

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CRIMINAL DIVISION**

**COMMONWEALTH OF
PENNSYLVANIA**

vs.

**VICTOR MANUEL
FIGUEROO-MARTINEZ,**

Defendant.

No.: C-48-CR-1884-2015

OPINION OF THE COURT

This matter is before the court on Defendant Victor Manuel Figuereo-Martinez's ("Figuereo-Martinez") "Pretrial Omnibus Motion" and "Motion to Suppress Evidence."¹ See Defendant's Pretrial Omnibus Motion, *Commonwealth v. Figuereo-Martinez*, No. C-48-CR-1884-2015 (C.P. Northampton Co. Jul. 31, 2015) ("Omnibus Motion"); see generally Defendant's Motion to Suppress Evidence, *Commonwealth v. Figuereo-Martinez*, No. C-48-CR-1884-2015 (C.P. Northampton Co. Sept. 21, 2015) ("Motion to Suppress"). Through his Motion to Suppress, Figuereo-Martinez

¹ Through his Omnibus Motion, Figuereo-Martinez filed motions to suppress evidence, suppress statements, suppress identification, and to preclude the Commonwealth from impeaching his testimony at trial on the basis of his prior criminal record. See generally Omnibus Motion. Figuereo-Martinez supplemented his motion to suppress evidence with a second filing in the form of his Motion to Suppress. See generally Motion to Suppress. However, on the date scheduled for his Omnibus Motion and Motion to Suppress, Figuereo-Martinez only proceeded on his motion to suppress evidence. See generally Notes of Testimony, *Commonwealth v. Figuereo-Martinez*, No. C-48-CR-1884-2015 (C.P. Northampton Co. Oct. 16, 2015). Therefore, we must deny as moot his motions to suppress statements, suppress identification, and to preclude the Commonwealth from impeaching his testimony at trial on the basis of his prior criminal record.

seeks to suppress evidence collected by the Bethlehem City Police Department at the time of his arrest. *See generally* Motion to Suppress.² The court held a hearing on Figuereo-Martinez's motions on October 16, 2015. *See generally* Notes of Testimony, *Commonwealth v. Figuereo-Martinez*, No. C-48-CR-1884-2015 (C.P. Northampton Co. Oct. 16, 2015) ("N.T."). Following the hearing, attorneys for the Commonwealth and Figuereo-Martinez filed memoranda of law. *See* Brief in Support of Defendant's Motion to Suppress Evidence, *Commonwealth v. Figuereo-Martinez*, No. C-48-CR-1884-2015 (C.P. Northampton Co. Nov. 16, 2015) ("Defendant's Brief"); *see also* Commonwealth's Brief in Response to Defendant's Omnibus Pretrial Motion to Suppress, *Commonwealth v. Figuereo-Martinez*, No. C-48-CR-1884-2015 (C.P. Northampton Co. Nov. 16, 2015) ("Commonwealth's Brief"). For the reasons set forth below, Figuereo-Martinez's motion to suppress evidence is denied.

² Figuereo-Martinez's motion and subsequent brief only challenged the initial encounter and subsequent stop of Figuereo-Martinez on May 3, 2015. *See generally* Motion to Suppress; *see generally* Brief in Support of Defendant's Motion to Suppress Evidence, *Commonwealth v. Figuereo-Martinez*, No. C-48-CR-1884-2015 (C.P. Northampton Co. Nov. 16, 2015). At the suppression hearing, Figuereo-Martinez's attorney confirmed that he was seeking suppression of physical evidence based upon the premise that the initial encounter and subsequent stop was illegal, and therefore the physical evidence recovered thereafter was fruit of the poisonous tree. *See generally* N.T. Therefore, we will not explore the legality of the subsequent dog sniff, search warrants, or Figuereo-Martinez's arrest.

BACKGROUND

I. Figuerero-Martinez's Police Encounter

In February of 2013, Bethlehem Police Department's Special Operation Vice Unit commenced an investigation into the distribution of narcotics from Feliz Auto and Repair located at 130 West Goepf Street in Bethlehem, Pennsylvania (the "Garage"). *See* N.T. at 5-6. The investigation was led by Detective Patrick Maczko. *See id.* At the time of the investigation, Detective Maczko had been a member of the Bethlehem City Police Department for twelve years, and a member of the Special Operation Vice Unit for two and a half years. *See id.* at 4. In addition, Detective Maczko completed numerous training courses in narcotics investigations, was a member of the Northampton County and Lehigh County Drug Task Force, and participated in approximately 300 drug investigations. *See id.* at 4-5.

The investigation commenced based upon information volunteered by a confidential informant that drugs were being trafficked through the Garage. *See id.* at 6, 15. This information was corroborated by Trooper Doug Rex of the Pennsylvania State Police Vice Unit. *See id.* As part of the investigation, Detective Maczko set up visual surveillance on the Garage. *See id.* at 8. Based upon his training and expertise, Detective Maczko concluded that certain behaviors he observed at the Garage were "indicative of drug activity." *See id.* at 17. Specifically, Detective Maczko observed numerous vehicles entering the Garage after business hours, the owner of

the Garage, Balmix Feliz, meeting with different individuals for short periods of time outside the Garage after business hours, and these individuals engaging in what Detective Maczko believed to be counter-surveillance measures. *See id.* at 9-16. Further, from September 2014 until November 2014, Detective Maczko used a confidential informant to complete four controlled purchases of cocaine from Balmix Feliz in the Garage. *See id.* at 12-13. Following the controlled purchases, the Special Operation Vice Unit continued to perform two to three hours per week of surveillance on the Garage until May of 2015. *See id.* at 14-15.

On May 3, 2015, Detective Maczko was conducting surveillance on the Garage with three Drug Enforcement Administration ("DEA") special agents and DEA Task Force Officer Detective Michael Mish ("Detective Mish"). *See id.* at 27. At the time of the investigation, Detective Mish had fifteen years of police experience, thirteen of which were with the DEA. *See id.* at 22-23. Additionally, Detective Mish had participated in thousands of drug investigations, received 500 hours of specialized training with respect to drug investigations, and testified as an expert witness in both state and federal court proceedings. *See id.*

At approximately 12 p.m., the DEA special agents observed Figuereo-Martinez park near the Garage in a silver Toyota Prius (the "Prius"). *See id.* at 28-29. Although the Garage was not open to the public, the DEA special agents observed Figuereo-Martinez enter the Garage and remain there for

approximately two hours. *See id.* at 30. At 1:50 p.m., Figuereo-Martinez exited the Garage and moved the Prius to an obscured location directly between the Garage door and the main door to the business. *See id.* at 31. Detective Mish testified that the Figuereo-Martinez's "behavior seemed to change" once he moved the Prius. *See id.* at 30-32. Detective Mish observed Figuereo-Martinez engage in behavior "consistent with being very concerned about detection" in that he became "suddenly aware of his surroundings" and consistently looked over his shoulders to scan the area. *See id.* at 32, 38.

Detective Mish noted that Figuereo-Martinez took interest in the surveillance vehicle during his scan of the area, and spent a period of time staring at the vehicle. *See id.* at 31. While continuing to scan the area, Figuereo-Martinez opened the trunk of the Prius, removed an empty gym bag, and brought the empty gym bag into the Garage. *See id.* at 32. A few minutes later, Figuereo-Martinez exited the Garage with the gym bag, which Detective Mish described as appearing heavier because "the straps looked pulled tight." *See id.* Figuereo-Martinez placed the gym bag in the trunk of the Prius, and moved the Prius to a parking spot approximately thirty feet away on the street. *See id.* at 33. Figuereo-Martinez exited the Prius, entered and moved a Suzuki vehicle to the opposite side of the street, and then returned to the Prius and departed the area. *See id.* at 38. Detective

Mish described this behavior as strange and stated that it “further raised or heightened [my] suspicions.” *See id.*

Detective Mish and backup officers followed Figuereo-Martinez in unmarked vehicles from the Garage to the 200 block of North Ninth Street in Allentown, Pennsylvania. *See id.* When Figuereo-Martinez arrived at the location, he parked the Prius fifty feet from what Detective Mish knew to be Figuereo-Martinez’s apartment building, despite the availability of closer parking. *See id.* at 40. This act aroused Detective Mish’s suspicions because it was consistent with behavior he had previously observed among drug traffickers. *See id.* at 40-41. Figuereo-Martinez removed the gym bag from the trunk of the Prius, scanned the area, and proceeded to his apartment located at 219 North Ninth Street. *See id.* at 39.

Detective Mish, Special Agent Josh Romig, DEA Task Force Officer Jeff Taylor, and Detective Christopher Benton of the Bethlehem Police Department approached Figuereo-Martinez as he was walking from the Prius to his apartment. *See id.* at 43. At the time they approached Figuereo-Martinez, it was the middle of the day on a public street. *See id.* at 42. Three of the officers were wearing plain-clothes with police-issued badges displayed around their necks, while one of the officers was wearing a police vest. *See id.* None of the officers pulled, or pointed, a weapon at Figuereo-Martinez while confronting him. *See id.*

Upon reaching Figuereo-Martinez, Detective Mish asked Figuereo-Martinez for his name in a calm, non-confrontational manner. *See id.* at 43. Figuereo-Martinez responded to this request by stating that he “wanted a lawyer.” *See id.* Through further questioning, Detective Mish observed that Figuereo-Martinez exhibited “an odd reaction to all of [their] questions” and seemed “very tense.” *See id.* at 44. During this confrontation, police officers were holding Figuereo-Martinez by the arm as Detective Mish feared that he might attempt to flee. *See id.* At one point, Figuereo-Martinez was asked to place the gym bag on the sidewalk, but he refused, and the officers removed the gym bag from his hands and placed it on the sidewalk. *See id.* at 45. Eventually, because Figuereo-Martinez’s behavior was suspicious to the police officers, and because this confrontation occurred on a public street in the middle of the day, police officers feared for the safety of others on the street and handcuffed Figuereo-Martinez and placed him on the curb. *See id.*

Immediately after placing Figuereo-Martinez on the curb, police officers summoned a canine officer and his canine partner to the scene. *See id.* at 46. Detective Mish testified that the canine officer and his partner arrived at the scene within minutes of the call and conducted a dog sniff of the bag. *See id.* The dog sniff of the bag generated a positive alert to the presence of illegal narcotics. *See id.* at 47. Based on this positive alert, Figuereo-Martinez was detained until the police obtained a search warrant

from Magisterial District Judge Butler. *See id.* at 48. Upon obtaining the search warrant, the gym bag was seized and transported to the Allentown Regional Office to be searched pursuant to the warrant. *See id.* Police officers recovered four pounds of methamphetamine from the gym bag. *See id.* Police officers also obtained and executed search warrants at Figuereo-Martinez's apartment at 219 North Ninth Street, Apartment 202 and at the Garage, which ultimately yielded firearms and drug paraphernalia. *See id.* at 18-19, 49.

II. Figuereo-Martinez's Suppression Motion

On May 3, 2015, following the execution of the search warrants, Figuereo-Martinez was arrested and charged with one count of possession of methamphetamine with intent to deliver. *See generally* Criminal Information, *Commonwealth v. Figuereo-Martinez*, No. C-48-CR-1884-2015 (C.P. Northampton Co. Jul. 20, 2015). On July 31, 2015, Figuereo-Martinez filed an omnibus pretrial motion which included a motion to suppress evidence, a motion to suppress statements, a motion to suppress identification, and a motion to preclude the Commonwealth from impeaching his testimony at trial on the basis of his prior criminal record. *See generally* Omnibus Motion. On September 21, 2015, Figuereo-Martinez supplemented his initial motion to suppress by filing another suppression motion, seeking suppression of physical evidence based upon the premise that the initial encounter and subsequent stop was illegal, and therefore the physical

evidence recovered thereafter was “fruit of the poisonous tree.” See Motion to Suppress at ¶ 8; see also Memorandum of Law in Support of Defendant’s Motion to Suppress Evidence at 1, 3, *Commonwealth v. Figuereo-Martinez*, No. C-48-CR-1884-2015 (C.P. Northampton Co. Sept. 21, 2015).

DISCUSSION

I. Classification of Police Officer’s Stop of Figuereo-Martinez

A. *Statement of Law*

Both the Fourth Amendment to the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution protect a person’s right to be secure in his person, house, papers, effects and possessions against unreasonable searches and seizures. See *Commonwealth v. Boswell*, 721 A.2d 336, 339 (Pa. 1998). However, “[n]o constitutional provision prohibits police offices from approaching a citizen in public to make inquiries of them.” See *id.* at 339-40. Moreover,

[n]ot every encounter is so intrusive so as to trigger constitutional protections. It is only when the officer, by means of physical force, or by displaying or asserting authority, restrains the liberty of the citizen that a “seizure” occurs. Any curtailment of a person’s liberty by the police must be supported at least by a reasonable and articulable suspicion that the person seized is engaged in criminal activity.

Id. at 340 (additional citations omitted).

Since not every encounter triggers constitutional protections, “ ‘[i]nteraction’ between citizens and police officers, under search and seizure law, is varied and requires different levels of justification depending

upon the nature of the interaction and whether or not the citizen is detained." *Commonwealth v. Jones*, 874 A.2d 108, 116 (Pa. Super. 2006) (additional citation omitted). These levels of interaction are classified as "mere encounters," "investigative detentions," and "custodial detentions." *Id.*

The first level of interaction is the "mere encounter," which can constitute "any formal or informal interaction between an officer and a citizen, but will normally be an inquiry by the officer of a citizen. The hallmark of this interaction is that it carries no official compulsion to stop or respond." *Id.* (additional citation omitted).

The second level of interaction is an "investigative detention," which "by implication, carries an official compulsion to stop and respond, but the detention is temporary, unless it results in the formation of probable cause for arrest, and does not possess the coercive conditions consistent with a formal arrest." *Id.* "An investigative detention, unlike a mere encounter, constitutes a seizure of a person and thus activates the protections of Article 1, Section 8 of the Pennsylvania Constitution." *Id.* "There is no clear formula for determining whether an interaction constitutes a mere encounter or an investigative detention, but we are guided by the question of whether a reasonable person, based on the totality of the circumstances, would believe he is free to leave." *Commonwealth v. Bennett*, 827 A.2d 469, 478

(Pa. Super. 2003) (additional citation omitted). In determining whether a seizure of the defendant has occurred, a suppression court:

must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the police officers' request or otherwise terminate the encounter. In applying this test, it is necessary to examine the nature of the encounter. Circumstances to consider include, but are not limited to, the following: the number of officers present during the interaction; whether the officer informs the citizen they are suspected of criminal activity; the officer's demeanor and tone of voice; the location and timing of the interaction; the visible presence of weapons on the officer; and the questions asked.

Boswell, 721 A.2d at 340 (internal citations and quotations omitted).

"To institute an investigative detention, an officer must have at least a reasonable suspicion that criminal activity is afoot. Reasonable suspicion requires a finding that based on the available facts, a person of reasonable caution would believe the intrusion was appropriate." *Jones*, 874 A.2d at 116 (additional citation omitted). The investigative detention derives from "Terry [v. Ohio, 392 U.S. 1 (1968)] and its progeny: such a detention is lawful if supported by reasonable suspicion because, although it subjects a suspect to a stop and a period of detention, it does not involve such coercive conditions as to constitute the functional equivalent of an arrest." *Commonwealth v. Smith*, 904 A.2d 30, 35 (Pa. Super. 2006). The investigative detention may continue only as long as necessary to confirm or dispel the reasonable suspicion that criminal activity is afoot. See

Commonwealth v. Lyles, 54 A.3d 76, 79 (Pa. Super. 2012) (quoting *Commonwealth v. Strickler*, 757 A.2d 884, 889-90 (Pa. 2000)).

The final level of interaction, the “custodial detention,” however, “occurs when the nature, duration and conditions of an investigative detention become so coercive as to be, practically speaking, the functional equivalent of an arrest.” *Jones*, 874 A.2d at 116 (additional citation omitted). To determine whether an investigative detention becomes a custodial detention, the suppression court examines the totality of the circumstances. See *Commonwealth v. Mannion*, 725 A.2d 196, 200 (Pa. Super. 1999) (*en banc*). The factors included in such analysis include “the basis for the detention; its length; its location; whether the suspect was transported against his or her will, how far, and why; whether restraints were used; whether the law enforcement officers showed, threatened or used force; and the investigative methods employed to confirm or dispel suspicions.” *Id.*

B. *Classification of Figuereo-Martinez’s Police Stop*

In this case, the totality of the circumstances supports the conclusion that the interaction between Figuereo-Martinez and the police officers was something more than a “mere encounter.” As noted above, Pennsylvania courts have not articulated an exact test to determine whether an interaction is a “mere encounter” or an “investigative detention.” However, applying the *Jones* factors to this case, the court determines that this was something

more than a mere encounter. *See Jones*, 874 A.2d at 116. Figuereo-Martinez was confronted mid-day on a public street by four police officers. *See N.T.* at 42. All of the police officers were armed, and though three of the officers were in plain-clothes, all four officers prominently displayed police-issued badges. *See id.* Detective Mish testified that he asked Figuereo-Martinez a series of questions, and when he became concerned that Figuereo-Martinez might be a danger to others on the street, Detective Mish handcuffed Figuereo-Martinez and placed him on the curb. *See id.* at 45. Applying the *Jones* factors to this case, we conclude that “the totality of the circumstances was sufficiently coercive enough that a reasonable [person] innocent of any crime, would have thought he was being restrained, and hence, would not have felt free to terminate the encounter.” *Commonwealth v. Beasley*, 761 A.2d 621, 623 (Pa. Super. 2000) (internal citations omitted). Therefore, because we do not believe that Figuereo-Martinez, nor the police officers, believed that Figuereo-Martinez was free to leave during this encounter, we find that this encounter constituted a seizure, elevating the encounter past a “mere encounter” to an “investigative detention.”³

The circumstances do not, however, support the conclusion that the interaction between Figuereo-Martinez and the police officers involved the

³ In its brief, the Commonwealth concedes that Figuereo-Martinez was subjected to an investigative detention on May 3, 2015 when he was approached on the street by the four police officers. *See Commonwealth’s Brief* at 8.

sort of “coercive conditions [that] constitute the functional equivalent of an arrest.” See *Jones*, 874 A.2d at 116; *Commonwealth v. Smith*, 904 A.2d 30, 35 (Pa. Super. 2006). Our analysis of the *Mannion* factors, including “the basis for the detention; its length; its location; whether the suspect was transported against his or her will, how far, and why; whether restraints were used; whether the law enforcement officers showed, threatened or used force; and the investigative methods employed to confirm or dispel suspicions,” weigh in favor of the conclusion that Figuereo-Martinez was subjected to an investigative detention, and not an arrest. See *Commonwealth v. Mannion*, 725 A.2d 196, 200 (Pa. Super. 1999) (*en banc*).

Figuereo-Martinez was not detained for an excessive period of time, transported to a distant location, questioned overnight, or exposed to other methods of interrogation which would otherwise be coercive. See generally N.T. Instead, Detective Mish testified that he detained Figuereo-Martinez because of his nervous, evasive behavior, and his suspicious presence at a verified drug location. See *id.* at 32, 38. Detective Mish immediately called for a canine officer and his canine partner upon approaching Figuereo-Martinez, and the canine officer and his canine partner arrived at the scene within minutes to conduct a dog sniff of the gym bag. See *id.* at 46.⁴

⁴ As Figuereo-Martinez concedes that the subsequent positive alert from the dog sniff provided sufficient probable cause for the search warrant, Detective Mish’s uncontroverted testimony evidences that the period of time during which Figuereo-Martinez was detained before the canine officer and his canine partner arrived **[FOOTNOTE CONTINUED ON NEXT PAGE]**

Figuereo-Martinez was questioned where he was initially stopped, on a public street in the middle of the day, and was not transported until after the police officers obtained probable cause through the positive result of the dog sniff. *See id.* at 42. Further, while Figueredo-Martinez was handcuffed during the encounter, none of the officers brandished their weapons while approaching Figueredo-Martinez or at any point during the detention. *See id.* at 42, 45. Finally, Detective Mish testified that he calmly asked Figueredo-Martinez general questions and did not search Figueredo-Martinez's possessions until he possessed valid search warrants. *See id.* at 45, 48.

While the handcuffing of Figueredo-Martinez and placing him on the curb could be considered an arrest tactic, none of the other factors indicate that Figueredo-Martinez was the subject of a "custodial detention." Notably, the Pennsylvania Superior Court has recently stated that the handcuffing of a defendant, without the presence of additional factors indicating an arrest, does not elevate an investigative detention to the level of a custodial detention. *See Commonwealth v. Ramey*, 2016 WL 153272, *6 (Pa. Super. 2016). In the *Ramey*, the Superior Court found that the police officers' actions in drawing their weapons, pushing a defendant to the ground, and handcuffing him, did not, without more, constitute a custodial detention requiring probable cause. *See id.* The Superior Court explained that

[FOOTNOTE CONTINUED FROM PREVIOUS PAGE]

lasted only *minutes*. *See* Memorandum of Law in Support of Defendant's Motion to Suppress Evidence at 3, *Commonwealth v. Figueredo-Martinez*, No. C-48-CR-1884-2015 (C.P. Northampton Co. Sept. 21, 2015).

Pennsylvania law provides that “the handcuffing of [a defendant is] merely part and parcel of ensuring the safe detaining of the [defendant]” and that “a custodial arrest does not arise until a defendant is not only handcuffed, but also transported by the police to jail.” See *id.* (quoting *Commonwealth v. Gillespie*, 745 A.2d 654, 660-61 (Pa. Super. 2000)) (citing *Commonwealth v. Charleston*, 16 A.3d 505, 515 (Pa. Super. 2001)). Here, similar to the circumstances in *Ramey*, the act of Figuereo-Martinez being placed in handcuffs was the only factor that could suggest an arrest. Therefore, based on the holding in *Ramey*, we conclude that Figuereo-Martinez was not subjected to “coercive conditions [that] constitute the functional equivalent of an arrest,” and therefore the investigative detention did not rise to the level of a custodial detention. See *Jones*, 874 A.2d at 116; *Commonwealth v. Smith*, 904 A.2d 30, 35 (Pa. Super. 2006).

II. Existence of Reasonable Suspicion for Figuereo-Martinez’s Stop

Based upon our conclusion that the interaction at issue was an investigative detention, we must determine whether the police officers had sufficient “reasonable suspicion” to detain Figuereo-Martinez. Based upon the totality of the circumstances, we conclude that they did.

A. *Statement of Law*

As noted above, 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. See *Commonwealth v. Cook*, 735 A.2d 673, 679 (Pa. 1999). Courts have found that:

[r]easonable suspicion exists only where the officer is able to articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him to reasonably conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity. Therefore, the fundamental inquiry of a reviewing court must be an objective one, namely, whether the facts available to the officer at the moment of intrusion warrant a man of reasonable caution in the belief that the action taken was appropriate.

Jones, 874 A.2d at 116 (additional citations omitted). In conducting a reasonable suspicion inquiry, a suppression court must evaluate a police officer's actions based upon the totality of the circumstances. See *In re D.M.*, 781 A.2d 1161, 1163 (Pa. 2001).

"In assessing the totality of the circumstances, a court must give weight to the inferences that a police officer may draw through training and experience." *Commonwealth v. David*, 102 A.3d 996, 1000 (Pa. Super. 2014) (citing *Commonwealth v. Holmes*, 14 A.3d 89, 96 (Pa. 2011)). Further, "the totality of the 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." *David*, 102 A.3d at 1000 (citing *Commonwealth v. Rogers*, 849 A.2d 1185, 1189 (Pa. 2004))(internal quotation and alteration omitted))(citing *Commonwealth v. Scarborough*, 89 A.3d 679, 684 (Pa. Super. 2014) (holding that the "single factor of the

defendant keeping his hand in his pocket after being asked to remove it” constituted reasonable suspicion to stop and frisk)).

While the application of the totality of the circumstances test necessitates each suppression court to evaluate unique sets of facts to determine if a stop was supported by reasonable suspicion, the presence of certain factors have been consistently found to support reasonable suspicion. Pennsylvania courts have found that “the time, street location, and the movements and manners of the parties bear upon the totality assessment, as does an officer’s experience.” *See Commonwealth v. Zhahir*, 751 A.2d 1153, 1157 (Pa. 2000) (citing *Commonwealth v. Lawson*, 309 A.2d 391, 394 (Pa. 1973); *Commonwealth v. Banks*, 658 A.2d 752, 753 (Pa. 1995)). Specifically, courts have found that reasonable suspicion is bolstered by an individual’s presence in an area known for criminal activity, that individual’s nervous, evasive behaviors, and the reasonable conclusion of an experienced police officer. *See Commonwealth v. Myers* 728 A.2d 960, 963 (Pa. Super. 1999) (finding reasonable suspicion where defendant entered home under surveillance for drugs, where police received numerous citizen complaints and knew of previous drug-related arrests at home); *see also Zhahir*, 751 A.2d at 1157 (citing *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (“explaining that an area of criminal activity is a relevant contextual consideration, as is nervous or evasive behavior, in determining reasonable suspicion”); *Commonwealth v. Cook*, 735 A.2d 673, 676 (Pa. 1999) (quoting

Terry v. Ohio, 392 U.S. 1, 27 (1968)) (stating that suppression court must give “due weight to the specific reasonable inferences the police officer is entitled to draw from the facts in light of his experience”).

Here, we find that an evaluation of the totality of the circumstances provided Detective Mish with the reasonable suspicion necessary to legally conduct an investigative detention of Figuereo-Martinez. At the time of the investigation, Detective Maczko had been a member of the Bethlehem City Police Department for twelve years, and a member of the Special Operations Vice Unit for two and a half years. See N.T. at 4. In addition, Detective Maczko completed numerous training courses in narcotics investigations, was a member of the Northampton County and Lehigh County Drug Task Force, and participated in approximately 300 drug investigations. See *id.* at 4-5. Detective Maczko testified that he personally conducted surveillance on the Garage for two years prior to Figuereo-Martinez’s arrest and witnessed behaviors that, based upon this training and expertise, he believed to be “indicative of drug activity.” See *id.* at 14-15, 17. He corroborated this belief by conducting four controlled drug purchases from the Garage from September 2014 through November 2014. See *id.* at 12-13. Following the controlled drug purchases, Detective Maczko continued to perform two to three hours per week of surveillance on the Garage until the date of Figuereo-Martinez’s arrest. See *id.* at 14-15.

On May 3, 2015, Detective Mish knew the details of Detective Maczko's investigation into the Garage and was conducting surveillance of the Garage when he observed Figuereo-Martinez entering the Garage after business hours. *See id.* at 30. At the time of the encounter, Detective Mish had fifteen years of police experience, thirteen of which were with the DEA. *See id.* at 22-23. Additionally, Detective Mish had participated in thousands of drug investigations, received 500 hours of specialized training with respect to drug investigations, and testified as an expert witness in both state and federal court proceedings. *See id.* When Figuereo-Martinez exited the Garage approximately two hours later and moved the Prius to an obscured location closer to the Garage, Detective Mish noted that Figuereo-Martinez's "behavior seemed to change" in that he became "suddenly aware of his surroundings" and consistently looked over his shoulders to scan the area. *See id.* at 30-32, 38. Based upon his years of experience, Detective Mish testified that Figuereo-Martinez's behavior was "consistent with being very concerned about detection." *See id.* at 32, 38.

Further, Detective Mish observed Figuereo-Martinez enter the Garage with an empty gym bag, and then exit the Garage with the same gym bag, but heavier as the "straps were pulled tight." *See id.* at 30-32. Detective Mish then followed Figuereo-Martinez from the Garage to his home, where Detective Mish observed Figuereo-Martinez park his car a considerable distance from his residence, which Detective Mish immediately noted, based

on his experience, as a typical move of a drug trafficker. *See id.* at 40. Upon parking, Figuereo-Martinez removed the gym bag from the vehicle, scanned the area, and proceeded to his apartment located at 219 North Ninth Street. *See id.* at 39.

Based on the circumstances as then known to Detective Mish, he proceeded to conduct an investigative detention of Figuereo-Martinez. *See id.* at 43. While Detective Mish did not directly observe Figuereo-Martinez engaging in illegal activity, he was able to articulate that his suspicion arose from the fact that Figuereo-Martinez was acting nervous and evasive, was continually scanning the area, was present in a known drug location, and emerged from the known drug location with items he did not previously possess. *See id.* at 32, 38. From these behaviors and his significant experience with the behaviors of drug traffickers, Detective Mish drew the reasonable conclusions that Figuereo-Martinez was attempting to avoid detection and exhibited behavior similar to other drug traffickers that Detective Mish had encountered. *See id.* at 32, 38, 40-41. As we must give weight to the inferences that Detective Mish drew based upon his training and experience, we find that the totality of the above-mentioned circumstances was sufficient to support a reasonable suspicion that criminal activity was afoot, and thus the ensuing investigative detention. *See Commonwealth v. Holmes, 14 A.3d 89, 96 (Pa. 2011).*

III. Fruit of the Poisonous Tree

Figuerero-Martinez argues that we should suppress the drugs taken from him, because it falls under the doctrine of “fruit of the poisonous tree.” See Motion to Suppress at ¶ 8. For the reasons that follow, we disagree.

Generally, evidence obtained in violation of a defendant’s constitutional right to be free of unreasonable searches or seizures may not be introduced against him at trial. See, e.g. *Commonwealth v. Williams*, 2 A.3d 611, 619-622 (Pa. Super. 2002) (*en banc*) (discussing exclusion of evidence obtained without a warrant and exceptions to this general exclusionary rule). Similarly, evidence flowing from the unreasonable search or seizure, *i.e.*, evidence that would not have been discovered but for that unreasonable search or seizure, may not be introduced against a defendant at trial. See *Wong Sun v. U.S.*, 371 U.S. 471 (1963); *Williams*, 2 A.3d at 619 -622. Such evidence is referred to as “the fruit of the poisonous tree.” See *Wong Sun*, 371 U.S. at 488; *Williams*, 2 A.3d at 619.

Figuerero-Martinez argues that the seizure of the drugs that he possessed was “fruit of the poisonous tree” because it flowed from the allegedly illegal seizure of his person. Because we determined that the seizure of Figuerero-Martinez was legal, the seizure of the drugs did not flow from a violation of Figuerero-Martinez’s constitutional rights and, thus, cannot be “fruit of the poisonous tree.”

WHEREFORE, we enter the following:

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CRIMINAL DIVISION**

**COMMONWEALTH OF
PENNSYLVANIA**

vs.

**VICTOR MANUEL
FIGUEROO-MARTINEZ,**

Defendant.

No.: C-48-CR-1884-2015

ORDER OF COURT

AND NOW, this 28th day of January, 2016, upon consideration of Defendant Victor Manuel Figuereo-Martinez's "Pretrial Omnibus Motion" and "Motion to Suppress Evidence," the Commonwealth's response thereto, and the evidence adduced at the October 16, 2015 hearing thereon, it is hereby **ORDERED** and **DECREED** that:

1. Figuereo-Martinez's motion to suppress statements is **DENIED AS MOOT**;
2. Figuereo-Martinez's motion to suppress identification is **DENIED AS MOOT**;
3. Figuereo-Martinez's motion to preclude the Commonwealth from impeaching his testimony at trial on the basis of his prior criminal record is **DENIED AS MOOT**; and

4. Figuereo-Martinez's motion to suppress is **DENIED**.

BY THE COURT:

/s/ Michael J. Koury, Jr.

MICHAEL J. KOURY, JR., J.