Officer McCauley, whose testimony was consistent with the above summary of the facts. The Commonwealth also admitted into evidence footage from Officer McCauley's body-worn camera that documented the incident. At the conclusion of the hearing, the juvenile court denied Appellant's motion to suppress. Immediately following that hearing, the juvenile court held an adjudicatory hearing, where the parties stipulated to Appellant being a minor at the time of the incident and all non-hearsay evidence from the suppression hearing was incorporated. The juvenile court then adjudicated Appellant delinquent on the charge of possession of a firearm by a minor and found him not guilty of the other charges. The juvenile court entered its dispositional order, and Appellant filed a timely notice of appeal. Appellant and the court complied with Pennsylvania Rule of Appellate Procedure 1925.

Appellant presents the following question for our review:

Did the trial court err in denying [Appellant's] motion to suppress where the police arrested [Appellant] without probable cause, and[,] even if not arrested, he was searched without reasonable and articulable suspicion that he was armed and dangerous?

Appellant's Brief, 2.

As this appeal raises alternative legal theories, we only need to find that one is satisfied for the juvenile court's denial of the suppression motion to be

upheld.<sup>5</sup> We begin with a review of whether there was probable cause for Officer McCauley to arrest Appellant.

Appellant asserts that Officer McCauley lacked probable cause to arrest him (and thus conduct a search of Appellant's person incident to arrest). In support of this claim, Appellant relies on the fact that there was no proven marijuana recovered on his person or within the items he was holding when Officer McCauley approached him. **See id.** at 8, 10. Appellant concedes that the items he had in his hands "may have given Officer McCauley the requisite reasonable suspicion to initiate an investigative detention for the possession of marijuana," but argues that there cannot be probable cause because he "had no marijuana in his possession, the police saw no green leafy substance, nor did they even smell marijuana" and Appellant "was never charged with possession of marijuana." **Id.** at 10-11. Because Appellant believes there was not probable cause to arrest him for possession of marijuana, he argues that the firearm recovered in the search incident to arrest should be suppressed as fruit of the poisonous tree. **See id.** at 12. We disagree.

Our standard of review for a suppression order is well settled. When reviewing a suppression order:

we are required to determine whether the record supports the factual findings of the suppression court, and we are bound by

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<sup>5</sup> It "is well settled that where the result is correct, an appellate court may affirm a [trial] court's decision on any ground without regard to the ground relied upon by the [trial] court itself." **Commonwealth v. Lehman**, 275 A.3d 513, 520 n.5 (Pa. Super. 2022) (citation omitted).

those facts and may reverse only if the legal conclusions drawn therefrom are in error. As the Commonwealth prevailed below, we 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. However, we are not bound by the juvenile court's legal conclusions, which we review *de novo*.

***Int. of G.E.W.***, 233 A.3d 893, 898–99 (Pa. Super. 2020) (internal citations and quotation marks omitted).

"The Fourth Amendment of the United States Constitution and Article 1, 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" need not be supported by any level of suspicion but carries no official compulsion to stop or respond. An "investigative detention" must be supported by reasonable suspicion and subjects the suspect to a stop and a period of detention, but it does not have the coercive conditions that would constitute an arrest. The courts determine whether reasonable suspicion exists by examining the totality of the circumstances. An arrest, or "custodial detention," must be supported by probable cause.

**Int. of J.G.**, 145 A.3d 1179, 1185 (Pa. Super. 2016) (internal citations omitted).

Probable cause exists where “the facts and circumstances within the knowledge of the arresting officer are reasonably trustworthy and sufficient to justify a person of reasonable caution in believing that the arrestee has committed an offense.” **Commonwealth v. Floyd**, 313 A.3d 1061, 1065 (Pa. Super. 2024) (internal citations omitted). It requires “only the probability, not a prima facie showing, of criminal activity.” **Id.** (internal citations omitted). The determination of whether probable cause exists to justify a warrantless arrest requires an examination of the totality of the circumstances. **See Commonwealth v. Clark**, 735 A.2d 1248, 1252 (Pa. 1999). The totality of the circumstances analysis encompasses

the consideration of factors that may arguably be innocent in nature. **See [Illinois v. Gates**, 462 U.S. 213, 243 n.13, (1983)] (providing that “[i]n making a determination of probable cause the relevant inquiry is not whether the particular conduct is ‘innocent’ or ‘guilty,’ but the degree of suspicion that attaches to particular types of non-criminal acts”).

**Commonwealth v. Barr**, 266 A.3d 25, 42 (Pa. 2021).

“Once probable cause is established, it does not dissipate simply because the suspect is not charged with the particular crime that led to the finding of probable cause.” **Commonwealth v. Canning**, 587 A.2d 330, 442 (Pa. Super. 1991). There are many reasons why an officer may not file a formal charge, and even if that reason is that the officer later determines that there was insufficient evidence to warrant a conviction, it does not affect the

finding of probable cause, as “probable cause is based on the facts and circumstances *known at the moment of arrest*, and not on what may or may not occur after the arrest.” ***Id.*** (emphasis in original; internal citation omitted).

The use and possession of small amounts of marijuana and drug paraphernalia is generally prohibited in this Commonwealth under the Controlled Substance, Drug, Device, and Cosmetic Act (“CSA”), 35 P.S. §§ 780.101-780.144, where the CSA defines drug paraphernalia as “includ[ing], but is not limited to: ... (10) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.” 35 P.S. § 780-102(b); **see also** 35 P.S. § 780-113(a)(31)-(32).<sup>6</sup> The General Assembly’s Medical Marijuana Act (“MMA”), 35 P.S. §§ 10231.101-10231.2110, provides some exceptions to this general prohibition, as it legalized the possession and use of marijuana in limited circumstances for

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<sup>6</sup> 35 P.S. § 780-113(a)(31)-(32) states:

The following acts and the causing thereof within the Commonwealth are hereby prohibited:... (31) ... (i) the possession of a small amount of marihuana only for personal use; ... (32) The use of, or possession with intent to use, drug paraphernalia for the purpose of ... ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

35 P.S. § 780-113(a)(31)-(32).

medical use.<sup>7</sup> Because marijuana may be legally possessed and used under the MMA, possession of marijuana itself cannot create probable cause to justify a search under the state and federal constitutions. **See Barr**, 266 A.3d at 41 (finding that because the MMA makes it so that “marijuana is no longer *per se* illegal in this Commonwealth ... the smell of marijuana alone cannot create probable cause to justify a search under the state and federal constitutions.”). However, “the realization that a particular factor contributing to probable cause may involve legal conduct does not render consideration of the factor *per se* impermissible, so long as the factor is considered along with other factors that, in combination, suggest that criminal activity is afoot.” **Id.** at 41-42.

No matter whether viewed under the MMA or CSA, it remains illegal to smoke marijuana, even “medical” marijuana. **See** 35 P.S. § 10231.304(b)(1); **see also Commonwealth v. Moore**, 263 A.3d 1193, 1203 (Pa. Super. 2021) (stating that “While the vaporization of marijuana is permitted under the MMA, and the odor of vaporized marijuana may be consistent with the smell of burnt marijuana, the MMA provides that it is unlawful to “[s]moke medical marijuana.” (citations omitted)). As such, whether there are any factors pointing to marijuana being smoked is relevant to an officer having probable cause to believe marijuana is possessed illegally. **See Commonwealth v.**

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<sup>7</sup> “If a provision of the [CSA] relating to marijuana conflicts with a provision of this act, this act shall take precedence.” 35 P.S. § 10231.2101.

**Felder**, 2022 WL 3210181, \*4 (Pa. Super., filed Aug. 9, 2022) (1082 MDA 2021) (finding that “knowledge that Appellant had paraphernalia for smoking marijuana gave the [officer] reason to believe the marijuana was being used illegally”) (unpublished memorandum cited for persuasive value under Pa.R.A.P. 126(b)).

Additionally, medical marijuana can only be possessed by a patient or their caregiver with a valid identification card on their person and must be kept in the original package in which it was dispensed. **See** 35 P.S. § 10231.303(b)(1),(6), & (7). Medical marijuana packaging must be labeled and contain various pieces of information, including packaging and use by dates, a specific warning statement, dosing information, and information that it must be kept in the original container and used only as authorized. **See** 35 P.S. § 10231.801(i).

When determining whether a container constitutes drug paraphernalia, we keep in mind that “while a particular type of container may have lawful purposes, the circumstances under which a trained narcotics detective views its use may be tantamount to a view of actual contraband.” **Commonwealth v. Burnside**, 625 A.2d 678, 681 (Pa. Super. 1993). As far as the nature of the container factors into a determination of whether probable cause exists, we must “focus on the circumstances as seen through the eyes of the trained officer, and do not view the situation as an average citizen might.” **Id.** (quoting **Commonwealth v. Simmons**, 440 A.2d 1228, 1234 (Pa. Super. 1982) (emphasis omitted), and finding that an officer had probable cause to

arrest Appellee based on drug violations when the officer had years of experience with drug arrests in the area, the officer had seen Appellee holding the type of packets used in selling drugs, and Appellee concealed the packets and moved away from the officer upon spotting the patrol vehicle).

While it is typically illegal to conduct a warrantless search, 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, viewing the totality of the circumstances, we conclude that probable cause existed for the officers to detain and arrest Appellant for multiple violations of the CSA. **See** 35 P.S. § 780-113(a)(31)-(32). When the officers first saw Appellant, he was licking an object, held in one hand, that Officer McCauley was confident was a blunt and holding a plastic container Officer McCauley recognized is commonly used for storing non-medical marijuana in his other hand. **See** N.T. Suppression Hearing, 2/18/26, 10. When the court asked how he could tell the first item was a blunt, Officer McCauley testified, “I[ ha]ve seen blunts all the time. [] I[ ha]ve been a cop for 15 years. Juveniles smoke weed, adults smoke weed. [] I see it in car

stops. [ ] I know what a blunt is.”<sup>8</sup> **Id.** at 11. As a blunt is used for smoking marijuana in violation of both the MMA and CSA, Appellant possessing it is a relevant factor in the officer determining that he was violating the law. **See Clark**, 735 A.2d at 1252. Officer McCauley further described the factors that led him to believe that Appellant was in possession of an illicit substance rather than engaged in an innocent activity:

“when it[ i]s packed like that and they[ a]re licking it, it[ i]s already packed,” and “from my experience, I thought he had already packed it because he had the cigar in the one hand, and he had the empty container in the other. Now, was there residue in the container? Yes. Was it completely filled? Absolutely not.”

**Id.** at 29, 31.

The container itself was another area of concern to Officer McCauley as, while, ultimately, it was empty of anything except an untested residue, the container was a “green plastic container” of the type Officer McCauley described as “commonly [used for] stor[ing] marijuana” and which his partner logged as drug paraphernalia in creating the property receipt for the item. **Id.** at 13, 27-28. As described, this item does not meet the

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<sup>8</sup> Upon seeing the body worn camera footage of the items Appellant was holding, and Appellant objecting to the officer’s characterization of the items as a blunt and marijuana container, the juvenile court said “[Officer McCauley] has the experience. He[ ha]s been on the street in the 25<sup>th</sup> [police district]. That[ i]s a [marijuana] holder and that[ i]s a blunt. Okay, so, [Appellant] has a [marijuana] holder and a blunt in his hands, clear as day, and it[ i]s clear out there on the streets of Philadelphia.” N.T. Suppression Hearing, 2/18/26, 18.

standards required to be a medical marijuana container compliant with the MMA. **See** 35 P.S. § 10231.801(i).

Further, Appellant's reaction to being confronted by the officer is relevant to the totality of the circumstances analysis. Officer McCauley testified that he believed Appellant was a juvenile based on his appearance. **See id.** at 23. As Officer McCauley stepped out of his vehicle to approach Appellant, Appellant put his hands, holding both items, in the air by his shoulders. **See** Commonwealth Suppression Exhibit C-2 (Officer McCauley Body Worn Camera Footage), 1:04. When Officer McCauley asked him how old he was, Appellant offered an evasive and exonerating non-answer: "Uh—this—this was—They just passed me this. I[ a]m not with them." **Id.** at 1:07. Officer McCauley described his initial impression of Appellant and how it impacted his thinking of the situation:

[A]t first[,] he seemed a little, like, nervous, because he—he kind of just put both of them up, like, the—you know, the [marijuana] container and the blunt in one hand, and he immediately said, "Oh they just gave it to me."

Like, he was trying to not accept responsibility that he was actually the one holding the marijuana, not—not somebody else gave it to him. He [] did[ ]n[o]t want to take accountability for it. [N]o one else was holding it; it was just him.

N.T. Suppression Hearing, 2/18/26, 22.

Officer McCauley was able to ask the group of four youths one more question about whether anyone possessed a firearm, which Appellant and the others denied. **See** Commonwealth Suppression Exhibit C-2 (Officer McCauley Body Worn Camera Footage), 1:11. Before the officer could investigate

further, Appellant tried to leave the scene. **See id.** at 1:14; N.T. Suppression Hearing, 2/16/26, 12. In circumstances Officer McCauley described as being “very unusual,” two of the other youths moved to stand between Appellant and the officer as Appellant started to move away. **Id.** at 12. Then, when the officer went around the others and grabbed Appellant, Appellant said, “Get off me,” and “No consent,” and struggled to get away, despite the officer’s grip on him. **Id.** at 19.

Appellant makes a point of arguing that Officer McCauley “failed to actually investigate,” and instead was “rushing to arrest” him. Appellant’s Brief at 11-12. However, what Appellant fails to recognize is that it was Appellant’s own actions to leave the scene that cut the investigation short and led to the officer moving to detain Appellant based on his belief that Appellant was engaged in delinquent behavior. **See** Commonwealth Suppression Exhibit C-2 (Officer McCauley Body Worn Camera Footage), 1:14. What little information Appellant provided the officer before attempting to leave the scene is a denial of ownership of the items in his hand (and denial of any connection to the others in the group), and thus an implicit acknowledgement that, if the materials—as the officer has reason to believe—are marijuana, they cannot be lawfully possessed as required by the MMA. **See Moore**, 263 A.3d at 1203 (finding that indicators that the MMA’s regulations concerning the legal use of marijuana had been violated supplied the officers “more individualized suspicion that the activity is criminal and contributed to a finding of probable cause”); **see also Burnside**, 625 A.2d at 681. Additionally,

Appellant's nervous and defensive demeanor and attempts to leave the scene are evidence of consciousness of guilt. **See Moore**, 263 A.3d at 1204 (noting that "Appellant's defensive demeanor and flight from the scene indicat[ed] consciousness of guilt" and was a factor in the officers' determination that there was a "fair probability [of] contraband" in Appellant's backpack).

Here, as in **Burnside**, an experienced police officer observed someone in possession of items—two different items to **Burnside's** one—that, combined with the individual's furtive and suspicious behaviors, "painted a picture of probable cause" allowing the officer to arrest the individual based on the "conclusion that [they were] in possession of contraband in violation of Pennsylvania's drug laws." **Burnside**, 625 A.2d at 681 (finding that the officer had the probable cause to arrest Appellee after the officer observed Appellee holding packets that were, in the officer's experience, the type of packets used to sell cocaine and Appellee concealed the items and tried to leave upon spotting the officer). Neither the fact that Appellant was never charged with any marijuana possession offenses nor the fact that, post-arrest, no marijuana was ever proven to be in Appellant's possession, negate the existence of probable cause at the time of the arrest. **See Canning**, 587 A.2d at 442.

Because the officer had probable cause to arrest Appellant for violating the CSA's prohibitions against possessing small amounts of marijuana and drug paraphernalia,<sup>9</sup> Officer McCauley's resulting detainment of Appellant

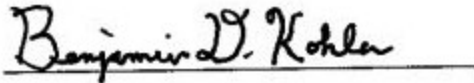
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<sup>9</sup> 35 P.S. § 780-113(a)(31)-(32).

against the patrol car and simultaneous pat down of his waist region, which led to the recovery of a gun, was a valid search incident to arrest. **See *Simonson***, 148 A.3d at 797, 799. Accordingly, the juvenile court properly denied Appellant's motion to suppress, and the recovery of the gun was properly admitted into evidence.

Dispositional Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.  
Prothonotary

Date: 10/23/2026