

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
KEITH JAMAL BURNETT	:	
	:	
Appellant	:	No. 756 EDA 2025

Appeal from the Judgment of Sentence Entered February 12, 2025  
In the Court of Common Pleas of Delaware County Criminal Division at  
No(s): CP-23-CR-0003010-2023

BEFORE: KUNSELMAN, J., McLAUGHLIN, J., and BENDER, P.J.E.

MEMORANDUM BY McLAUGHLIN, J.: **FILED MARCH 10, 2026**

Keith Jamal Burnett appeals from the judgment of sentence entered following his conviction for possession of a firearm prohibited, firearms not to be carried without a license, possession of marijuana, and no rear lights.<sup>1</sup> Burnett argues the court erred in denying his motion to suppress the physical evidence recovered and the statements he made after the police stopped his vehicle. We affirm.

Following a hearing on Burnett’s motion to suppress, the court made the following findings of fact:

Officer Brodzinski is a patrolman with the City of Chester Police Department. On May 18, 2023[,], he was patrolling in the area of W. 9<sup>th</sup> Street and Edwards Street in the City of Chester when he observed a vehicle in front of him with a broken brake light. The vehicle had tinted windows and Officer Brodzinski could

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<sup>1</sup> **See** 18 Pa.C.S.A. §§ 6105(a)(1), 6106(a)(1); 35 P.S. § 780-113(a)(31); and 75 Pa.C.S.A. § 4303(b), respectively.

not see inside. The officer initiated a stop by activating his emergency lights, but [Burnett] did not initially stop his vehicle. He did a "slow roll" for approximately 15 feet after turning onto Yarnall Street.

Upon approach at the passenger's side window, which had been rolled down, Officer Brodzinski immediately smelled fresh marijuana. He asked for [Burnett's] license, which he provided, and then asked [Burnett] to step out of the vehicle. [Burnett] was hesitant to get out of his vehicle when asked. The officer had to ask him twice to exit before he did. When he did exit, Officer Brodzinski conducted a pat down and noticed a boxcutter attached to the back pocket of [Burnett's] pants. He removed it from his pants and moved [Burnett] toward the rear of [Burnett's] vehicle.

Another officer remained with [Burnett] while Officer Brodzinski then conducted a wingspan search of the driver's seat area of the vehicle. He did this to ensure there were no weapons which [Burnett] could use once he was to reenter the vehicle. While shining his flashlight around the areas where [Burnett] could reach from the driver's seat, Officer Brodzinski observed a firearm sticking out of the pocket behind the passenger's seat. He opened the rear door and removed the firearm. The officer then asked [Burnett] if he had a license to carry firearms, to which he replied that he did not.

Findings of Fact and Conclusions of Law, July 30, 2024, at 1-3 (formatting altered; citations to N.T. omitted).

The court denied the motion. It rejected Burnett's argument that the police unlawfully frisked him and unlawfully conducted a wingspan search of his vehicle. It explained,

In the matter *sub judice*, the totality of the circumstances provided Officer Brodzinski with reasonable suspicion to conduct a **Terry** frisk<sup>[2]</sup> of [Burnett] and to conduct a wingspan search of the vehicle. When Officer Brodzinski activated his emergency lights to initiate a stop, [Burnett] did not immediately stop, but did a "slow roll" around the corner and down fifteen feet before

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<sup>2</sup> Referring to ***Terry v. Ohio***, 392 U.S. 1 (1968).

stopping. The vehicle's windows were tinted such that the officer could not see inside. With regard to the "slow roll," the officer stated this: "If we have a slow roll situation — like everything that happened during this car stop. The car is tinted, the car doesn't stop, the car pulls over. I don't know what the operator is doing in the car." (N.T., 5/30/24, p. 31) [Burnett] then hesitated to exit the vehicle when asked by Officer Brodzinski. Additionally, although not a reason standing alone to rise to the level of probable cause to conduct a warrantless search, the smell of marijuana may be a factor in determining probable cause to search. These factors, when combined, rose to the level of reasonable suspicion to conduct a **Terry** frisk.

After finding the boxcutter during the frisk, the officer had even more reason to conduct a protective sweep of the vehicle to ensure his safety and that of his fellow officers. Even though [Burnett] was at the rear of his vehicle at the time of the wingspan search, that is not dispositive of the issue. At this time, it was unclear if [Burnett] was going to be under arrest or would have been permitted to get back in the vehicle. It is also justified, as the **Long**<sup>3</sup> [C]ourt stated, based upon the fear that [Burnett] may break away from officers and gain a weapon from his vehicle.

Moreover, the wingspan search of the vehicle did not exceed the permissible scope. Officer Brodzinski searched near [Burnett]'s seat in areas he could quickly grab a weapon. This included the rear pocket of the passenger's seat where the firearm was found. He shined his flashlight on the pocket and viewed, what he knew based upon his experience to be a firearm.

**Id.** at 4-5 (formatting altered).

The court also rejected Burnett's claim that the police unlawfully prolonged the stop after discovering the firearm. The court stated,

The officer in the instant matter stopped the vehicle for a Motor Vehicle Code violation. The matter quickly developed into a situation which required the officer to conduct a **Terry** frisk and wingspan search for his safety; a search which was supported by the requisite reasonable suspicion. The matter was not prolonged

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<sup>3</sup> Referring to **Michigan v. Long**, 463 U.S. 1032 (1983).

unnecessarily or without the appropriate suspicion and was therefore valid.

**Id.** at 6.

Burnett proceeded to a stipulated bench trial, after which the court found Burnett guilty of the above offenses. The court sentenced him to an aggregate of three to six years' incarceration.

In this appeal, Burnett raises two issues:

I) Whether the court below erred when it denied Mr. Burnett's suppression motion since police frisked him and conducted a warrantless protective search of his car without reasonable suspicion that he was both armed and dangerous, and in any event, exceeded the constitutional limits on the scope of wingspan sweeps?

II) Whether the court below erred when it denied Mr. Burnett's suppression motion because, after the purpose of the initial seizure should have ended, police prolonged the routine traffic stop and continued to detain him absent any legal justification to conduct an unrelated investigation into whether he was lawfully permitted to carry a firearm?

Burnett's Br. at 5.

Our review is guided by the following.

Our standard of review of a suppression motion is well-settled[;] it "is limited to determining whether the suppression court's factual findings are supported from the record and whether the legal conclusions drawn from those facts are correct." **Commonwealth v. Shaffer**, 653 Pa. 258, 209 A.3d 957, 968-69 (2019). Our review of questions of law is *de novo*. **Id.** The scope of review for the denial of a motion to suppress "is to 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 suppression record as a whole." **Id.**

**Commonwealth v. Jones-Williams**, 279 A.3d 508, 515 (Pa. 2022).

In his first issue, Burnett argues Officer Brodzinski “failed to articulate any reasonable grounds to conclude that Mr. Burnett was armed and/or dangerous” prior to conducting the frisk or vehicle search. Burnett’s Br. at 17-18. Burnett points out that he was stopped for a minor traffic infraction – a broken taillight – and the stop did not occur at night. **Id.** at 18. He contends that he “did not make furtive or suspicious movements”; “[t]here was no evidence of warrants or nervousness”; and he “was compliant with police the entire time, supplying his requested documents and exiting the vehicle almost immediately after Brodzinski explained that command.” **Id.** at 18-19.

Regarding the “slow roll,” Burnett contends that he came to a complete stop within five seconds after Officer Brodzinski activated his emergency lights, which is not objectively unusual or suspicious. **Id.** at 19 (citing N.T. 5/30/24 at 30-32, 38-39). While his vehicle had tinted windows, Burnett claims this Court has found the fact of tinted windows, even when combined with nervous behavior, does not give rise to any suspicion of danger. **See id.** at 16-17, 19 (discussing **Commonwealth v. Cartagena**, 63 A.3d 294, 305-07 (Pa.Super. 2013) (*en banc*)).

Finally, Burnett asserts that the smell of fresh, unburnt marijuana does not allow for a protective search. **Id.** at 21 (citing, *inter alia*, **Commonwealth v. Barr**, 266 A.3d 25, 41 (Pa. 2021), **Commonwealth v. Grahame**, 7 A.3d 810, 814 (Pa. 2010)), and **Commonwealth v. Shaw**, 246 A.3d 879, 886 (Pa.Super. 2021)). Burnett points out that Officer Brodzinski did not even ask him if he had a medical marijuana card. **Id.** Burnett concludes the trial court

erred in relying on Officer Brodzinski's subjective allegations of fear, when this combination of benign facts made it objectively unreasonable for the officer to assume that Burnett was armed and dangerous. **Id.** at 15, 21-22.

Burnett next contends that, even assuming Officer Brodzinski had reasonable suspicion that he was armed and dangerous prior to the frisk, the court erred in concluding his discovery of the boxcutter increased the reasonable suspicion of dangerousness such that a wingspan search of Burnett's vehicle was warranted. Burnett posits that armed suspects are not automatically presumed to be dangerous, **id.** at 16 (citing **Commonwealth v. Hicks**, 208 A.3d 916, 945 (Pa. 2019)), and that the boxcutter the police found on him, which he allegedly used at his job, "is not contraband or inherently dangerous." **Id.** at 20. Burnett also states that the police had removed whatever threat the boxcutter posed before they conducted the wingspan search of the vehicle.

Burnett further claims that a "wingspan" search of the passenger compartment for weapons is only permissible where the arrestee is unsecured at the time of the search. **Id.** at 24-25 (citing **Arizona v. Gant**, 556 U.S. 332, 343, 346-47 (2009)). Burnett argues that because he was not within arm's reach of the passenger compartment when the police searched his vehicle, it was unconstitutional. **Id.** at 26.

Burnett's final argument is that even if the search of the front passenger compartment was constitutional, the police exceeded the scope of the search by searching the rear passenger compartment. **Id.** at 26-27.

Pursuant to the federal and state constitutions, an investigative detention<sup>4</sup> must be supported by “reasonable suspicion of unlawful activity.” ***Commonwealth v. Ward***, 318 A.3d 410, 414 (Pa.Super. 2024) (citation omitted), *appeal denied*, 346 A.3d 316 (Pa. 2025). “Reasonable suspicion is a less stringent standard than probable cause necessary to effectuate a warrantless arrest, and depends on the information possessed by police and its degree of reliability in the totality of the circumstances.” ***Commonwealth v. Brown***, 996 A.2d 473, 477 (Pa. 2010). This is an objective analysis. ***Commonwealth v. Morrison***, 166 A.3d 357, 364 (Pa.Super. 2017). A suppression court must “afford due weight to the specific, reasonable inferences drawn from the facts in light of the officer’s experience and acknowledge that innocent facts, when considered collectively, may permit the investigative detention.” ***Brown***, 996 A.2d at 477.

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

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<sup>4</sup> ***See Commonwealth v. Beasley***, 761 A.2d 621, 624 (Pa.Super. 2000) (noting there are three types of encounters citizens may have with police: a mere encounter, an investigative detention, and a custodial detention). The parties agree that Burnett was subject to an investigative detention.

circumstances would be warranted in the belief that his safety or the safety of others was in danger.” **Id.** (citation omitted). Thus, 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. **Grahame**, 7 A.3d at 814 (citing **Terry**, 392 U.S. at 21-22), 816. 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).

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; **see also Commonwealth v. Wright**, 224 A.3d 1104, 1109 (Pa.Super. 2019).

During this type of encounter, as during any investigative detention, if the police have reasonable suspicion that the vehicle’s occupants are armed and dangerous, they may conduct a **Terry** frisk. **See Mack**, 953 A.2d at 591. In addition, if the police have reasonable suspicion that the detainee has a weapon in the vehicle, they may conduct a search of the areas of the vehicle

where weapons may be readily accessible. **See Commonwealth v. Morris**, 644 A.2d 721, 723 (Pa. 1994) (discussing **Long**, 463 U.S. at 1049-50). They 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. **See Commonwealth v. Buchert**, 68 A.3d 911, 913 (Pa.Super. 2013) (stating, "The **Long** Court specifically rejected the contention that a protective search of the interior of a car is unreasonable where the person is under police supervision outside the vehicle" because "a suspect who is not placed under arrest will be free to leave and 'reenter his automobile, and he will then have access to any weapons inside.'" (quoting **Long**, 463 U.S. at 1051)).

Instantly, Burnett argues that Officer Brodzinski lacked reasonable suspicion that Burnett was armed and dangerous such that a frisk of his person and a search of his vehicle was impermissible. We disagree.

Officer Brodzinski testified that he had been in law enforcement for five years and had taken "narcotics classes" and "firearms classes to learn people who carry firearms, the way they would carry firearms, the way firearms would be placed inside of vehicles . . . things like that." N.T., 6/21/23, at 9. On the night of the stop, after Officer Brodzinski activated his emergency lights, Burnett continued to "slow roll" his car for a half a block. **Id.** at 12. Burnett passed other safe areas to pull over, turned onto a separate street, and travelled an additional 15 feet before stopping. **Id.** Due to Burnett's tinted windows, Officer Brodzinski could not during this time see what Burnett was

doing inside the vehicle. **Id.** at 13, 24. When he approached Burnett's vehicle, Officer Brodzinski could smell the odor of fresh marijuana. **Id.** at 14.

Officer Brodzinski explained that in his experience, a person driving a vehicle with heavily tinted windows, who has potential contraband in the vehicle, and who purposefully hesitates stopping the vehicle for the police, may be using that delay to secure a weapon. **Id.** at 31. He stated, "If we have a slow roll situation -- like everything that happened during this car stop. The car is tinted, the car doesn't stop, the car pulls over. I don't know what that operator is doing in that car. They're removed and a wingspan for weapons is conducted." **Id.**; **see also id.** at 19-20 ("I had the odor of fresh marijuana . . . before the wingspan, you know, that's why I had Mr. Burnett step out. The slow roll, paired with the odor of marijuana, he was asked to step out of the vehicle").

Officer Brodzinski also testified,

If you're not stopping when I activated my lights, there's a reason for it. . . . There's a reason that the vehicle is not pulling over. . . . I've had numerous car stops where a vehicle slow rolls me. They're tucking contraband. They're tucking a firearm that they're not supposed to have. The vehicle is tinted. I don't know what he's doing in there. But all I know is he's not stopping, and my overhead lights are activated.

**Id.** at 38, 39.

Officer Brodzinski's suspicion that Burnett was armed did not arise from the tinted windows, alone, or the proximity to drugs, alone, but from the combination of tinted windows, a slow roll – wherein Burnett passed other safe areas to pull over – and the odor of fresh marijuana in Burnett's vehicle.

**See Cartagena**, 63 A.3d at 303 (stating defendant’s failure to stop immediately for the police can be a factor giving rise to reasonable suspicion of danger); **id.** at 304 (stating tinted windows can be a factor giving rise to reasonable suspicion). Under the totality of the circumstances, we find Officer Brodzinski’s suspicion that Burnett might be armed was objectively reasonable, and that his frisk of Burnett and his limited search of Burnett’s vehicle, to secure his safety during the traffic stop, was constitutional. **See Commonwealth v. Lewis**, 343 A.3d 1016, 1038-39 (Pa. 2025) (stating “the reasonable suspicion inquiry falls considerably short of 51% accuracy,” and “[c]ourts cannot reasonably demand scientific certainty where none exists, but rather must permit officers to make commonsense judgments and inferences about human behavior” (cleaned up)).<sup>5</sup>

We reject Burnett’s argument that Officer Brodzinski’s discovery of the boxcutter did not give the police an additional reason to suspect Burnett might have concealed a weapon in his vehicle. **See Long**, 463 U.S. at 1050-51 (long hunting knife); **Morris**, 644 A.2d at 723 (metal pipe). Burnett’s further argument that the police could not conduct a wingspan search if he was not within reach of the vehicle at the time of the stop is contrary to the law. **See**

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<sup>5</sup> We note the trial court’s erroneous statement that Officer Brodzinski’s having smelled fresh marijuana was “a factor in determining probable cause to search.” Findings of Fact and Conclusions of Law at 5. The question here is not whether the police had probable cause. The issue was whether the police had reasonable suspicion that Burnett was armed and dangerous. **See Cartagena**, 63 A.3d at 305 (“We reiterate that this search can only be legitimized if the officer had a reasonable suspicion that [the detainee] was armed and dangerous”).

**Buchert**, 68 A.3d at 913. Finally, there is no merit to Burnett's argument that the search exceeded its permissible scope. Officer Brodzinski testified that the firearm was in the rear pouch of the front passenger seat, which was accessible to the driver. N.T. at 17, 30. The trial court credited this testimony, and we will not disturb that factual conclusion.

In his second issue, Burnett argues the police unlawfully prolonged the traffic stop to ask him about his firearm. He claims that when the police stop a vehicle for a traffic infraction, they may not extend the stop without reasonable suspicion, aside from "inquiries addressed to the traffic violations that originally prompted the seizure, as well as any incidental inquiries to ensure the vehicle's safe and responsible operation." Burnett's Br. at 29. Burnett claims that after Officer Brodzinski found a firearm in his vehicle during the wingspan search, he "illegally extended the seizure by initiating an unrelated investigation into whether Mr. Burnett purchased a license to carry firearms." **Id.** at 31. He claims this inquiry is "not among 'the incidental inquiries permitted during a lawful traffic stop . . . which promotes safe and financially responsible operation of motor vehicles.'" **Id.** (quoting **Commonwealth v. Malloy**, 257 A.3d 142, 152 (Pa.Super. 2021)). Burnett

contends the additional detention and investigation was not independently supported by reasonable suspicion. *Id.* at 33.<sup>6, 7</sup>

An officer may not prolong a traffic stop to investigate matters unrelated to the stop or the officer's safety, unless the officer has lawful justification for the further inquiry. *Commonwealth v. Ross*, 297 A.3d 787, 792-93 (Pa.Super. 2023) ("not all inquiries during a traffic stop qualify as ordinarily incident to the stop's mission, a[nd] measures aimed at finding evidence of other crimes or safety precautions taken to facilitate detours from the mission do not pass constitutional muster"). As a safety precaution, an officer may inquire about the presence of weapons. *Id.* at 795.

However, in *Malloy*, upon which Burnett relies, we held that when the police discover a firearm during a traffic stop, they may not prolong the stop to investigate whether the firearm is possessed lawfully, absent reasonable suspicion of criminal activity. *See Malloy*, 257 A.3d at 155. We explained that while the police may secure the firearm for their own safety, they are not permitted "even a 10- to 15-minute extension of a routine traffic stop" to investigate whether the firearm is lawfully possessed "absent independent

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<sup>6</sup> We disagree with the Commonwealth that Burnett waived this argument. Burnett's motion to suppress challenged the admission of both the physical evidence and the statement, and he argued that the stop was unlawfully extended.

<sup>7</sup> Burnett concedes that, having discovered the firearm, Officer Brodzinski was entitled to secure it during the stop.

justification, suspicion, or cause.” *Id.* at 153. We find **Malloy** does not support reversal here, for two reasons.

First, neither **Malloy** nor any other authority presented by Burnett has held that the discovery of a firearm in a vehicle during a traffic stop, in combination with **other** factors, cannot lend weight to reasonable suspicion under the totality of the circumstances. *See Barr*, 266 A.3d at 43 (acknowledging that observation of marijuana can be considered a contributing factor under the totality of circumstances giving rise to reasonable suspicion). Here, after police signaled Burnett to stop his vehicle, the vehicle made a “slow roll,” which, in Officer Brodzinski’s experience, is often linked to the concealment of contraband. Officer Brodzinski then smelled fresh marijuana emanating from the vehicle and discovered a firearm in the vehicle. This combination of factors supplied Officer Brodzinski with reasonable suspicion of criminal activity, such that he could prolong the stop to investigate whether Burnett possessed the firearm legally.

Second, in **Commonwealth v. Hawkins-Davenport**, 319 A.3d 537, 550 (Pa.Super. 2024), *affirmed*, ---A.3d---, 2026 WL 451772 (Pa. Feb. 18, 2026), we held that the police may inquire about the legal status of a firearm that they secured for officer safety during a traffic stop, even without reasonable suspicion of criminal activity, provided the relevant events

“happened in quick succession.”<sup>8</sup> In ***Hawkins-Davenport***, upon lawfully discovering the firearm and securing it, the police officer asked whether the defendant had a license to carry a concealed firearm, and the defendant answered immediately that he did not. The relevant facts here are indistinguishable.<sup>9</sup> We therefore affirm.

Judgment of sentence affirmed.

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<sup>8</sup> ***Malloy*** relied on ***Hicks***, which the Pennsylvania Supreme Court recently held in ***Hawkins-Davenport*** does not apply in the context of a traffic stop. ***See Hawkins-Davenport***, 2026 WL 451772, at \*13. That ruling calls into question our holding in ***Malloy***, but we need not determine the continuing validity of ***Malloy*** to resolve this appeal.

<sup>9</sup> The testimony was as follows:

Q. And after you found -- after you located that firearm, you detained my client?

A. Yes.

Q. And you had asked him if he had a license to carry, correct?

A. Correct.

Q. And my client responded that he did not, correct?

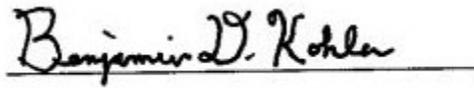
A. Correct.

Q. And then he was arrested, correct?

A. Yes.

N.T. at 30.

Judgment Entered.

A handwritten signature in black ink that reads "Benjamin D. Kohler". The signature is written in a cursive style and is positioned above a solid horizontal line.

Benjamin D. Kohler, Esq.  
Prothonotary

Date: 3/10/2026