

following events which occurred on March 26, 2021:

A Confidential Informant [hereinafter "CI"], who was working with the police, met with an Unwitting Informant [hereinafter "UI"], for the purpose of purchasing methamphetamine. The CI picked up the UI at the Annunciation Church in a vehicle containing an audio and video recording device. It was expected that the UI would be obtaining the drugs from third party who lived in a building behind the Shamrock bar in Williamsport and the CI would drive her to the location of the third party.

In the recording, the UI is seen entering the vehicle and tells the CI that he cannot park in the Shamrock parking lot. She says, "he got a notice in the mail that said that he is not allowed to have any visitors park in the fucking parking lot. He only pays for one parking space for his own car. I just got bitched at. He said, 'are you bringing people in my parking?' I said, 'no.' He said, 'well somebody is.'" It is suspected that the "he" to which the UI is referring is the third party.

Once the CI and UI are parked elsewhere, the UI says to the CI, "you can't go in. He does not want to meet you at this time. That's what he said." The UI goes on to explain that "he has a 'bad feeling'" about the CI and that, "these people are all meth heads what do you expect?" The UI leaves the car and enters apartment 103 for approximately twenty-nine (29) minutes during which time no one else enters or exits the apartment. The UI then exits the apartment and reenters the CI's vehicle. Upon entering the vehicle, the UI tells the CI "the only way he will ever meet you is if you're cool and you're going to chill for a while and do drugs." She then says, "he was sleeping . . . because he was waiting since seven a.m. for you." The CI then dropped off the UI, met with the officers, and delivered to them a bag

containing suspected methamphetamine that he received from the UI after she exited apartment 103.

Later that day, around 12:30 p.m., Detective Havens and Officer Gardner [hereinafter “officers,” collectively] went to apartment 103 in an unmarked police car. From the time the UI left the apartment to the time the officers arrived, no one had entered or exited the apartment.² Both officers were wearing “POLICE” vests and were armed. Upon their approach, the front door was open and a screen door was the only door between the inside and outside of the apartment. The officers observed a male individual inside on the couch who answered the door and was later identified as the Defendant, who was speaking with the officers through the screen door. The officers asked if they could come in and Defendant declined but did come outside to speak with them. When he came outside, he did not close the front door to the apartment.

The officers told Defendant that they were there for a complaint of foot traffic possibly related to drug activity and wanted Defendant to believe that they were there on a “stupid” assignment. Defendant voluntarily provided them with his identification, wallet, and a partial view of his phone log, which did not reveal any calls to or from the UI. While Defendant again declined a “quick walk through” of his apartment, he Defendant volunteered a search of his vehicle. While Detective Havens searched the vehicle, Officer Gardner remained at the door and, through the screen door, observed a plastic vial in the living room containing suspected crack cocaine.³ Officer Gardner told both Detective

² Detective Sarah Edkin was assigned to surveil the apartment building during this time. She did not testify at the time of the hearing, but the Commonwealth and Defense Counsel stipulated that she would testify consistent with this statement.

³ Officer Gardner did not testify at the time of the hearing, but the Commonwealth and Defense Counsel

Havens and Defendant of this discovery at which point Defendant closed the front door to the apartment such that the officers could no longer see inside.

Detective Havens then asked Defendant again to search his home and told him that he was not required to consent, but that they would apply for a search warrant for the apartment, which could take several hours and may or may not be granted. Additionally, Detective Havens told Defendant that if he consented to the search, they would work with him on any future charges and arrest. Defendant eventually consented to the search which produced a plastic vial of crack cocaine, a bag of crystal meth, a digital scale, meth pipes, and the money that the CI gave to the UI to purchase the meth.

For the duration of the officers' interaction with Defendant which consisted of approximately three (3) minutes, Defendant was relaxed, not confused in any way, and in Detective Havens' opinion, Defendant was more intelligent than most others he encounters in these types of situations. Additionally, the conversations that took place between the officers and Defendant were non-confrontational.

II. Discussion

Defendant's arguments can be categorized as follows: one, that Detective Havens and Officer Gardner lacked the requisite degree of reasonable suspicion and/or probable cause to interact with Defendant in the first place; and two, that Defendant's ultimate consent to the search of his home was obtained by duress and therefore, was involuntary.

a. Unreasonable Search and Seizure

Defendant argues first that the initial interaction with the Defendant was illegal

stipulated that he would testify consistent with this statement.

because the officers did not have probable cause, if in custodial detention, or even reasonable suspicion, if in investigative detention. The UI was not reliable or credible, there was no hand-to-hand transaction witnessed, and the Defendant was not the initial subject of the investigation. The Commonwealth, on the other hand, argues that the facts surrounding this case provided a reasonable inference that the UI received the methamphetamine from someone inside apartment 103. The Court agrees.

There are three types of interactions between police officers and citizens: a mere encounter, an investigative detention, and a custodial detention. *Com. v. Newsome*, 170 A.3d 1151, 1154 (Pa. Super. 2017). “An investigatory stop, which subjects a suspect to a stop and a period of detention . . . requires a reasonable suspicion that criminal activity is afoot.” *Id.* When a person is under investigative detention, he or she is under an official compulsion to stop and respond, but it does not consist of the coercive conditions of an arrest. *Com. v. DeHart*, 745 A.2d 633, 636 (Pa. Super. 2000). Unless the police forms probable cause, the detention is temporary. *Id.*

Whether an officer had reasonable suspicion, which is a less stringent standard than probable cause, the totality of the circumstances must be considered. *Com. v. Rogers*, 849 A.2d 1185, 1189 (Pa. 2004) (internal citations omitted). “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.’” *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)).

On the other hand, custodial detention, which must be supported by probable cause, “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.” *Com. v. Mackey*, 177 A.3d 221, 227 (Pa. Super. 2017); *Newsome*, 170 at 1154. Similar to reasonable suspicion, the totality of the circumstances must be considered when determining probable cause. *Com. v. Jacoby*, 170 A.3d 1065, 1081 (Pa. 2017) (internal citations omitted).

“Probable cause exists where the facts and circumstances within [the officer’s] knowledge and of which he has reasonably trustworthy information are sufficient in and of themselves to warrant a [person] of reasonable caution in the belief that a search should be conducted.” *Id.* at 1081-82.

It is undisputed that the interaction between the Defendant and the officers was not a mere encounter. At the time Detective Havens and Officer Gardner initially encountered the Defendant, the information they had available to them was as follows:

The CI had no drugs on him prior to picking up the UI. The CI gave prerecorded money to the UI for the purpose of purchasing methamphetamine. The UI, while being driven to a third party’s residence, consistently used the term “he.” The UI went into the apartment for approximately thirty (30) minutes and, when she came out, she gave the CI a baggie containing suspected methamphetamine. From the time that the UI entered the apartment to the time that Detective Havens and Officer Gardner arrived there, no one other than the UI had entered or exited the apartment. After the dropping off the UI, the CI returned to the officers with a baggie of methamphetamine. The Defendant points out that the UI could have had the drugs on her prior to entering the house and, while this may be true, the Court questions the need for the CI to drive the UI to apartment 103 in the first place. These facts together create a reasonable suspicion that the person inside apartment

103 was selling drugs.

When Detective Havens and Officer Gardner first arrived at the apartment, the Defendant's front door was already open, with only the screen door blocking the entrance. The officers identified themselves, and the Defendant voluntarily came outside, leaving the front door open, and offered the officers his identification, wallet, and partial call log, as well as a search of his vehicle. Additionally, the officers were speaking to the Defendant about the "stupid" assignment they were on, which was almost jovial in nature, without any indication of threat or harm to the Defendant.

The Court finds that, based on the above, the officers had reasonable suspicion that drugs were being sold from apartment 103 and appropriately placed the Defendant under an investigatory detention thereafter.

When Detective Havens left to search the Defendant's vehicle, Officer Gardner stayed at the front door, which was still not closed by the Defendant, and looked through the screen door where he saw what looked like crack cocaine. Only upon learning of Officer Gardner's discovery did the Defendant close the front door. At this point, based on Officer Gardner's suspected discovery and the Defendant's actions thereafter, Detective Havens and Officer Gardner gained probable cause and appropriately placed the Defendant under custodial detention when they told him they would apply for a search warrant and that he could not enter his home until that process was completed.

For the above reasons, the Court finds that Detective Havens and Officer Gardner had the requisite degree of reasonable suspicion and then probable cause to detain the Defendant as they did.

a. Invalid Consent

Next, the Defendant argues that even if the officers had probable cause, Defendant's consent to search his apartment was involuntary because he was under duress, specifically because Defendant denied the officers access three separate times and was threatened with obtaining a search warrant.⁴

The Commonwealth bears the burden of establishing that consent was given voluntarily by proving that the consent was “the product of an essentially free and unconstrained choice—not the result of duress or coercion, express or implied, or a will overborne—under the totality of the circumstances.” *Com. v. Acosta*, 815 A.2d 1078, 1083 (Pa. Super. 2003) (internal citation omitted). When determining whether consent to a search was given voluntarily, the Court should consider the totality of the circumstances, including following factors:

- 1) the presence or absence of police excesses;
- 2) whether there was physical contact;
- 3) whether police directed the citizen's movements;
- 4) police demeanor and manner of expression;
- 5) the location of the interdiction;
- 6) the content of the questions and statements;
- 7) the existence and character of the initial investigative detention, including its degree of coerciveness;
- 8) whether the person has been told that he is free to leave; and
- 9) whether the citizen has been informed that he is not required to consent to the search.

⁴ Defendant relies primarily on the Honorable Nancy Butts' Opinion and Order in *Commonwealth v. Williams*. At the time of argument, Defense Counsel provided the Court with a copy of a *Commonwealth v. Williams* Opinion and Order docketed at CR-1391-2011 and CR-1432-2011. However, the Court had thoroughly reviewed this Opinion and Order and believes that Counsel has provided it in error. The case provided discusses at length search warrants obtained but does not discuss consent. As the Court has no additional information, such as a docket number, regarding the correct *Commonwealth v. Williams* case, it cannot consider it here.

Com. v. Hawkins, 257 A.3d 1, 10 (Pa. Super. 2020), *reargument denied* (Feb. 11, 2021), *appeal denied*, 259 A.3d 883 (Pa. 2021), *citing Com. v. Strickler*, 757 A.2d 884, 901-902. Additionally, the maturity, sophistication and mental or emotional state of the defendant should be taken into account. *Hawkins*, 257 A.3d at 9-10.

The Commonwealth points to the case of *Commonwealth v. Mack* for guidance here. In *Mack*, the Defendant allowed police officers to search her baggage after being advised that, if she did not provide consent, they would apply for a search warrant to do so. *Com. v. Mack*, 796 A.2d 967, 970 (Pa. 2002). The Court found that Defendant's ultimate consent to the search was voluntary and not a coercive tactic when the information regarding obtaining a warrant was accurate and it advised Defendant that she was not free to leave. *Id.* at 972. Additional facts that the Court considered were that Defendant deliberated providing consent by waiting ten minutes before signing the consent form and the officers were polite and did not pressure the Defendant with additional urging. *Id.*

Similar circumstances exist here. The officers told the Defendant that if he refused to provide consent, they would apply for a search warrant which may take several hours but that there was no guarantee that one would be granted. This statement was not only accurate but also informed the Defendant not only that he did not have to consent but also that there was a chance a warrant would be denied. Additionally, when considering the above nine factors, the Court can find no evidence of duress or coercion. During the officers' interaction with Defendant, they did not draw their weapons and the conversation remained relaxed and non-confrontational. The mere three-minute conversation took place outside, in a public space, during the day.

Detective Havens testified that he found Defendant to have reasonable intelligence that went beyond that of someone he would normally encounter under these circumstances. There was no evidence provided that the officers pressured the Defendant into consenting to the search after they explained the warrant process. In fact, the Defendant had already denied consent more than once before, which demonstrates that he knew his rights and understood that he was not required to allow the officers to search his apartment.

Based on the above, the Court finds that Defendant was not under duress or coercion at the time that he gave his consent for them to search his apartment and therefore, his consent was voluntary.

III. Conclusion

The Court finds that Detective Havens and Officer Gardner had reasonable suspicion, and then probable cause, to interact with and question the Defendant and did so appropriately. Additionally, the Court finds that the Defendant provided voluntary consent to the search of his home, which was free from duress or coercion.

ORDER

AND NOW, this 2nd day of **December, 2021**, upon consideration of Defendant's Omnibus Pre-Trial Motions and for the reasons set forth above, the Motion is **GRANTED** in part and **DENIED** in part. The Motion to Reserve Right is **GRANTED**. The Motion to Suppress Evidence Based on an Unreasonable Search and Seizure Due to a lack of Probable Cause or Reasonable Suspicion and the Motion to Suppress Evidence as a Result of Invalid Consent are **DENIED**.

By the Court,


Ryan M. Tira, Judge

RMT/ads

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