

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>v.</b>	:	<b>CR-428-2024</b>
	:	
<b>SHARIF JONES,</b>	:	<b>Omnibus Motion</b>
<b>Defendant</b>	:	

**OPINION**

This matter was before the Court on November 26, 2024, on the Defendant's Omnibus Motion filed on May 24, 2024, by and through Defendant's attorney, David Lampman, II, Esquire. At the hearing on the Motion, Defendant was represented by his counsel of record, David Lampman, II, Esquire; and Lindsay Sweeley, Esquire, appeared on behalf of the Commonwealth.

In his pre-trial motion, Defendant requested the case be removed from the trial list until the motions contained therein are resolved, a Motion to Suppress all Evidence Based on an Illegal Arrest, a Motion to Suppress all Evidence Based on an Illegal Search, and a Motion for Return of Property. The Motion to Continue was resolved by the date of the hearing on the pre-trial motions. The Motion for the Return of Property is held in abeyance until the Defendant's Motions to Suppress are resolved.

The Commonwealth presented two witnesses, Detective Tyson Havens and Detective Kevin Dent, both with the Lycoming County Narcotics Enforcement Unit. The Commonwealth submitted Detective Dent's body camera footage, and without objection from the Defendant, the exhibit was admitted as Commonwealth Exhibit No. 1. The Defendant submitted the preliminary hearing transcript, without objection from the Commonwealth, the transcript was admitted as Defense Exhibit No. 1.

At the conclusion of the hearing the Commonwealth requested leave to file a brief. The Court granted the Commonwealth's request, and provided the Defendant ten (10) days to respond. The Commonwealth's brief was to be filed by December 16, 2024. With permission from the Court, the Commonwealth was granted a one-day extension to file its brief. The Commonwealth filed its brief on December 17, 2024. The Defendant timely filed his brief on December 23, 2024.

### ***Background***

By way of further background, Defendant was arrested on March 9, 2024, and charged with Possession with Intent to Deliver<sup>1</sup>, Simple Possession<sup>2</sup>, and Possession of Drug Paraphernalia<sup>3</sup>. A preliminary hearing was held on March 21, 2024. On April 25, 2024, the Commonwealth filed the Criminal Information and provided discovery materials to the Defendant. Defendant waived his arraignment scheduled for April 29, 2024, by and through counsel. On or about May 6, 2024, the Commonwealth turned over the body camera recordings and photographs related to this matter.

At the hearing on the pre-trial motions, the Commonwealth presented Detective Tyson Havens with the Lycoming County Narcotics Enforcement Unit (LCNEU)<sup>4</sup>. Detective Havens possesses extensive experience with hand-to-hand transactions as an undercover officer, and he worked for the Pennsylvania State Police for more than twenty years. Detective Havens testified that he has specialized knowledge in drug cases due to his years employed as an officer and continued training in law enforcement. Detective Havens was

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<sup>1</sup> 35 P.S. §780-113(a)(30)

<sup>2</sup> 35 P.S. §780-113(a)(16)

<sup>3</sup> 35 P.S. §780-113(a)(32)

<sup>4</sup> The mission of the LCNEU is to investigate aspects of illegal drugs in Lycoming County, Pennsylvania. Detective Havens has extensive training in this area; and, his daily responsibilities include investigating active cases, working with confidential informants, conducting surveillance on individuals suspected of drug dealing, and conducting interviews with confidential informants and narcotics users to remain current in drug dealing trends.

appropriately established as an expert witness for the limited purpose of the hearing in narcotics enforcement, specifically drug identification and investigations.

Detective Havens then testified that on March 9, 2024, he was conducting routine narcotics patrols to monitor possible drug dealing and illegal gun activity in an undercover vehicle accompanied by another detective of the LCNEU. (Omnibus Transcript, 10:1-5). Detective Havens stated that, despite the unmarked vehicle, he was not patrolling in a covert capacity because he had on his vest marked “police.” (Tr. 10:2). The detectives were “watching an area that [they] were aware of” (Tr. 10:8) that was familiar to the detectives due to high drug trafficking and recent illegal firearm activity. (Tr. 10:8-9). Detective Havens clarified that the area they were watching was “[t]he 500 block of Eighth Ave.,” (Tr. 10:11), in Williamsport, Lycoming County Pennsylvania. More specifically, Detective Havens stated that Williamsport City Police had conducted search warrants at both 523 and 525 Eighth Avenue, and seized cocaine and firearms during those search warrants. (Tr. 10:15-18). Detective Havens further stated that the LCNEU was independently aware of the Williamsport Police’s investigation due to information provided by confidential informants and tipsters providing information on the residences. (Tr. 10:19-22).

Detective Havens testified that he observed the Defendant “walk off the porch at 523-525 Eighth Avenue<sup>5</sup>,” (Tr. 10:24-25), which is a row home. (Tr. 10:25). At the time the detectives were traveling north on Eighth Avenue, and observed the Defendant walking east on Eighth Avenue and crossed in front of the detectives. (Tr. 11:2-4). The Defendant was further observed walking toward a “heavily tinted Chevy Impala parked on the east side of Eighth Ave[nue] facing north.” (Tr. 11:14-15). Detective Havens noted that the vehicle’s tint

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<sup>5</sup> On cross-examination, Defense counsel questioned Detective Havens about his preliminary testimony when he said “823-825 Eighth Avenue” instead of 523-525 Eighth Avenue. Detective Havens stated that “a lot of times I say eight for that block...it’s a thing I end up doing by accident...its 523 and 525. It’s the 500 block of Eighth Avenue.” (Tr. 27: 3-7).

was so dark as to impede Detective Havens from seeing into the vehicle. (Tr. 11:21-22).

Detective Havens then stated that the Defendant did observe the unmarked car, but continued toward the Chevy Impala and opened the passenger door. (Tr. 11:11-12). Detective Havens stated that he and the other detective continued traveling north, over Memorial and up to Isabella Court, because they did not want the Defendant to know that they were watching him. (Tr. 12:12-15).

Along with Detective Havens patrol unit, there were other undercover officers patrolling who were watching the Defendant as well. (Tr. 12:17-18). At a point nearby, the detectives stationed their vehicle and when the Defendant turned onto Freed Place in the Chevy Impala the detectives started traveling behind him by about one city block. (Tr. 12:24-25; 13:1-2). Detective Havens stated that the Defendant accelerated “a lot,” (Tr. 13:4), he did not stop on Seventh Avenue, he continued onto Seventh Avenue traveling north, (Tr. 13:5-6), then continued east on Park Avenue. (Tr. 13:25). The detectives entered Park Avenue and observed that the Defendant was “still traveling at a higher rate of speed.” (Tr. 14:1-3). Detective Havens clarified that the Defendant was not traveling at excessively high speeds like “80, 90 miles an hour, but he was certainly going faster than normal.” (Tr. 14:3-4). The detectives observed the Defendant turn north onto Fifth Avenue, but by the time the detectives turned onto Fifth Avenue, the Defendant had already parked the Chevy Impala on the east side of Fifth Avenue and exited the vehicle. (Tr. 14:5-8). Detective Havens noted that the Defendant “was rapidly walking north away from the car.” (Tr. 14:8).

Upon this observation, Detective Havens stated that he “activated his emergency lights and sped up” to try to get to the vicinity of where the Defendant had parked and was walking. (Tr. 14:9-10). Detective Havens testified that the tint on the Chevy Impala would have been a traffic violation, (Tr. 14:18-21), sufficient to conduct a traffic stop. (Tr. 14:25).

When asked, Detective Havens stated that he simultaneously activated his lights as the Defendant exited the parked Chevy Impala. (Tr. 15:1-3). Detective Havens then stated that his partner, Detective Dent “exited [the] vehicle [and] called out to [the Defendant] to stop.” (Tr. 14:10-11). Detective Havens observed the Defendant stop initially, and then began to back up and protest the detectives’ actions. (Tr. 14:11-12). “Detective Dent ultimately grabbed ahold of [the Defendant]’s left arm, and [the Defendant] pulled away in protest.” (Tr. 14:13-14). Detective Havens then approached where Detective Dent and the Defendant were interacting, and Detective Havens “secured [the Defendant] from the front while Detective Dent placed [the Defendant] in handcuffs behind his back.” (Tr. 14:15-17).

When Detectives Havens and Dent approached the Defendant, Detective Havens testified that he did have concerns for his safety because the Defendant was coming from a residence where guns were recently seized, and “guns and drugs go hand in hand here in Lycoming County.” (Tr. 15:12-14). Detective Havens testified that the Defendant “specifically was guarding the right side of his body,” (Tr. 15:21-22), and that because most people are right handed and guns are kept on the right side of the body there were concerns about the Defendant protecting the right side of his body. (Tr. 15:22-25). Based on the preceding, and the fact that the Defendant was distancing himself from the officers as they approached him, Detective Havens had concerns for his own safety and concerns that the Defendant “essentially fled from [them] as soon as he realized there was a police car behind him.” (Tr. 12-16).

Once the Defendant was in handcuffs, Detective Havens stated that he was detained. (Tr. 16:4). Additionally, Detective Dent attempted a pat-down on the Defendant for possible weapons, due to the Defendant moving the right side of his body and being uncooperative,

the detectives backed the Defendant up to the Chevy Impala to stabilize his body and conduct the pat-down search. (Tr. 16:7-16).

Initially, Detective Havens felt a large amount of cash folded over in the left pant pocket of the Defendant's pants. (Tr. 17:1-9). Detective Havens then moved to pat-down the Defendant's right side, toward the right jacket pocket, but the Defendant was still fidgeting his right side away from the detective until the Defendant succumbed to his circumstances. (Tr. 17:12-25). Detective Havens stated that he "pressed on the pocket, and [he] could feel right away that it was a plastic bag with crack cocaine in it." (Tr. 18:4-5).

The Commonwealth then played Commonwealth Exhibit No. 1, Detective Dent's Body Camera Footage from March 9, 2024 (Commonwealth Ex. 1, Detective Dent's Body Cam, 03/09/2024). Detective Havens was able to identify the footage because Detective Dent was the passenger in the patrol vehicle on the date this incident occurred. (Tr. 19:5-6). The Commonwealth played the footage from 00:00:30 to 00:1:00, and Havens described the events that occurred. This portion of the video depicted Detective Dent approaching the Defendant and requesting him to stop. (Tr. 20:11-12). Detective Havens testified that the Defendant did not stop and he backpedaled some, so Detective Dent grabbed his left arm, Defendant pulled away. (Tr. 20:12-14). Detective Havens testified that he then appeared and directed another detective to ensure the Chevrolet Impala was empty, (Tr. 20:16-18), and Havens stated he was convinced the Defendant was intending to flee. (Tr. 21:4).

At 00:01:00 to 00:01:30 Detective Havens (1) explained that the Defendant was detained and not free to leave, (Tr.21:17-18); (2) conducted the pat-down on a suspicion of suspected drug activity, (Tr. 21:18-19); and (3) the Defendant tried to refuse the pat-down by moving away and vocalizing he would not be searched. (Tr. 21:18-20). The Commonwealth then played the body camera footage from 00:01:30 to 00:02:05. Detective Havens explained

that (1) he had continued attempting the pat-down by starting at the left waist-band (Tr. 22:7-8); (2) he requested Detective Loudenslager call for a canine/K9 unit, (Tr. 22:9-10); (3) he moved his pat-down to the left jacket pocket<sup>6</sup> that the Defendant was attempting to limit access by detectives to, (Tr. 22:11-12); (4) the Defendant attempted to reach for the pocket with his restrained hands, (Tr. 22:12-13); (5) Detective Havens then pressed on the pocket, and felt crack cocaine in the pocket, (Tr. 22:13-14); (6) Detective Havens removed the crack cocaine. (Tr. 22:14-15).

Detective Havens explained further that he has:

handled cocaine thousands of times, crack cocaine, powder cocaine. Powder cocaine, when it comes in large quantities, is heavily compressed so it's hard; but it's not the same hardness as crack cocaine." (Tr. 23:17-20). And crack cocaine is not always the exact same hardness, but it feels a certain way in a bag. (Tr. 23:21-22). And when you can press the bag and you can press the powder in the bag you can tell—by doing it so often you can tell what it is. (Tr. 23:22-25).

Detective Havens further described the tactile difference between baking soda in a bag and flour in a plastic bag; and, that a layperson could push on one plastic bag and tell that it's flour over baking soda. (Tr. 24:1-3). Because, when one presses on baking soda it's crystalline and the crystals move in a certain way and when one presses on flour, the flour is softer and compresses more. (Tr. 24:3-5). Detective Havens stated that the differences between baking soda and flour in plastic bags is the same with various forms of cocaine, and that he is able to tell by pushing on bags of suspected drugs and knowing what they are by the way they feel. (Tr. 24:6-11).

When asked about "pushing on it," (Tr. 24:10), Detective Havens further stated that when he was "pushing across the pocket [he knew] what he [had] in [the pocket]." (Tr.

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<sup>6</sup> The Commonwealth corrected the testimony provided by Detective Havens by inquiring about his hand being on the Defendant's right pocket and whether Detective Havens vocalized "there's crack rocks in there" two times during the frame from 00:01:43 to 00:01:53. (Tr. 22:17-21).

24:15-16). Detective Havens further stated that “[he] knew [he] had it, so [he] grabbed it. Initially grabbed it outside the pocket...and could tell there was more than one thing in there. Then [he] decided ‘I’m just gonna make entry into the pocket and take it since I knew what it was to begin with.’” (Tr. 24:20-25).

The cash recovered from the Defendant amounted to \$2050.00, (Tr. 25:3), which Detective Havens states is an amount consistent with drug trafficking. (Tr. 25:4-7). Detective Havens stated that a cell phone was also seized from the Defendant’s hand. (Tr. 25:10-12). Detective Havens further stated that the Defendant “was being detained from the moment that we put handcuffs on him. It was my intent to make application for a search warrant for both [the Defendant] and the vehicle. So, our intentions were already made up prior to even finding the cocaine.” (Tr. 25:15-19). The Defendant was placed under arrest after the cocaine was found on his person, so Detective Dent read the Defendant his *Miranda* warnings immediately after the cocaine was removed from the Defendant’s pocket. (Tr. 25:21-24).

The Commonwealth completed its direct examination of Detective Havens with inquiring about the purpose of a K9 unit, however, Detective Havens stated that the K9 unit initially requested was called off because the detectives found the cocaine on the Defendant. (Tr. 26:4-7). Detective Havens stated that if a K9 unit was being dispatched, the Defendant would have been placed in the back of the patrol car because the detectives were intending to take him to Williamsport Bureau of police “to be detained there while [the detectives] continued to investigate.” (Tr. 26:11-13).

On cross-examination, Detective Havens testified that he often refers to the 523-525 Eighth Avenue address, and other addresses on that block, as 800 numbers by accident. (Tr. 27:3-7). Detective Havens clarified his preliminary hearing testimony, because the transcript of the hearing indicates the Detective Havens referred to two different addresses. Detective



Havens testified at the preliminary hearing that firearms and illegal drugs were recently seized from 523-525 Eighth Avenue and that he saw the Defendant walk off of the porch of 823-825 Eighth Avenue. (Tr. 27:12-20). At the hearing on the motion, Detective Havens testified to the correct address, and when asked about the discrepancy admitted that he “makes the mistake regularly” (Tr. 27:25), by inadvertently referring to the 500 block as the 800 block. (Tr. 28:8-9). Additionally, Detective Havens was unable to recall when the seizure of firearms and drugs occurred at the 523-525 address. (Tr. 29:17). Between the preliminary hearing testimony and the motion hearing testimony, Detective Havens testified that the operation occurred either one month or several weeks, (Tr. 29:7-13), prior to the March 9, 2024, date on which the Defendant was seen at the address.

On cross-examination, Detective Havens agreed that his testimony of the pat-down of the right jacket pocket included a digital manipulation of the pocket, but that is because when he initially “patted” the pocket he automatically knew it was drugs, so he manipulated the pocket because he felt more than one object. (Tr. 31:2-23). Detective Havens stated that, at the point in the video where he is seen manipulating the Defendant’s pocket, the pat-down evolved to a search incident to arrest because it was Detective Havens’ “knew that it was crack cocaine” as soon as he felt it, (Tr. 34:12-13), and it was a search incident to arrest. (Tr. 34:17).

Detective Havens testified that if he had applied for a search warrant instead of finding the contraband on the Defendant’s person, he would have based his probable cause on: (1) the negative activity associated with the address where Defendant was observed (Tr. 32:6-7); (2) a previous arrest of the Defendant by Detective Havens, (Tr. 32:8-9); (3) an awareness through informants that Defendant was actively involved in the sale of cocaine, (Tr. 32:9-10); (4) the attempts by Defendant to distance himself and his body from the

detectives by vehicle, by walking, and while handcuffed, (Tr. 32:12-13, 16, 18); and (5) the discovery of the cell phone and the large stack of cash found on Defendant that are consistent with a person who is engaged in selling cocaine, (Tr. 32:19-21).

On redirect, Detective Havens more clearly stated that the manipulation of the pocket occurred after he knew it was illegal drugs, (Tr. 35:15-17), and that the Chevrolet Impala driven by Defendant was not owned by him, but he was the only occupant at the time of the arrest. (Tr. 35:19-22).

The Commonwealth then called Detective Dent to testify. Detective Dent testified that he has been with the LCNEU since October of 2017, (Tr. 36:14-16), he has received training regarding illegal drugs, he has been a law enforcement officer since 2009, has completed several trainings related to illegal drug activity, and he has participated in over one thousand drug investigations. (Tr. 35:17-25).

On March 9, 2024, Detective Dent was working in his capacity as an LCNEU detective on the 500 block of 8<sup>th</sup> Avenue, Williamsport, Pennsylvania, (Tr. 36:8-11) with Detective Havens in an unmarked patrol car with outer carrier police vests labeled “police.” (Tr. 38-1-5). Detective Dent stated that the detectives “were watching a residence in the...500 block.” (Tr. 38:6-7). Detective Dent stated that the detectives observed the Defendant enter the residence at 523-525 Eighth Avenue and exit after a short time. (Tr. 38:8-9). Detective Dent then stated that the officers followed the vehicle and observed the Defendant make “several elusive turns and went down several back alleys and proceeded to pull away at a high rate of speed.” (Tr. 38:8-12).

Detective Dent further testified that the detectives pulled up onto Fifth Avenue behind the Defendant’s vehicle, and he was out of the vehicle walking away. (Tr. 38:17-18). Detective Dent instructed the Defendant to stop, but the Defendant continued to try to walk

away. (Tr. 38:18-19). That is when Detective Dent “placed hands on him and put him in handcuffs.” (Tr. 38:19-20).

Detective Dent observed Detective Havens conduct the pat-down, a cell-phone, and recalled a large sum of money and cocaine being removed from the Defendant’s person. (Tr. 39:4-5). Detective Dent personally observed the drugs packaged in “a sandwich baggy indicative of how possession with intent to deliver crack cocaine is packaged around here in Williamsport.” (Tr. 39:11-13).

Detective Dent explained that the Defendant was then Mirandized and placed in the back of his patrol vehicle. (Tr. 39: 14-17). Detective Dent stated that he searched the back of the vehicle for any contraband, which he would have removed if it was present. (Tr. 39:20-25). The Defendant was then moved to the back of Detective Irvin’s vehicle for processing while Detectives Havens and Dent logged the evidence and filed the charges. (Tr. 40:9-11). When the Defendant was removed from the patrol vehicle, there was a bag of cocaine tucked under the seat where Defendant’s feet would have been sitting. (Tr. 40:12-17). Detective Dent observed a knotted-off baggy that was similar in distribution style to what was initially found in the Defendant’s jacket pocket. (Tr. 41:2-3). The bag Detective Dent found had fecal matter present, which indicates it was located in a rectum at some point. (Tr. 41:4-10). All of the bags of drugs recovered by detectives positively field tested as cocaine and were sent to a lab. (Tr. 41:13-19).

On cross-examination, Defense Counsel asked if Detective Dent saw “[the Defendant] exit the porch of 823-825 Eighth Avenue” (Tr. 42:1-2), and Detective Dent answered affirmatively. (Tr. 42:3).

The Commonwealth did not conduct a re-direct on Detective Dent and presented no further witnesses. The Commonwealth’s request for leave to submit a brief in this matter was

granted, and the Defendant was provided ten (10) days after receipt of the Commonwealth's brief to submit a rebuttal.

### ***Argument and Analysis***

Preliminarily, the Court notes that Defendant argues in his brief that the Commonwealth's brief is unsupported by the record. Specifically, the Commonwealth failed to cite to the record and argues facts that are contrary to the record. (Defendant's Brief at 1). The Defendant provides numerous and specific examples on this claim by citing to the contrasting claims and statement of facts between the Commonwealth's brief and the Preliminary Hearing and Omnibus Hearing Transcripts.

By way of example, the Commonwealth avers that it is of "specific importance" that Detective Havens called for a K9 unit during his pat-down of Jones—in so doing, the Commonwealth asserts that a K9 unit did present and conduct a sniff of Jones' vehicle and alerted, but nothing was found. (Commonwealth's Brief at 17). However, Detective Havens' testimony asserts that the K9 unit was called off and no search of the vehicle was conducted by a K9. (Defendant's Brief at 1 citing to Omnibus Tr. At 26:2-7). Another example is that the Commonwealth's brief relied on Detective Dent's testimony that he watched the Defendant enter and then exit the residence on Eighth Avenue while Havens' testimony conveyed that the detectives were traveling on Eighth Avenue in the patrol vehicle as Defendant walked off of the porch. This raises questions about the direct conflict in the officers' testimony who were in the same patrol vehicle at the time they both observed Defendant. (Defendant's Brief at 3, citing to Defense Exhibit 1, Preliminary Tr. At 5:2-10 and Omnibus Tr. At 11:3-4). The Defendant further asserts that the Commonwealth's brief also maintains an interpretation of facts that directly contradicts the video evidence. (Defendant's Brief at 3).

After a review of the record, the Court agrees with the Defendant. The Court concludes that the Defendant is accurate with his claim that the Commonwealth's brief contains facts that are not substantiated by the record. The Court's evaluation of the Commonwealth's and Defendant's arguments contained in their briefs will focus on the Commonwealth's accurate arguments and the facts as evidenced by the testimony provided, the body camera footage in evidence, and those legal analyses that were applied appropriately to the relevant facts as deduced therefrom.

**I. Defendant's Motion to Suppress all evidence based on an illegal arrest on March 9, 2024**

In his Motion, Defendant avers that the detectives did not possess the required probable cause to arrest Defendant, and for that reason, the arrest was illegal in violation of Article I, Section 8 of the Pennsylvania Constitution and the Fourth Amendment of the United States Constitution. Based on Detective Havens' testimony, Defendant was arrested because at some point in February of 2024, drugs and guns were seized from 523-525 Eighth Avenue, Defendant appeared to be distancing himself from the unmarked patrol vehicle, and Defendant's "overall body language made [Havens] feel uncomfortable about letting him remain there without being handcuffed." (Defendant's Omnibus Motion at 9, quoting Prelim. Tr. At 4, 10-11).

**a. Motion to Suppress all evidence as a result of an unlawful arrest because the Commonwealth failed to establish the requisite nexus between 523/525 Eighth Avenue and the Defendant and the information was stale.**

Defendant argues that even if drugs and guns were seized from the aforementioned address and/or there was relevant and timely information about drug activity at that address, there is still no nexus between the address and the Defendant. (Defendant's Motion at 9; Defendant's Brief at 10). More specifically, Defendant argues in his brief that the record does not support that the Defendant was seen exiting from 523-525 Eighth Avenue, (Defendant's

Brief at 10), and that any evidence of drug activity at the relevant address was stale. (Defendant's Brief at 12). Therefore, LCNEU detectives lacked the requisite probable cause to effectuate a warrantless arrest on Defendant and the arrest was illegal under Article I, Section 8 of the Pennsylvania Constitution and the Fourth Amendment.

First, Defendant argues that the record suggests Defendant did not exit 523-525 Eighth Avenue. At the preliminary hearing, Detective Havens testified that he observed Defendant walk off the porch of 823-825 Eighth Avenue. (Preliminary Hearing Tr. at 5:6-8). While Detective Dent initially testified to seeing Defendant enter the residence and then exit, but on cross-examination Detective Dent replied "yes" to seeing Defendant exit the porch of the 823-825 Eighth Avenue. (Omnibus Hearing Transcript at 42:1-3).

Defendant emphasizes this discrepancy as important because there is no testimony of criminal activity ever occurring at the 823-825 Eighth Avenue address. (Defendant's Brief at 11). To clarify: (1) at the omnibus hearing, Detective Havens contradicted his own testimony from the preliminary hearing and Detective Dent's testimony at the omnibus hearing, making Detective Havens' testimony unreliable (Defendant's Brief at 11); (2) Detective Havens claimed to frequently refer to the incorrect residence on the block in question, which raises questions about his reliability (Defendant's Brief at 11 citing Omnibus Tr. at 27:5-6); and, (3) Detective Dent's "speaking error" while testifying about the address (Commonwealth's Brief) should have been cured by the Commonwealth on redirect, rather than asserted without basis in the Commonwealth's brief. For the latter, the Defendant argues that the record does not support the alleged mistake, so the Court does not have a basis on which to determine that a speaking error was made by Detective Dent at the omnibus hearing.

For the aforementioned reasons, the Defendant asserts that the Commonwealth failed to establish a clear nexus between Defendant and the alleged illegal drug and gun activity at

523-525 Eighth Avenue because the detectives did not testify to the correct address and the Commonwealth failed to effectively correct the alleged errors on the record leaving the Court to rely on dubious testimony in deciding on the motion. (Defendant's Brief 11).

Next, Defendant argues that the detectives did not have the requisite probable cause to effectuate a legal, warrantless arrest because whatever evidence was presented regarding illegal drug and gun activity at 523-525 Eighth Avenue was stale. For one, the record is unclear about when such a seizure occurred at 523-525 Eighth Avenue because Detective Havens was unable to recall. (Defendant's Brief at 12 citing Omnibus Tr. at 29:6-17). Nevertheless, the Commonwealth had a clear chance to provide the necessary timeline, and thus, nexus at both pre-trial hearings. Defendant asserts that there is nothing in the record to establish that the evidence of illegal activity at 523-525 Eighth Avenue was not stale because the Commonwealth chose not to present the necessary evidence. The Defendant concludes that without the clear nexus and an established timeline to prove the information on the address was not stale, the Court cannot find otherwise. (Defendant's Brief at 12).

The Commonwealth argues that the Defendant's presence at the address was not the only consideration and it is not the prime consideration to support the detectives' probable cause. (Commonwealth's Brief at 17). The Commonwealth asserts that the totality of the circumstances provides the basis for the necessary probable cause, and that those factors are the evidence the Court should consider. (Id).

The Commonwealth relies on *Commonwealth v. Green*, "[s]taleness of information supporting a search warrant is not determined by age alone, as it would be inconsistent with the totality of the circumstances analysis." Thus, the Commonwealth asserts that the staleness argument would be more compelling if the detectives were seeking to search the address of 523-525 Eighth Avenue on March 9, 2024. Also, the relevance of the address here is that the

Defendant was first seen on the property which is known to law enforcement as a “drug house,” (Commonwealth’s Brief at 17). Moreover, the Defendant was known to law enforcement from other drug-related investigations. Therefore, the relevant factors to consider, here, are not stale and contribute sufficiently to the probable cause determination.

The touchstone of appropriateness for a warrantless arrest is the existence of probable cause. *Commonwealth v. Romero*, 673 A.2d 374, 377 (Pa. Super. 1996). “Probable cause to effectuate an arrest exists when 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 [or is committing] an offense.” *Id* at 377. The standard for probable cause for warrantless arrest is probability not a *prima facie* showing of criminal activity. *Commonwealth v. Quiles*, 619 A.2d 291, 298 (Pa. Super. 1993) citing *Commonwealth v. Kloch*, 230 Pa. Super. 563, 327 A.2d 375 (1974). A reviewing court must reach its probable cause determination by using a common-sense, non-technical approach, and consider “the factual and practical considerations of everyday life on which reasonable and prudent men act,” by employing the perspective of police officers rather than that of an average citizen. *Id* at 376-77. Additionally, in determining whether probable cause existed to effectuate the warrantless arrest, a court will consider the “totality of the circumstances” and all of the factors total effect as it appeared to the arresting officer. *Commonwealth v. Quiles*, 619 A.2d 291, 298 (Pa. Super. 1993).

In his motion and his brief, Defendant relies on *Commonwealth v. Myers*, 728 A.2d 960 (Pa. Super. 1999). In *Myers*, officers arrested individuals for violations under the Drug Act outside of a residence in late March of 1997. *Myers, supra*, 728 A.2d 960 (Pa. Super. 1999). On April 1, 1997, officers were conducting surveillance at that same address when they observed a man enter the house and leave two minutes later. *Id*. The same thing



occurred approximately thirty minutes later. *Id.* In *Myers*, an officer testified that he believed to have seen the man holding something in his closed hand and then place it in his pocket. *Id.* The man got into his vehicle and drove, then the officers conducted a stop, removed him from his vehicle, and conducted a pat-down for weapons. *Id.* The officer recovered two packs of cocaine from the same pocket where the officer indicated the man put his hand after exiting the house. *Id.* In *Myers*, the Pennsylvania Superior Court reversed the conviction, holding that, the police lacked probable cause to arrest the defendant because “the officer was unable to ascertain whether Appellant was holding anything at all.” *Id.* at 962.

Relevantly, the Pennsylvania Superior Court distinguished *Myers* from *Commonwealth v. Burnside*, 425 Pa. Super. 425, 625 A.2d 678, 679 (1993), a case on which the Commonwealth in *Myers*, *supra*, relied on because, similar to the argument here, the Commonwealth posited that a veteran officer can identify illegal drug activity sooner than a layperson. *Myers*, *supra* at 962. In the string of cases cited by the Court in *Myers*, the officers observed defendants engaging in conduct and under circumstances where drug dealers are observed engaging in acts consistent with the illegal distribution of drugs. *Commonwealth v. Burnside*, 425 Pa. Super. 425, 625 A.2d 678, 679 (1993)(officer observed the defendant with a handful of small blue plastic packets of the type he knew from experience were commonly used to package cocaine); *Commonwealth v. Stroud*, 699 A.2d 1305, 1307 (Pa.Super.1997)(police had probable cause to arrest drug dealer who was twice observed exchanging for cash objects removed from his shoe); *Commonwealth v. Cramutola*, 450 Pa.Super. 345, 676 A.2d 1214, 1215 (1996)(defendant arrested for dealing drugs from her home after warrant was obtained as a result of surveillance); *Commonwealth v. Montavo*, 439 Pa.Super. 216, 653 A.2d 700, 704, appeal denied, 541 Pa. 636, 663 A.2d 689 (1995)(same); *Commonwealth v. Dennis*, 417 Pa.Super. 425, 612 A.2d 1014, 1015 (1992), appeal denied,

535 Pa. 654, 634 A.2d 218 (1993)(police had probable cause to arrest defendant who attempted to flee after making an exchange in doorway of known drug house).

*Commonwealth v. Myers*, 728 A.2d 960 (Pa. Super. 1999).

Here, regardless of whether the Defendant was inside the 523-525 Eighth Avenue address or merely exiting the porch, the Defendant was not observed engaging in activity consistent with establishing probable cause that the Defendant was engaged in drug activity on which detectives could rely to effectuate a warrantless arrest. The testimony about where the Defendant was located in relation to the “known drug house” is not dispositive. Officers saw an individual with whom they are familiar leave a property that possibly a month or several weeks ago was lawfully searched and illegal firearms and drugs were seized. However, there was no observable or articulable action on behalf of the Defendant that could have indicated to any reasonable individual in the position of the LCNEU detectives that criminal activity did occur or was about to occur based on the Defendant’s location. Their conclusory position that once a drug dealer, always a drug dealer is neither supported by the testimony nor the presumption of innocence provided by the Constitution.

The Court agrees with the Defendant’s argument and his reliance on *Myers, supra*. Regardless if the information about the residence is stale, there is no indication of criminal activity by the Defendant at the residence. Considering that every commercial transaction among citizens on the street when unidentified property is involved does not provide probable cause to arrest someone, it follows that probable cause is lacking when someone is merely observed at an address or on the property of a residence that was under surveillance or in a high drug activity area. Correctly, the Commonwealth argued that the presence of an individual in a high-crime area alone is not sufficient to establish probable cause. Nonetheless, that is essentially the only non-disputed fact the Commonwealth can argue to

establish the detectives had probable cause to stop the Defendant here because he was not seen engaging in criminal activity. Thus, the stop was illegal because insufficient probable cause existed at the time the Defendant was stopped outside of his vehicle to conduct the subsequent detainment and search.

**b. Defendant's Motion to Suppress all evidence as a result of an unlawful arrest because there was no traffic stop to warrant a further investigatory detention of the Defendant.**

Next, Defendant asserts that the arrest of the Defendant was unlawful under Article I, Section 8 of the Pennsylvania Constitution because there was no traffic stop to warrant any further investigation of Defendant based on reasonable suspicion or probable cause. Defendant argues that the testimony regarding the tint of the Chevrolet Impala and the way in which Jones' was driving is irrelevant because the case did not involve a traffic stop. (Defendant's Brief at 12). The Defendant specifies that: (1) Defendant did not flee by vehicle and he was not arrested for fleeing; (2) the LCNEU detectives were not in a position to consider the vehicle's tint prior to the arrest; and, (3) the LCNEU detectives did not make sufficient observations of Defendant's driving to issue citations. (Id at 12-13).

Additionally, Defendant asserts that the Commonwealth's construal of the facts conveys that the LCNEU detectives were parked and stationary observing Defendant's activity to pursue further surveillance by following the Defendant in his vehicle with the intent to conduct a traffic stop. Defendant claims that this is not the case because one detective's recitation of the events directly contradicts the other while the Commonwealth argues only the testimony that caters best to the relevant law. (Defendant's Brief at 12).

The Commonwealth argued in its brief that the LCNEU had sufficient reasonable suspicion to conduct a traffic stop and an investigatory detention of Defendant at the time contact was made because Defendant was observed driving a vehicle with tint dark enough to

prevent Detective Haves from seeing inside the vehicle and he was observed failing to stop at a stop sign. (Commonwealth's Brief at 5). Thus, the Commonwealth asserts that the detectives had probable cause and reasonable suspicion to support a traffic stop. (Id). The Commonwealth argues further that "[h]ad Detective Havens been able to effectuate his emergency lights and sirens prior to the Defendant rapidly exiting his motor vehicle, an actual traffic stop would have been conducted, Detective Havens would have had the right to order the Defendant out of the motor vehicle." (Commonwealth's Brief at 7). The Commonwealth argues that Detective Havens was attempting to conduct a traffic stop, but the Defendant was already out of his vehicle and walking away from the LCNEU detectives. (Id). This argument fails because there was no traffic stop and "[m]ere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation." *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. 2010)(*appeal denied*, 611 Pa. 650, 25 A.3d 327 (2011)). Here, based on the alleged traffic violations, there would be nothing more for the officers to investigate. "A stop of a single vehicle is unreasonable where there is no outward sign the vehicle or the operator are in violation of the Motor Vehicle Code...there must be specific facts justifying this intrusion." *Commonwealth v. Sands*, 887 A.2d 261, 266 (Pa. Super. 2005) citing *Commonwealth v. Swanger*, 453 Pa. 107, 307 A.2d 875, 878 (1973). It is necessary for an officer to "articulate specific facts possessed by him, at the time of the questioned stop, *which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the [Motor Vehicle] Code.*" *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. 2010) citing *Commonwealth v. Gleason*, 785 A.3d 567 Pa. 111, 785 A.2d 983, 989 (2001)(emphasis in original).

Thus, the Commonwealth proceeds to its argument that Detective Havens possessed the requisite reasonable suspicion to conduct an investigatory detention of the Defendant.

In evaluating the stop under this classification and the reasonable suspicion and probable cause in this case, the Commonwealth urges the Court to consider the supporting facts as listed by Detective Havens at the omnibus hearing, including: (1) Defendant was observed coming from a residence that detectives knew had recently been the subject of a search warrant that resulted in the seizure of guns and drugs; (2) his familiarity with the Defendant from prior drug investigations and knowing him to be a drug dealer; (3) Defendant getting into his vehicle, upon seeing police, rapidly driving away and rapidly exiting the vehicle at the time that detectives attempted a traffic stop; (4) Defendant rapidly walking towards an alley, opposite the direction of detectives, upon exiting his vehicle; (5) Defendant attempting to distance himself from the vehicle he had been operating; (6) Defendant resisting Detective Dent's attempt to handcuff him; (7) Defendant repeatedly angling one side of his body away from detectives upon being detained; and (8) Defendant becoming agitated with detectives immediately and telling them they were not going to search him. (Commonwealth's Brief at 9). The Commonwealth also urges the Court to consider that (1) Detective Havens was admitted as an expert in narcotics investigations at the hearing on the motion; (2) Detective Dent clarified that Defendant was seen exiting the residence on Eighth Avenue after entering for a brief period of time; (3) the vehicle operated by Defendant did not belong to him and no one else was present with him; and (4) Detective Havens' testimony that the area where Defendant was initially observed is a known high-crime area for drug trafficking. (Commonwealth's Brief at 9).

The Commonwealth further argues that police may restrain someone from walking away if the law enforcement officers have probable cause to arrest or have observed unusual

or suspicious behavior from which the officers can reasonably conclude criminal activity is afoot. (Id at 8, citing *Terry v. Ohio*, 392 U.S. 1 (1968) and *Commonwealth v. Ingram*, 814, A.2d 264 (Pa. Super. 2002).

The Commonwealth primarily relies on *Commonwealth v. Valentin*, 748 A.2d 711 (Pa. Super. 2000). In that case, the Pennsylvania Superior Court concluded that reasonable suspicion existed to make an investigatory stop where the officer previously conducted numerous narcotic arrests, was familiar with drug trafficking, and was surveilling the location known to be associated with drug trafficking on the day of the arrest. Additionally, the Commonwealth provides legal authority citing to *Commonwealth v. Carter*, 105 A.3d 765 (Pa. Super. 2012), in which the Superior Court considered as a factor that when the defendant was alerted to the police presence, he intentionally turned his body several times to conceal something in his coat pocket. Based on the proffered case law, the Commonwealth concludes that the facts here support a finding that the LCNEU detectives possessed reasonable suspicion to conduct an investigatory detention at the time Defendant was detained.

In *Commonwealth v. Valentin*, 748 A.2d 711 (Pa. Super. 2000), the Pennsylvania Superior Court did conclude the detectives possessed reasonable suspicion to conduct an investigatory detention “where the officer previously conducted numerous narcotic arrests, was familiar with drug trafficking, and was surveilling the location known to be associated with drug trafficking on the day of the arrest.” (Commonwealth’s Brief at 10). However, the Commonwealth omitted the fact that the Officer Ruane observed an exchange of cash for small objects, and based on his experience he reasonably believed the transaction to be a drug sale. *Valentin, supra*. Moreover, the Court in *Valentin*, evaluated whether the officers’ conduct was custodial in nature or an investigatory detention. *Id*. The appellant in *Valentin*

asserted that because Officer Ruane physically grabbed the appellant and ordered him to place his hands on the vehicle, the detention was custodial in nature. The Court concluded that Officer Ruane's act of holding the appellant's clothing and directing him to place his hands on a nearby car did not constitute a detention equivalent to that of a functional arrest. *Id.*

If reasonable suspicion exists to support an investigatory detention, then it is lawful. *Commonwealth v. Cauley*, 10 A.3d 321, 324 (Pa. Super. 2010). To qualify for the reasonable suspicion standard, the officer must provide a showing of specific and articulable facts, that when combined with reasonable inferences, warrant an intrusion like an investigatory detention. *Id.* at 326. A court must evaluate the totality of the circumstances to determine if an officer possessed reasonable suspicion that criminal activity was underway. *Commonwealth v. Cauley*, 10 A.3d 321, 326 (Pa. Super. 2010). It is accurate that Detective Havens and Detective Dent have extensive experience in narcotics investigations, and *if* such an observation were made, there is a high probability that the investigative detention would have been lawful under the standard of reasonable suspicion of criminal drug activity alongside the factors Detective Havens articulated on the record.

No such communication was made to Defendant at the time of the incident, to the Court at the hearing, or in the Commonwealth's brief afterward. In fact, the Commonwealth's argument that the LCNEU detectives would have done several things if they could have done several things that complied with the legal standards for an investigatory detention based on violations of the MVC is strictly hypothetical. Moreover, the detectives did not articulate to the Defendant that he was being stopped due to his presence in the high-crime area, which would be an insufficient basis alone. The LCNEU

detectives simply did not take any appropriate action to communicate to Defendant why they were ordering him to stop after exiting the vehicle and walking on the sidewalk.

Regarding the testimony that the Defendant was attempting to flee as a basis for his apprehension by detectives, it is difficult to discern from what or whom he was allegedly fleeing. The charge for fleeing requires the prosecution to establish, inter alia, that the defendant was given a visual and audible signal (hand, voice, emergency lights, or siren) by the police officer to bring his vehicle to a stop, that the defendant failed to or refused to bring the vehicle to a stop or fled, and that the defendant willfully did so with an awareness of the officer's signal to stop. PA-JICRIM 17.3733, pa. SSJI (Crim), §17.3722 (2024). Here, there was no outward indication that the LCNEU detectives were present in the area as they were in an unmarked vehicle, it is inconclusive that when the Defendant "looked their way" on Eighth Avenue that detectives ascertained that Defendant believed or had reason to believe the unmarked vehicle contained detectives, the detectives did not activate their emergency lights while actively pursuing the Defendant, and the detectives were unable to effectuate an actual traffic stop with lights or a siren at the time both vehicles came to a rest.

Under the circumstances, it is difficult to reasonably evaluate that the officers believed Defendant was attempting to flee given the fact that he parked the vehicle in which he easily could have actually fled. Moreover, Defendant had ample time to attempt to run or flee on foot, based on the body camera footage, when Detective Dent exited the patrol vehicle and approached Defendant. To the contrary, when ordered to stop, the Defendant turned around and put his hands in the air. The Defendant appeared too be startled or surprised by the police and showed no indication of fleeing.

Under the totality of the circumstances, and in viewing such circumstances as a fluid nature of events as perceived by the officers at the time, *Commonwealth v. Valentin*, 748



A.2d 711, 714 (Pa. Super. 2000)(internal citations omitted), no articulable facts were provided as to why the Defendant was detained based on MVC violations or any other lawful basis. The only “criminal act” to which the detectives testified to observing and for which the Defendant was detained was his presence in a high crime area, which is not a crime. The case law is clear that this is not substantial to satisfy a finding of reasonable suspicion or probable cause. The Defendant’s tint was mentioned in testimony, his driving was mentioned in testimony, but Defendant was neither charged with nor cited for either of those alleged MVC violations. The detectives did not communicate the alleged violations to the Defendant for a reason as to why he was being detained for investigatory purposes. Furthermore, the evidence provided does not substantiate a finding that the officers could have reasonably believed the Defendant was attempting to flee.

Therefore, the detention of Defendant was not supported by reasonable suspicion based on a reasonable belief that criminal activity was afoot or probable cause based on alleged violations of the MVC. The actions of the Lycoming County Narcotics Enforcement Unit did violate Article I, Section 8 of the Pennsylvania Constitution. Accordingly, the detention of the Defendant for investigatory purposes was unlawful, as well as the arrest, and Defendant’s request to suppress all evidence obtained thereof is **GRANTED**.

## **II. Defendant’s Motion to Suppress all Evidence Based on an Illegal Search**

Based on the conclusion that an unlawful, warrantless arrest was effectuated upon the Defendant, and having granted the Defendant’s motion to suppress the evidence obtained therefrom, the Court need not reach the Defendant’s claim that an illegal search occurred.

Accordingly, the Court enters the following Order:

**ORDER**

**AND NOW, this 18<sup>th</sup> day of August, 2025**, based on the evidence presented, the arguments by counsel, and for the aforementioned reasons, the Court concludes that an unlawful arrest occurred in this matter. The Defendant's rights were violated under Article I, Section 8 of the Pennsylvania Constitution. Accordingly, the Defendant's Motion to Suppress the evidence obtained from the unlawful arrest is **GRANTED**, and the evidence is **SUPPRESSED**. Additionally, the Defendant's Motion to Suppress for a finding that the search and seizure of Defendant were in violation of Article I, Section 8 of the Pennsylvania Constitution is rendered moot by the aforementioned determination.

By the Court,

\_\_\_\_\_  
Ryan M. Tira, Judge

RMT/asw

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