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**ORDER DENYING PETITION FOR  
ALLOWANCE OF APPEAL,  
SUPREME COURT OF PENNSYLVANIA,  
MIDDLE DISTRICT  
(MARCH 5, 2025)**

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IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

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COMMONWEALTH OF PENNSYLVANIA,

*Respondent,*

v.

DAVID A. MCMASTER, JR.,

*Petitioner.*

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No. 478 MAL 2024

Petition for Allowance of Appeal from the  
Order of the Superior Court

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**ORDER**

PER CURIAM

AND NOW, this 5th day of March, 2025, the  
Petition for Allowance of Appeal is DENIED.

A True Copy Elizabeth E. Zisk  
As Of 03/05/2025

Attest: /s/ Elizabeth E. Zisk  
Chief Clerk  
Supreme Court of Pennsylvania

**OPINION,  
SUPERIOR COURT OF PENNSYLVANIA  
(JUNE 25, 2024)**

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IN THE SUPERIOR COURT OF PENNSYLVANIA

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COMMONWEALTH OF PENNSYLVANIA,

*Appellant,*

v.

DAVID A. MCMASTER, JR.

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No. 1354 MDA 2023

Appeal from the Order Entered August 17, 2023  
In the Court of Common Pleas of Adams County  
Criminal Division at No(s): CP-01-CR-0000266-2023

Before: LAZARUS, P.J., PANELLA, P.J.E.,  
and MURRAY, J.

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**OPINION BY PANELLA, P.J.E.:**

The Commonwealth of Pennsylvania appeals from the Adams County Court of Common Pleas' order granting in part David A. McMaster, Jr.'s motion to suppress evidence. After careful review, we reverse and remand for further proceedings.

In its opinion, the suppression court summarized its findings of fact leading to the court's decision to grant, in part, suppression, as follows:

### App.3a

1. Officer Corey Ammerman (hereinafter “Officer Ammerman”) is employed by the Conewago Township Police Department. Officer Ammerman has been a law enforcement officer for approximately fourteen years.
2. Officer Ammerman has been involved in hundreds of encounters dealing with individuals suspected to be under the influence of controlled substances.
3. Detective Burnell Bevenour (hereinafter “Detective Bevenour”) is employed as a Detective with the Conewago Township Police Department and has been a police officer for approximately seventeen years.
4. Detective Bevenour has been involved in hundreds of encounters dealing with individuals suspected to be under the influence of controlled substances.
5. On December 7, 2022, at approximately 3:00 p.m., Officer Ammerman was dispatched to the residence located at 2982 Hanover Pike, Conewago Township, Adams County, Pennsylvania for the report of an unclothed male subject screaming in the back yard of a neighbor. While traveling to the residence, Officer Ammerman was advised the male subject had moved to the front of the residence and was in the roadway on Hanover Pike.
6. When Officer Ammerman arrived at the residence, he observed [McMaster] walking along Hanover Pike in front of his residence, completely naked.

7. Officer Ammerman approached [McMaster] and observed [McMaster] was naked, incoherent, excited, jumping around and appeared to be under the influence of controlled substances.
8. Based on Officer Ammerman's observation of [McMaster], and for [McMaster]'s safety, Officer Ammerman secured [McMaster] with handcuffs. Officer Ammerman advised [McMaster] that an ambulance was called.
9. For proper medical treatment, Officer Ammerman questioned [McMaster] as to what controlled substances he had taken.
10. [McMaster] appeared incoherent, but eventually advised Officer Ammerman that he had consumed Ketamine and had huffed butane gas.
11. Officer Ammerman asked [McMaster] if anyone else was in the residence and [McMaster] did not respond. Officer Ammerman asked [McMaster] several times if he lived alone, and [McMaster] subsequently responded, "I live by myself".
12. Officer Ammerman did not observe any injuries on [McMaster].
13. Detective Bevenour arrived at the residence approximately three minutes after Officer Ammerman.
14. In the rear of the residence, Detective Bevenour observed that a doorway to an exterior porch and a doorway into the residence through the porch were both open. From

outside the porch, Detective Bevenour observed that the inside of the house appeared to be in disarray, and there were items thrown on the floor and trash everywhere.

15. Detective Bevenour observed a butane lighter on the ground outside of the rear porch.
16. Based on Detective Bevenour's observations of [McMaster], [McMaster]'s statements that he had ingested Ketamine and inhaled butane, [McMaster]'s lack of response to the question whether anyone else was present in the residence, and Detective Bevenour's observation that the kitchen was in disarray, Detective Bevenour conducted a protective sweep of the residence. Detective Bevenour was concerned there could be person(s) in the residence suffering from a potential overdose or medical emergency.
17. Before entering the residence, Detective Bevenour announced his presence as a police officer.
18. During the protective sweep of the residence, Detective Bevenour observed, in plain view, suspected controlled substances, drug paraphernalia and a mushroom growing operation.
19. The sweep lasted less than five minutes and no individuals were present in the residence.
20. Following the sweep, Conewago Township Police secured [McMaster]'s residence, obtained a search warrant for the residence, and seized numerous items of suspected controlled substances and drug paraphernalia.

21. After receiving medical attention, [McMaster] was subsequently charged with manufacture or possession with intent to manufacture a controlled substance, possession of a controlled substance, possession of drug paraphernalia, disorderly conduct as a misdemeanor of the third degree and indecent exposure as a misdemeanor of the first degree.
22. Officer Ammerman was wearing a body camera during the incident. The video footage and audio recording were marked as Commonwealth Exhibit 1 and entered into evidence during the suppression hearing on July 20, 2023. This [c]ourt reviewed the body camera footage, including the audio.
23. This [c]ourt finds the testimony of Officer Ammerman and Detective Bevenour credible.

Suppression Court Opinion, 8/17/23, at 1-4.

The Commonwealth charged McMaster with public drunkenness, indecent exposure, disorderly conduct, and various drug possession offenses including possession with intent to deliver.

McMaster filed an omnibus pre-trial motion for suppression of evidence, namely his statements made to police, and any physical evidence obtained from the searches of his residence.

On July 20, 2023, the court held a suppression hearing during which the Commonwealth presented the testimony of Officer Ammerman and Detective Bevenour. McMaster did not present any testimony. After taking the matter under advisement, the suppression court entered an order granting the

motion to suppress in part and denying the motion in part. Specifically, the court denied suppression of McMaster's statements made to police. However, the court granted suppression of evidence seized based on the initial warrantless entry into McMaster's residence. This timely appeal followed.

On appeal, the Commonwealth argues the suppression court erred "when it granted in part the portion of [McMaster]'s omnibus motion requesting suppression of evidence discovered in a warrantless search of [McMaster]'s residence." Appellant's Brief, at 4.

When this Court reviews a Commonwealth appeal from an order granting suppression, as we are tasked to do here, we may only consider the evidence produced at the suppression hearing by the defendant's witnesses, along with the Commonwealth's evidence that remains uncontradicted. *Commonwealth v. Barr*, 266 A.3d 25, 39 (Pa. 2021). We must determine, in the first instance, whether the suppression court's factual findings are supported by the record and if they are, we are bound by those findings. *See id.* We must also keep in mind that the suppression court, as fact-finder, has the exclusive role of passing on the credibility of witnesses. *See Commonwealth v. Fudge*, 213 A.3d 321, 326 (Pa. Super. 2019). Therefore, "we will not disturb a suppression court's credibility determinations absent a clear and manifest error." *Id.* at 326 (citation omitted).

Here, the record supports the suppression court's factual findings as set forth at the suppression hearing. However, unlike the deference we give to the suppression court's factual and credibility findings, we have *de novo* review over the suppression court's legal con-



clusions. *See Commonwealth v. Brown*, 996 A.2d 473, 476 (Pa. 2010). Accordingly, we must determine whether the legal conclusions the suppression court drew from its factual findings are correct. *See Barr*, 266 A.3d at 39.

The court explained that it granted suppression of the physical evidence seized during a search of McMaster's residence because it found the initial warrantless search was not justified as a protective sweep. *See Suppression Court Opinion*, 8/17/23, at 12-13.

In a brief memorandum filed with the court in response to McMaster's suppression motion, the Commonwealth asserted the police entry into McMaster's residence was permitted under the protective sweep doctrine. In support of this argument, the Commonwealth cited to *Commonwealth v. Davido*, 106 A.3d 611 (Pa. 2014) and *Commonwealth v. Caple*, 121 A.3d 511, 514 (Pa. Super. 2015).

In *Davido*, the police responded to an anonymous 911 call to "investigate a 'domestic situation' that involved a 'man. . . hitting a woman[,] and were informed en route that loud screaming had been heard from inside the residence." *Davido*, 106 A.3d at 616 (record citation omitted). When they arrived minutes later, the residence was quiet, and no one answered the door. Accordingly, "[r]esponding to a 'gut feeling' that someone inside might be injured or otherwise in need of assistance, one officer entered the residence through an unsecured window, unlocked a deadbolt on the front door, and admitted the other officer." *Id.* at 616-17 (record citation omitted). The officers announced themselves as they proceeded to search the residence for any injured persons. *See id.* at 617.

In reviewing Davido's appeal, the Pennsylvania Supreme Court emphasized that "the potential for imminent physical harm in the domestic context implicates exigencies that may justify a limited police intrusion into a dwelling." *Id.* at 623 (citation omitted). While it refused to hold that domestic abuse cases create a *per se* exigent need for warrantless entry, the Court stated:

We do recognize, however, that the police have a duty to respond seriously to reported domestic conflict situations, and in doing so, they must be accorded some latitude in making on-the-spot judgments as to what actions to take and what actions are reasonably necessary to protect themselves and potential victims of abuse.

...

... Here, the 911 call reporting domestic violence contained the fairly specific details that a man was beating a woman within a specifically identified residence, and a separate report indicated that screaming could be heard emanating from within that residence. Yet, when the officers arrived at the scene shortly before 8:00 a.m. on that Sunday morning, approximately three minutes after the 911 call had been received, no one answered the door, and no sound could be heard except the unanswered ringing of a telephone within the residence.

*Id.* at 623-24. The *Davido* Court noted the officer's initial search was limited to a search for persons in need of assistance; a subsequent search for evidence

was conducted only after a warrant was secured. *See id.* at 625. Upon these facts, the Supreme Court concluded “the officers’ entry into the home was justified under the recognized ‘persons in immediate need of assistance’ exigency exception to the warrant requirement[.]” *Id.*

In *Caple*, officers were dispatched to a motel for a report of a domestic assault. The victim called 911 and sounded “extremely hysterical.” *Caple*, 121 A.3d at 518 (record citation omitted). The victim stated she had been assaulted, that the assault had occurred in room 115, and that she had been in rooms 115 and 215. *See id.* Upon arrival at the motel, the officers spoke with two women who were occupying room 115 and learned that an assault had just occurred. The women directed the officers to room 210. In the meantime, the officers received another radio transmission that the victim could possibly be in room 215. The officers knocked loudly on the door of room 215 and announced “police”, attempting to locate the victim, to no avail. The officers asked the manager to open the door. A female was located within the room who was not the assault victim. The officers observed two metal crack pipes on top of a dresser in room 215. Room 215 was secured, and a search warrant was obtained for the room. The assault victim was identified, and it was determined that the domestic assault occurred in room 115 of the motel. When police encountered the victim, they observed her face was swollen, she had a cut on her lip, and she was visibly upset. Based on the totality of the circumstances, the Court concluded the police were justified in their warrantless entry of Room 215. *See id.* at 519. The exigent circumstances of the information the officers had received, and the

fact that they had not located the victim, “allowed the officers to take ‘immediate action’ and enter Room 215 without a warrant to prevent further harm.” *Id.*

The suppression court found the Commonwealth’s reliance on *Davido* and *Caple* under the current facts was “misplaced and not supported by the facts.” Suppression Court Opinion, 8/17/23, at 11. We disagree.

While the facts may not be as specific as the reports of domestic violence in *Davido* and *Caple*, we nevertheless conclude the suppression court erred when it found Detective Bevenour’s minimally invasive protective sweep to confirm that no one was injured or overdosing, was improper.

Here, the circumstances presented to Detective Bevenour—McMaster’s erratic behavior, McMaster’s statements that he had ingested Ketamine and inhaled butane, McMaster’s lack of response to the question whether anyone else was present in the residence, and Detective Bevenour’s observation that the kitchen was in disarray—along with Detective Bevenour’s experience with overdose and medical emergency situations, provided him with an objectively reasonable belief that someone inside the residence may be in need of immediate aid.

Indeed, the suppression court itself found that Detective Bevenour’s motive for conducting the protective sweep—to ensure there was no one in the residence who needed medical attention or was suffering from a potential overdose – was sincere. *See* Suppression Court Opinion, 8/17/23, at 12-13 (“This [c]ourt finds that Detective Bevenour’s motive for conducting the protective sweep of [McMaster]’s residence was sincere to ensure there was no one in the residence who needed

medical attention or was suffering from a potential overdose.”). Notwithstanding this finding, the court concluded a protective sweep was not warranted because there was no reasonable evidence of a domestic abuse situation. *See id.* at 13.

However, the exception in question does not require the existence of a domestic situation. The legal standard to be applied where police will be excused from the warrant requirement has been set forth as follows:

Generally, the police will be excused from compliance with the warrant and probable cause requirements of the Fourth Amendment to the United States Constitution in only limited circumstances. One of these circumstances is when the police reasonably believe that someone within a residence is in need of immediate aid. Additionally, it is widely recognized that situations involving the potential for imminent physical harm in the domestic context implicate exigencies that may justify limited police intrusion into a dwelling in order to remove an item of potential danger. The relevant inquiry is whether there was an objectively reasonable basis for believing that medical assistance was needed, or persons were in danger. [T]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain and rapidly involving.

*Commonwealth v. Potts*, 73 A.3d 1275, 1280-81 (Pa. Super. 2013) (citations and internal quotation marks omitted).

While this exigency often occurs in domestic situations, such as the case in *Davido* and *Caple*, the reasoning regarding exigencies in general is nevertheless sound in other contexts as well. See *Commonwealth v. Hand*, 2579 EDA 2016 (Pa. Super. Filed July 25, 2017) (unpublished memorandum) (concluding investigating officer's minimally intrusive act of moving aside drapes to confirm no one was in immediate need of aid after a potential armed home invasion did not violate constitutional rights); *Commonwealth v. Wilmer*, 296 MDA 2016 (Pa. Super. Filed December 5, 2016) (unpublished memorandum) (finding initial warrantless entry into sorority house justified due to emergency circumstances involving an inebriated person on the roof).

Here, the police discovered McMaster behaving in a bizarre and erratic manner, and concluded he was clearly under the influence of controlled substances. After asking a few times if he lived alone, McMaster claimed to live alone. However, McMaster did not respond when the officers asked if there were anyone else in the residence. After arriving at the scene, Detective Bevenour walked around the property to check if anybody else might be there and might need medical attention. See N.T, 7/20/23, at 22. Detective Bevenour observed that at the rear of the house, an exterior screen door and interior door to the house were both open. From the porch, Detective Bevenour observed that the inside of the house was in disarray. Based on his experience with overdose and medical emergency situations, Detective Bevenour was con-

cerned there may have been somebody else in inside the house. *See id.* at 24. Detective Bevenour decided to make a protective sweep of the residence to ensure nobody else needed medical attention or help. *See id.* Detective Bevenour announced himself as the police and requested that anybody show themselves during the search. The search covered three floors and took less than five minutes. The search was only of general areas where people might be laying and did not include opening any drawers.

Detective Bevenour credibly testified that he was concerned there could be a person in the residence suffering from a potential overdose or medical emergency. Detective Bevenour's concern was based on his observations of McMaster, McMaster's statements that he had ingested Ketamine and inhaled butane, McMaster's lack of response to the question whether anyone else was present in the residence, and Detective Bevenour's observation that the kitchen was in disarray.

Based on the totality of the circumstances, we agree with the Commonwealth's contention that the officer's actions were proper.

Accordingly, we conclude the suppression court erred when it determined the detective's minimally intrusive protective sweep violated McMaster's constitutional rights. Accordingly, we reverse that part of the suppression order which granted suppression of physical evidence, and remand for further proceedings. All other parts of the suppression order to remain the same.

Order reversed in part. Case remanded for proceedings consistent with this opinion. Jurisdiction relinquished.

Judgment Entered.

/s/ Benjamin D. Kohler, Esq. \_\_\_\_\_  
Prothonotary

Date: 06/25/2024



**ORDER, COURT OF COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA  
(AUGUST 17, 2023)**

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IN THE COURT OF COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA  
CRIMINAL

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COMMONWEALTH OF PENNSYLVANIA

v.

DAVID A. MCMASTER, JR.

---

No. CP-01-CR-266-2023

Before: Shawn C. WAGNER, Judge.

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**ORDER OF COURT**

AND NOW, this 17th day of August, 2023, for the reasons set forth in the attached Opinion, Defendant's Omnibus Pre-Trial Motion for Suppression of Evidence is granted in part and denied in part. Defendant's Motion for Suppression of Evidence concerning statements provided by Defendant without Miranda warnings is denied. Defendant's Motion for Suppression of Evidence based on the warrantless entry into Defendant's residence is granted. All evidence subsequently seized from Defendant's residence is suppressed.

App.17a

BY THE COURT:

/s/ Shawn C. Wagner

Judge

nil

Robert A. Bain, Esquire

Richard W. Fisher, III, Esquire

**OPINION, COURT OF COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA  
(AUGUST 17, 2023)**

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IN THE COURT OF COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA  
CRIMINAL

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COMMONWEALTH OF PENNSYLVANIA

v.

DAVID A. MCMASTER, JR.

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No. CP-01-CR-266-2023

Before: Shawn C. WAGNER, Judge.

---

**OPINION**

Presently before this Court is David A. McMaster, Jr.'s (hereinafter "Defendant") Omnibus Pre-trial Motion for Suppression of the Evidence, filed April 20, 2023. A hearing was held on Defendant's Motion on July 20, 2023. The issues before the Court are: (1) whether Conewago Township Police should have administered *Miranda* warnings to Defendant before subjecting him to custodial interrogation and (2) whether the warrantless search of Defendant's residence violated Defendant's constitutional rights requiring the suppression of all evidence seized from Defendant's residence. For the reasons set forth herein, Defendant's Motion to Suppress Evidence is granted in part and denied in part.

## **FINDINGS OF FACT**

1. Officer Corey Ammerman (hereinafter “Officer Ammerman”) is employed by the Conewago Township Police Department. Officer Ammerman has been a law enforcement officer for approximately fourteen years.

2. Officer Ammerman has been involved in hundreds of encounters dealing with individuals suspected to be under the influence of controlled substances.

3. Detective Burnell Bevenour (hereinafter “Detective Bevenour”) is employed as a Detective with the Conewago Township Police Department and has been a police officer for approximately seventeen years.

4. Detective Bevenour has been involved in hundreds of encounters dealing with individuals suspected to be under the influence of controlled substances.

5. On December 7, 2022, at approximately 3:00 p.m., Officer Ammerman was dispatched to the residence located at 2982 Hanover Pike, Conewago Township, Adams County, Pennsylvania for the report of an unclothed male subject screaming in the back yard of a neighbor. While traveling to the residence, Officer Ammerman was advised the male subject had moved to the front of the residence and was in the roadway on Hanover Pike.

6. When Officer Ammerman arrived at the residence, he observed Defendant walking along Hanover Pike in front of his residence, completely naked.

7. Officer Ammerman approached Defendant and observed Defendant was naked, incoherent, excited,

jumping around and appeared to be under the influence of controlled substances.

8. Based on Officer Ammerman's observation of Defendant, and for Defendant's safety, Officer Ammerman secured Defendant with handcuffs. Officer Ammerman advised Defendant that an ambulance was called.

9. For proper medical treatment, Officer Ammerman questioned Defendant as to what controlled substances he had taken.

10. Defendant appeared incoherent, but eventually advised Officer Ammerman that he had consumed Ketamine and had huffed butane gas.

11. Officer Ammerman asked Defendant if anyone else was in the residence and Defendant did not respond. Officer Ammerman asked Defendant several times if he lived alone, and Defendant subsequently responded, "I live by myself".

12. Officer Ammerman did not observe any injuries on Defendant.

13. Detective Bevenour arrived at the residence approximately three minutes after Officer Ammerman.

14. In the rear of the residence, Detective Bevenour observed that a doorway to an exterior porch and a doorway into the residence through the porch were both open. From outside the porch, Detective Bevenour observed that the inside of the house appeared to be in disarray, and there were items thrown on the floor and trash everywhere.

15. Detective Bevenour observed a butane lighter on the ground outside of the rear porch.

16. Based on Detective Bevenour's observations of Defendant, Defendant's statements that he had ingested Ketamine and inhaled butane, Defendant's lack of response to the question whether anyone else was present in the residence, and Detective Bevenour's observation that the kitchen was in disarray, Detective Bevenour conducted a protective sweep of the residence. Detective Bevenour was concerned there could be person(s) in the residence suffering from a potential overdose or medical emergency.

17. Before entering the residence, Detective Bevenour announced his presence as a police officer.

18. During the protective sweep of the residence, Detective Bevenour observed, in plain view, suspected controlled substances, drug paraphernalia and a mushroom growing operation.

19. The sweep lasted less than five minutes and no individuals were present in the residence.

20. Following the sweep, Conewago Township Police secured Defendant's residence, obtained a search warrant for the residence, and seized numerous items of suspected controlled substances and drug paraphernalia.

21. After receiving medical attention, Defendant was subsequently charged with manufacture or possession with intent to manufacture a controlled substance, possession of a controlled substance, possession of drug paraphernalia, disorderly conduct as a misdemeanor of the third degree and indecent exposure as a misdemeanor of the first degree.

22. Officer Ammerman was wearing a body camera during the incident. The video footage and audio

recording were marked as Commonwealth Exhibit 1 and entered into evidence during the suppression hearing on July 20, 2023. This Court reviewed the body camera footage, including the audio.

23. This Court finds the testimony of Officer Ammerman and Detective Bevenour credible.

### LEGAL STANDARD

“[Alt a suppression hearing, the Commonwealth has the burden of ‘establish[ing] by a preponderance of the evidence that the evidence was properly obtained.” *Commonwealth v. Galendez*, 27 A.3d 1042, 1046 (Pa. Super. 2011) (quoting *Commonwealth v. Culp*, 548 A.2d 578, 581 (Pa. Super. 1988)). Moreover, “it is the sole province of the suppression court to weigh the credibility of the witnesses. Further, the suppression court judge is entitled to believe all, part or none of the evidence presented.” *Commonwealth v. Benton*, 655 A.2d 1030, 1032 (Pa. Super. 1995) (internal citations omitted).

Under *Miranda v. Arizona*, 384 U.S. 436 (1966), an individual subject to custodial interrogation “must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.” *Id.* at 479. If an individual does not receive these warnings prior to custodial interrogation, “no evidence obtained as a result of interrogation can be used against him” due to the violation of his “privilege against self-incrimination.” *Id.* at 478-79. However, *Miranda* warnings “are required only where a suspect is both

taken into custody and subjected to interrogation.” *Commonwealth v. Coleman*, 204 A.3d 1003, 1007-08 (Pa. Super. 2019) (quoting *Commonwealth v. Yandamuri*, 159 A.3d 503, 519-20 (Pa. 2017)). Furthermore, “[t]he procedural safeguards of *Miranda* do not apply to police interactions less intrusive than custodial detentions, such as investigatory detentions and mere encounters.” *Id.* at 1008.

In *Commonwealth v. Rowe*, 984 A.2d 524 (Pa. Super. 2009), the Superior Court of Pennsylvania set forth the criteria to justify a warrantless search of a residence:

“The Fourth Amendment to the United States Constitution and Article 1, § 8 of the Pennsylvania Constitution require that searches be conducted pursuant to a warrant issued by a neutral and detached magistrate.” *Commonwealth v. Copeland*, 955 A.2d 396, 399 (Pa. Super [2008]), appeal denied, 599 Pa. 706, 962 A.2d 1194, 2008 WL 5087421 (Pa. Dec 03, 2008). “A warrantless search or seizure is per se unreasonable unless it falls within a specifically enumerated exception.” *Commonwealth v. Wright*, 599 Pa. at 301, 961 A.2d 119 at 137 (Pa. 2008). Exigent circumstances provide one such exception to the warrant requirement. *Commonwealth v. English*, 839 A.2d 1136, 1141 (Pa. Super. 2003). In *Commonwealth v. Roland*, 535 Pa. 595, 637 A.2d 269 (1994), our Supreme Court provided the following description of the applicable constitutional principles relating to exigent circumstances:

In a private home, searches and seizures



without a warrant are presumptively unreasonable. Absent probable cause and exigent circumstances, the entry of a home without a warrant is prohibited under the Fourth Amendment. In determining whether exigent circumstances exist, a number of factors are to be considered:

(1) the gravity of the offense, (2) whether the suspect is reasonably believed to be armed, (3) whether there is above and beyond a clear showing of probable cause, (4) whether there is a strong reason to believe that the suspect is within the premises being entered, (5) whether there is likelihood that the suspect will escape if not swiftly apprehended, (6) whether the entry was peaceable, and (7) the time of entry, *i.e.*, whether it was made at night. These factors are to be balanced against one another in determining whether the warrantless intrusion was justified.

Other factors may also be taken into account, such as whether there is hot pursuit of a fleeing felon, a likelihood that evidence will be destroyed if police take the time to obtain a warrant, or danger to police or other persons inside or outside the dwelling. Nevertheless, police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests. *Id.* at 600, 637 A.2d at 270-71 (quotations and citations omitted).

*Rowe*, 984 A.2d at 526.

## DISCUSSION

Officer Ammerman was not required to advise Defendant of his *Miranda* warnings before questioning him during his investigation. Officer Ammerman's initial contact with Defendant, outside of Defendant's residence, constituted an investigative detention, similar to a traffic stop. "[T]he questioning of a motorist during a routine traffic stop is an investigative, not a custodial detention, and therefore does not trigger *Miranda* protections." *Walkden v. Commonwealth, Dep't of Transp., Bureau of Driver Licensing*, 103 A.3d 432, 439 (Pa. Commw. 2014) (citing *Berkemer v. McCarty*, 468 U.S. 420, 435-42 (1984)). Although questioning during a traffic stop may constitute a custodial detention in certain coercive circumstances, *see Commonwealth v. Meyer*, 412 A.2d 517, 521-22 (Pa. 1980); *Commonwealth v. Turner*, 772 A.2d 970, 974 (Pa. Super. 2001), in this case nothing increased the duration or coercion inherent in the stop so that it constituted a custodial interrogation. As the sound from the body camera revealed, Officer Ammerman maintained a professional demeanor throughout his contact with Defendant and did not brandish a weapon or threaten Defendant. In addition, Officer Ammerman did not bombard Defendant with questions but instead made a limited number of inquiries concerning Defendant's drug use for purposes of aiding in the medical treatment of Defendant. This is corroborated by the fact that Officer Ammerman requested an ambulance to provide medical treatment to Defendant. Therefore, Officer Ammerman's initial questioning of Defendant occurred during an investi-

gative detention. The handcuffing of a suspect, by itself, does not convert an investigative detention into an arrest. See *Commonwealth v. Smith*, 172 A.3d 26, 31-32 (Pa. Super. 2017). As such, Officer Ammerman's questions of Defendant would not rise to the level of custodial interrogation. Defendant's first issue is denied.

Defendant contends in his second issue that Detective Bevenour's warrantless entry into Defendant's residence violated Defendant's constitutional rights and requires the suppression of all evidence seized from the residence. The facts of this case and the applicable case law require this Court to grant this portion of Defendant's Motion to Suppress. The reasons for this determination are elaborated herein.

The Commonwealth contends that Detective Bevenour was justified in entering Defendant's residence to conduct a protective sweep to render medical aid in accordance with the "emergency aid exception". In *Michigan v. Fisher*, 558 U.S. 45, 47-48 (2019), the United States Supreme Court explained "the emergency aid exception" as follows:

"[T]he ultimate touchstone of the Fourth Amendment," we have often said, "is 'reasonableness'" *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006). Therefore, although "searches and seizures inside a home without a warrant are presumptively unreasonable," *Groh v. Ramirez*, 540 U.S. 551, 559, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004) (internal quotation marks omitted), that presumption can be overcome. For example, "the exigencies of the situation [may] make the needs of law

enforcement so compelling that the warrantless search is objectively reasonable.” *Mincey v. Arizona*, 437 U.S. 385, 393-394, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978).

*Brigham City* identified one such exigency: “the need to assist persons who are seriously injured or threatened with such injury.” 547 U.S. at 403, 126 S.Ct. 1943. Thus, law enforcement officers “may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.” *Ibid.* This “emergency aid exception” does not depend on the officer’s subjective intent or the seriousness of any crime they are investigating when the emergency arises. *Id.*, at 404-405, 126 S.Ct. 1943. It requires only “an objectively reasonable basis for believing,” *id.*, at 406, 126 S.Ct. 1943, that “a person within [the house] is in need of immediate aid,” *Mincey, supra*, at 392, 98 S.Ct. 2408.

*Brigham City* illustrates the application of this standard. There, police officers responded to a noise complaint in the early hours of the morning. “As they approached the house, they could hear from within an altercation occurring, some kind of fight.” 547 U.S. at 406, 126 S.Ct. 1943 (internal quotation marks omitted). Following the tumult to the back of the house whence it came, the officers saw juveniles drinking beer in the backyard and a fight unfolding in the kitchen. They watched through the window as a juvenile broke free from the adults restraining him

and punched another adult in the face, who recoiled to the sink, spitting blood. *Ibid.* Under these circumstances, we found it “plainly reasonable” for the officers to enter the house and quell the violence, for they had “an objectively reasonable basis for believing both that the injured adult might need help and that the violence in kitchen was just beginning.” *Ibid.*

*Id.* at 47-48. *Commonwealth v. Edgin*, 273 A.3d 573 (Pa. Super. 2022).

“While our courts have repeatedly recognized that the Fourth Amendment does not prevent police officers from conducting a warrantless entry and search when they reasonably believe that a person is in need of immediate aid, the intrusion must be commiserated with, and limited to, the perceived need to provide immediate assistance”, *Commonwealth v. Wilmer*, 194 A.3d 564, 571 (Pa. Super. 2018).

In support of the Commonwealth’s position that Detective Bevenour’s warrantless entry into Defendant’s residence was justified under the “emergency aid exception”, the *Commonwealth* cites *Commonwealth v. Davidio*, 106 A.3d 611 (Pa. 2014) and *Commonwealth v. Caple*, 121 A.3d 511 (Pa. Super. 2015). In *Davidio*, Appellant’s sister called 911 from a payphone several blocks away, identified herself as a neighbor, and reported that a man was beating a woman at 26 Hager Street. Two police officers were immediately dispatched to investigate a domestic situation that involved “man hitting a woman” and were informed en route that loud screaming had been heard from inside the residence, 26 Hager Street. The officers arrived at the residence approximately eight

minutes later and all was quiet. They knocked on the front and back doors, but no one answered. They opened an unsecured window in the front of the house, announced themselves, and listened for any response, but heard nothing. The officers entered the residence, conducted a floor-to-floor, room-to-room sweep of the residence and found the victim naked under a sheet on a mattress on the floor, seriously injured, with bruises and cuts visible on her face and body, including her pelvic region, and severe bruising on both sides of her throat and around both eyes. The victim ultimately died from her injuries.

In *Caple*, the facts show that officers were dispatched to a motel located in Pottstown, Montgomery County, Pennsylvania for a report of a domestic assault. The victim called 911 and sounded extremely hysterical. The victim advised that she had been assaulted by a male named “Flip”, that the assault had occurred in room 115 of the motel, and that she had been in rooms 115 and 215. Upon arrival at the motel, the officers spoke with two women who were occupying room 115 and learned that an assault had just occurred. The women directed the officers to room 210; the officers received another radio transmission that the victim could possibly be in room 215. The officers knocked loudly on the door of room 215 and announced “police”, attempting to locate the victim, to no avail. The officers asked the manager to open the door. A female was located within the room who was not the assault victim. The officers observed two metal crack pipes on top of a dresser in room 215. Room 215 was secured, and a search warrant was obtained for the room. The assault victim was identified, and it was determined that the domestic assault occurred in

room 115 of the motel. When police encountered the victim, they observed her face was swollen, she had a cut on her lip, and she was visibly upset.

The factual backgrounds in both *Davidio* and *Caple* involved credible reports of domestic abuse or domestic assault. In *Davidio*, the Pennsylvania Supreme Court stated:

“It is widely recognized that the potential for imminent physical harm in the domestic context implicates exigencies that may justify a limited police intrusion into a dwelling. *Commonwealth v. Wright*, 560 Pa. 34, 742 A.2d 661, 664-65 (1999) (collecting cases). The U.S. Court of Appeals for the Ninth Circuit has recognized that “the exigencies of domestic abuse cases present dangers that, in an appropriate case, may override considerations of privacy.” *U.S. v. Black*, 482 F.3d 1035, 1040 (9th Cir. 2007) (quoting *U.S. v. Brooks*, 367 F.3d 1128, 1136 (9th Cir. 2004)). Moreover, “[c]ourts have recognized the combustible nature of domestic disputes, and have accorded great latitude to an officer’s belief that warrantless entry was justified by exigent circumstances when the officer had substantial reason to believe that one of the parties to the dispute was in danger.” *Brooks*, 367 F.3d at 1136 (citing *Tierney v. Davidson*, 133 F.3d 189 (2d Cir. 1998)).

We do not suggest that domestic abuse cases create a per se exigent need for warrantless entry; rather, a reviewing court must assess the totality of the circumstances presented to the officer before the entry in

order to determine if exigent circumstances relieved the officer of the duty to secure a warrant. We do recognize, however, that the police have a duty to respond seriously to reported domestic conflict situations, and in doing so, they must be accorded some latitude in making on-the-spot judgments as to what actions to take and what actions are reasonably necessary to protect themselves and potential victims of abuse.”

*Id.* at 623-624.

The Commonwealth’s reliance on *Davidio* and *Caple* to support Detective Bevenour’s protective sweep of Defendant’s residence is misplaced and not supported by the facts. In both *Davidio* and *Caple*, the facts provided to the police officers clearly established that a domestic assault had occurred prior to the officers conducting a protective sweep of the residence or motel room. As such, the facts known to the officers in both cases clearly justified the warrantless entry based on the exigency in each case that an act of domestic violence had occurred; such information created an “objective basis for believing that a person within the residence was in need of immediate aid.”

Officer Ammerman and Detective Bevenour did not receive any information or facts that Defendant was involved in a domestic abuse situation or that an assault had occurred in Defendant’s residence prior to their arrival. The 911 dispatch initially advised Officer Ammerman that an unclothed male subject was screaming in the back yard of a neighbor. A subsequent dispatch advised Officer Ammerman that the unclothed male subject had moved to the front of the residence and was in the roadway on Hanover



Pike. Upon arrival, Officer Ammerman observed Defendant was naked, walking on the roadway on Hanover Pike in front of his residence, was incoherent, was physically jumping around and was clearly under the influence of a controlled substance. Neither Officer Ammerman nor Detective Bevenour received any information that there were other individuals located in Defendant's residence. They did not hear any sounds or screams from the residence. Officer Ammerman spoke with a neighbor of Defendant at the scene, but no evidence was presented concerning a potential domestic abuse situation. Defendant advised Officer Ammerman that he lived alone in the residence. The only potential, relevant information Detective Bevenour developed was his observation of the kitchen inside the residence in disarray, with garbage on the floor, and other items thrown about. It is equally plausible that the condition of the kitchen could have been caused solely by Defendant given Defendant's condition. The officers had no reasonable evidence that there was anyone within the residence needing medical attention.

This Court finds the testimony of Officer Ammerman and Detective Bevenour credible. This Court finds that Detective Bevenour's motive for conducting the protective sweep of Defendant's residence was sincere to ensure there was no one in the residence who needed medical attention or was suffering from a potential overdose. Notwithstanding Detective Bevenour's sincere motivation in conducting the protective sweep, given that the sweep occurred within Defendant's private residence, that there was no reasonable evidence of a domestic abuse situation, and there was no evidence that person(s) within the residence re-

quired medical attention, the protective sweep was not legally authorized under the “emergency aid exception”.

Therefore, for the reasons set forth herein, the attached Order is entered.

BY THE COURT:

/s/ Shawn C. Wagner

Judge

Date: August 17, 2023

nil

**ORDER DENYING APPLICATION FOR  
REARGUMENT, SUPERIOR COURT OF  
PENNSYLVANIA MIDDLE DISTRICT  
(JULY 8, 2024)**

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IN THE SUPERIOR COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

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COMMONWEALTH OF PENNSYLVANIA,

*Appellant,*

v.

DAVID A. MCMASTER, JR.

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No. 1354 MDA 2023

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**ORDER**

IT IS HEREBY ORDERED:

THAT the application filed July 8, 2024, requesting reargument of the decision dated June 25, 2024, is DENIED.

PER CURIAM

**TRANSCRIPT OF PROCEEDINGS OF  
OMNIBUS PRETRIAL MOTION HEARING,  
COURT OF COMMON PLEAS OF ADAMS  
COUNTY, PENNSYLVANIA  
(JULY 20, 2023)**

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IN THE COURT OF COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA  
CRIMINAL

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COMMONWEALTH OF PENNSYLVANIA

v.

DAVID A. MCMASTER, JR.

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No. CP-01-CR-266-2023

Before: Hon. Shawn C. WAGNER, Judge.

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***[July 20, 2023, Transcript, p.1]***

ATTORNEY BAIN: This is David A. McMaster, Jr.,  
CR-266 of '23. We're here for Defendant's Omnibus  
Pretrial Motion.

Commonwealth is ready to proceed.

THE COURT: All right. Attorney Fisher, are you ready  
to proceed in this matter?

ATTORNEY FISHER: Good morning. Yes. This is my  
client seated next to me, Mr. McMaster. We are  
both prepared to proceed.

THE COURT: Thank you. All right. If we can just indicate for the record, then, so we have a full understanding, what issues are we dealing with, Attorney Fisher?

ATTORNEY FISHER: Absolutely, Your Honor. So, in Part 1 of my Omnibus Pretrial Motion, I allege that my client was never Mirandized and—in answering questions posed to him by the police.

Any and all statements made without the proper Miranda Warnings should be suppressed. And then as far as the search of his residence, I'm arguing that the search should not have been conducted and asking for suppression of all items located in there, as well as I think articulating that the warrant that was obtained following said search does not cure that effect.

THE COURT: Okay. Attorney Bain, any comment?

ATTORNEY BAIN: The only thing I would say is the Commonwealth's response would be, at least for argument purposes before we get into testimony, for the Miranda portion, would indicate that he was—it was a investigative detention. We see no Miranda Warnings were provided, at least initially at the scene.

THE COURT: So, the issue there the Court will have to decide is whether he was in custody.

ATTORNEY BAIN: Certainly, yes.

THE COURT: Sure. Okay.

ATTORNEY BAIN: And with regard to the—So, police were there. They did enter the house. We would

assert that it was for a protective sweep and that was the basis for the Search Warrant.

Obviously, the Court will get more information when it hears the testimony and evidence to make that determination.

THE COURT: Sure. All right. So, sounds good.

First witness, please.

ATTORNEY BAIN: Thank you, Your Honor. Officer Ammerman.

\* \* \* \*

OFC. CORY AMMERMAN, having been duly sworn, was examined and testified as follows:

\* \* \* \*

THE COURT: Thank you. You may have a seat.

Attorney Bain, you may proceed.

ATTORNEY BAIN: Thank you, Your Honor.

ATTORNEY FISHER: Your Honor, before we start, I would just ask that any other Commonwealth witnesses that may potentially offer testimony today be sequestered.

THE COURT: Is there any other witnesses you plan to call?

ATTORNEY BAIN: One or two. So, if I can ask them

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THE COURT: Any other witnesses please step outside. Okay.

\* \* \* \*

**DIRECT EXAMINATION**

\* \* \* \*

BY ATTORNEY BAIN:

Q Sir, can you state your name for us?

A Yes. Cory Ammerman.

Q And, sir, where do you work at?

A Conewago Township Police Department.

Q How are you employed there?

A As a police officer.

Q Approximately, how long have you been a police officer altogether?

A Approximately, 14 years.

Q Were you employed as a police officer with Conewago Township on December 7, 2022, at approximately 15:00 hours?

A That's correct.

Q And at that time, prior to that, had you had encounters with individuals under the influence of controlled substances?

A Yes, that's correct.

Q How many times in your 14 years, approximately, have you encountered individuals under the influence of controlled substances?

A Hundreds.

Q So, on December 7, 2022, you're working and were you dispatched to 2982 Hanover Pike, Hanover, PA?

A That's correct.

Q Is that in Conewago Township, Adams County, Pennsylvania?

A Yes, it is.

Q Do you recall the reason that you were dispatched?

A We were dispatched to that location due to a neighbor calling in. Basically, the call was an individual, a male was unclothed and screaming in her backyard.

While heading to that location, she further—or that individual further advised that the unclothed male had moved to the front of the residence and was now on Hanover Pike, Route 194, in view of the public.

Q So, tell me what you observed, if anything, when you arrived at 2982 Hanover Pike.

A That's correct. So, immediately upon arrival, I observed an unclothed male standing basically in the roadway, or right along the side of the road at 194. When that individual saw my patrol vehicle, he then ran towards the address in question here and towards the vehicle.

Q Do you see the naked individual in the courtroom today?

A Yes, I do.

Q Can you identify him for us?



A Yes. He is clothed. He's wearing the blue long-sleeved shirt and seated at the Defendant table.

ATTORNEY BAIN: Is that sufficient, Your Honor?

THE COURT: Yes. For the record, the witness did identify the Defendant.

BY ATTORNEY BAIN:

Q So, you arrived there, you make that observation. What do you do at that point, sir?

A At that point in time, I tried to speak to the individual. He is basically still yelling, or very excited in nature, jumping around, obviously still unclothed. He was saying a lot of items that were incoherent, incoherent statements.

My immediate observation was that he was more than likely under the influence of a narcotic or several narcotics. At that time, he began moving around so much. In his excited nature, I did place him in handcuffs basically just to secure him at the scene at that time to assess what needed to be done.

Q So, what kind of questions—You placed him in handcuffs. And what kind of questions or conversation did you have with him at that point?

A The first set of questions would have been biographical in nature; name, date of birth, just trying to get information about him as an individual.

And then the other questions that were asked would have been more of a medical related. I immediately observed the individual having some

type of negative side effect or I guess encounter with the drugs that he had consumed.

So, at that point in time, it's important to advise EMS, who were summoned to the scene, what type of drugs that individual may have taken so that they can appropriately and properly care for him.

Q Okay. So, did you ask him what kind of drugs he had taken?

A I did, that's correct.

Q Okay. And what did he tell you at that point?

A He had advised that he had consumed Ketamine. Then he advised several times that he had taken some type of item that I had not heard of. I believe he called it a joke or a joker. But he did end up clarifying that he was basically huffing butane gas.

Q Okay. All right. Did any other individuals—any other police officers arrive shortly after you—

THE COURT: I apologize. What type of gas did you say, sir?

THE WITNESS: Butane.

THE COURT: Butane. Thank you.

THE WITNESS: That's correct.

THE COURT: I'm sorry. Go ahead.

BY ATTORNEY BAIN:

Q Any other police officers arrive after you, sir?

A That's correct. So, shortly after my arrival, Officer Larry Kitzmiller of McSherrystown Borough

arrived to assist. Officer Kitzmiller acted in a role that he secured the Defendant in place until the EMS arrived.

Q And is that—any other officers aside from Officer Kitzmiller?

A Officer Travis Smith had arrived on scene. Detective Bevenour of our department arrived on scene. At some point later, other officers did arrive; but those were the primary officers on scene directly.

Q Let's focus on those individuals you've already mentioned.

A That's correct. Yes.

Q So, are you aware at some point did Detective Bevenour decide to enter the residence—the Defendant's residence for a protective sweep of that?

A That's correct.

Q And did you follow them in at some point?

A That's correct. After I had ensured that the individual was basically secured by Officer Kitzmiller and that EMS was coming, I could hear them inside the residence basically announcing themselves as police. I believe they are saying, Come out now, or something to that nature to individuals inside.

Assuming that there may have been individuals inside, I did enter the residence in the same route that they took in order to assist them with that protective search. That's correct.

Q Okay. In the protective search, what were you looking for when you did any search in there?

A When I went to the back door to see where they had gone in at, immediately through the observation of the open doors I did see that the house was in complete disarray, items strewn about the house floor appearing that a struggle had occurred or something to that nature. So, I assumed that's why they entered the residence.

At that time, I did enter the residence to assist them in clearing for any other individuals that may be inside or having some type of other medical-related emergency.

Q So, just to be clear, and you're—are you searching opening drawers or are you just looking for people who might be inside of the residence?

A Just searching for people that may be inside of the residence.

Q Now, while inside performing that protective sweep, did you see anything that you believed to be illegal in nature?

A That's correct.

Q And is that in general outlined in a search warrant that you prepared to execute on the subject property?

A That's correct.

Q Okay. Additionally, sir, is your car equipped with an MVR?

A It is.

Q And was it working that day?

A It was.

Q And to the best of your knowledge, was that downloaded and sent to the DA's office as part of your case file?

A That is correct.

ATTORNEY FISHER: And, Your Honor, we've spoken beforehand and I have a copy of it. I'm stipulating to the authenticity—

THE COURT: Okay.

ATTORNEY FISHER:—and the accuracy of the MVR. (Commonwealth Exhibit Numbers 1 and 2 identified.)

ATTORNEY BAIN: I believe the Search Warrant would be Commonwealth 1. The MVR is Commonwealth 2.

ATTORNEY FISHER: No issues with either of those, Your Honor.

THE COURT: Sounds good.

ATTORNEY BAIN: And I believe that there's an agreement for the Court to be able to review that in camera, the MVR.

ATTORNEY FISHER: Sure.

ATTORNEY BAIN: If I may approach with those exhibits?

THE COURT: Yes.

ATTORNEY BAIN: And I'd move for their admission.

THE COURT: All right. Commonwealth Exhibits 1 and 2 are admitted. They have been marked?

ATTORNEY BAIN: They are, yes, sir.

THE COURT: Okay. Thank you.

BY ATTORNEY BAIN:

Q Approximately, how long was the search itself that you were involved in?

A Less than 10 minutes. The residence was the basement and two stories. So, three stories altogether that was searched.

Q Okay.

ATTORNEY BAIN: Nothing further for this witness at this time. Thank you.

THE COURT: All right. Cross, please.

ATTORNEY FISHER: Thank you, Your Honor.

\* \* \* \*

**CROSS-EXAMINATION**

\* \* \* \*

BY ATTORNEY FISHER:

Q Good morning, officer.

A Good morning.

Q All right. So, officer, you initially arrived there for a call of a naked individual who's kind of screaming in somebody else's backyard; is that correct?

A That's correct.

Q All right. And, so, that actually wouldn't be the backyard of this residence, correct; that was the neighbor's backyard?

A Yes. That's correct.

Q Okay. And, so, as you're—you're, obviously, getting updated information as you're arriving. And he's actually out on Hanover Pike now, correct?

A That is correct.

Q Okay. When you arrive, you actually see him and he kinda goes into the driveway of what was identified as his residence ultimately, correct?

A That's correct.

Q Okay. And at this point in time, he is completely unclothed?

A Yes.

Q Okay. And because of that, you know, I don't want to make assumptions, but I'm assuming he had no contraband, no weapons or anything of that nature in his possession, on him at that time?

A That's correct.

Q Okay. And, so, you made contact with him. He appears to be under the influence and he's having trouble communicating effectively; is that correct?

A That's correct. His speech was incoherent at times.

Q Okay. And it was at that point you decided to place him in handcuffs, correct?

A That is correct, just due to him—basically, his exciting nature, running around. You know, one of the other aspects there, as well, he's secured at one location so that he's not moving in the public or—I'm sorry, not the public but in the traffic or anything like that.

- Q Absolutely. And then another one of your concerns is, obviously, I'm assuming you positioned him behind your patrol vehicle so that oncoming traffic isn't seeing someone that is unclothed.
- A I positioned him in front of his vehicle that was in the driveway.
- Q Okay. In front of or behind?
- A In front of. So, his truck would have been pulled into the driveway head first.
- Q Okay.
- A And he was placed to the front of his vehicle so he was not in view of the motoring public, basically.
- Q Okay. And at that point in time, he was not free to leave from that position, correct?
- A That's correct.
- Q All right. He couldn't have gone into his house to get himself clothes or enter his truck to get clothes or a blanket to cover up, correct?
- A No. I offered to do those things for him but he was not free to do that, that's correct.
- Q Okay. And upon making contact with him and observing him, he didn't have any cuts, scratches, blood, anything of that nature to indicate that he had been in an altercation, correct?
- A Not that I recall.
- Q Okay. And, so, as you're dealing with my client, at that point in time, the other officers that you mentioned end up arriving on scene, correct?
- A That's correct.



Q All right. And prior to you entering the residence there, they had already entered; is that correct?

A That's correct.

Q Okay. So, by the time you had gotten into the residence, they have already been conducting the search, correct?

A I believe they had partially searched the residence, that's correct.

Q Okay.

A Like I said, I can hear them calling out.

Q Okay. And when you entered the residence, they began indicating to you what they had located, correct?

A I believe they advised what was in the residence.

Q And that would be the mushrooms and the other paraphernalia that is listed within the Search Warrant, correct?

A Yes. Directly inside the house, as soon as you enter, there was paraphernalia and drug items that were right in the kitchen readily apparent as soon as you entered the residence, that's correct.

Q And you indicated that as part of your conversation with my client, you were getting some basic information, biographical, date of birth, name.

A That's correct.

Q Is that correct?

A Yes.

Q All right. You also indicate you were asking about, you know, what he had used for EMS purposes to

make sure that they could provide him the right, I guess, antidote, for lack of a better term.

A Medical care, that's correct.

Q All right. And as part of that conversation, you asked him if he lives with anybody else, too, correct?

A I believe at some point in time I asked him if he lived with somebody else. Prior to that, I asked him if there's anybody in the residence. That's correct.

Q And he indicated on that occasion that he does live by himself, correct?

A Yes. He did not answer my initial question but he did answer that he lived by himself. That's correct.

Q All right. And as far as that, that response was prior to you entering the residence, correct?

A Yes.

THE COURT: I'm sorry. I don't mean to interrupt. Did you ask him whether anyone else lived with him before you entered the residence?

THE WITNESS: I asked if anybody else was in the residence, which he did not answer that question. I then asked him if he lived at the residence, which he indicated he lived by himself.

THE COURT: Okay. That's before you entered?

THE WITNESS: That's correct.

THE COURT: Thank you.

THE WITNESS: I believe that the other officers may have already at some point in time were in the residence at that time or they had gone in shortly after that.

THE COURT: I'm sorry. Go ahead, counsel.

ATTORNEY FISHER: No, that's okay. Thank you for clarifying that, Your Honor.

BY ATTORNEY FISHER:

Q And, officer, approximately, how long from when you made contact with my client till these other officers arrived how long did that take, approximately?

A Five to seven minutes maybe. I would have to review the tapes. I apologize.

Q No. I'm just looking for approximate.

A Yeah.

Q And in that period of time, that five to seven minutes, at no point in time do you hear anybody yelling, calling out, asking for help from the residence, correct?

A That's correct.

Q All right.

ATTORNEY FISHER: If I could have a moment.

THE COURT: Sure.

(Pause.)

ATTORNEY FISHER: Your Honor, at this point, I don't have any further questions for this witness.

THE COURT: Any redirect?

ATTORNEY BAIN: Not from the Commonwealth.  
Thank you.

THE COURT: Thank you. You may step down, officer.

OFC. AMMERMAN: Thank you.

THE COURT: Officer Ammerman may remain in the  
courtroom as he is the Affiant.

Next witness, please.

ATTORNEY BAIN: Detective Bevenour.

THE COURT: If we could have Detective Bevenour,  
please.

\* \* \* \*

DET. BURNELL BEVENOUR, having been duly  
sworn, was examined and testified as follows:

\* \* \* \*

THE COURT: Thank you. You may have a seat.

Counsel, you may proceed.

ATTORNEY BAIN: Thank you, Your Honor.

\* \* \* \*

### **DIRECT EXAMINATION**

\* \* \* \*

BY ATTORNEY BAIN:

Q Sir, could you state your name for us?

A Officer Burnell Paul Bevenour.

Q Where do you work at, sir?

A Conewago Township Police Department.

Q How are you employed there?

A As a detective/patrol officer.

Q How long have you been a police officer, approximately, over the years?

A Coming up on 17 years.

Q All right. And in those 17 years, have you encountered individuals who are under the influence of controlled substances?

A Yes.

Q How frequently, approximately?

A Too often.

Q So, very frequently throughout your—

A Yes, very frequently.

Q Sir, I want to take you back to December 7, 2022, at approximately 15:00—or 15:04 hours. Were you on duty at that time, sir?

A Yes, sir.

Q And were you dispatched to 2982 Hanover Pike, Conewago Township, Adams County, Pennsylvania?

A Yes, sir.

Q So, tell me what you observed when you arrived there?

A As I pulled on scene, Officer Ammerman with our agency and Officer Kitzmiller from McSherrystown Police Department had a nude male in custody. They were talking to him. It wasn't making sense what he was saying. He was very, I would say, out of it, incoherent.

Q And this nude male, is that the individual that would be two people to my right and your left—

A Yes, sir.

Q —identified as the Defendant?

A Yes, sir.

ATTORNEY BAIN: Is that sufficient, Your Honor?

THE COURT: Yes, that is sufficient.

BY ATTORNEY BAIN:

Q So, when you say he wasn't coherent, based upon your training and experience and your observations of him, what did you think was wrong with him?

A He was either having a medical emergency or he was under the influence of some type of drug or alcohol.

Q All right. So, what did you do—After you made that observation, how long did you stay with the Defendant and Officer Ammerman, approximately?

A Approximately, a couple seconds, maybe five to ten seconds. At that point, I went around looking at the rest of the property to check to see if anybody else might be there and might need medical attention.

Q Now, on your way around there, did you make any observations you thought were unusual?

A Yes. The rear of the house with the exterior screen door and the interior door of the house were both open.

Q Did you see any drug paraphernalia, not inside the house but possible lighters or—

A Yes, I did see a butane lighter right outside of the house.

Q Butane—

A Yes, right outside the rear of the house.

Q Now, the residence can you describe this for us a little bit?

A I believe it was a two-story—I can't remember what the siding was. If you went around the back, there was a porch screen-in area. That door was open. As you could look in, you could see the screen. If you went a little bit further around, you could look inside and see where the kitchen was.

Q Okay. So, essentially, you have an enclosed porch with a door and another door leading into the house?

A Yes.

THE COURT: Was that on the back or the front, sir?

THE WITNESS: That would be on the back, sir.

THE COURT: Thank you. I'm sorry.

BY ATTORNEY BAIN:

Q Were those both open?

A Yes, sir.

Q You didn't open them?

A No, sir.

Q And you would have been—Would you have been the first individual at around back there to be able to see that?

A Yes, that's correct.

Q Did you see anything strange from your vantage point from outside the house through the open doors?

A The inside of the house was in disarray.

Q Explain that for us.

A There was—It looked to be trash all over the place. I did see what appeared to be some type of vegetation that looked like it had been burnt and just there was, like, a center island where the stove was and it was laying on top of that.

Q What was your concern at that time based on the information that you had?

A I was worried there may have been somebody else inside of the house.

Q What led you to have that concern?

A Most overdoses or medical emergencies you go to there's normally more than one person there. We were standing outside asking if anybody else was at the house. We weren't getting any response from anybody else inside of the house.

Q So, did you hear the Defendant indicate at any time that he lived by himself or he was there alone or anything like that?

A I do not remember hearing him say that. I don't think I—I was not close enough to Officer Ammerman and Officer Kitzmiller to hear that.

Q Sure. So, based upon the information that you had at that time, what did you decide to do?



A I decided to make entry into the residence to ensure that nobody else needed any medical attention or help.

Q Protective sweep, essentially?

A Yes.

Q All right. So, walk me through that, if you would, in as much detail as you can remember.

A Basically went through the rear kitchen. At that point, we saw a white powder on the floor. We saw burnt vegetation on the stovetop. Continued in. I believe we went off to the left, which was like a living room. It was an empty room but I believe there was a closet and stuff there. On that floor, we saw some coins that had been scattered all over the place.

I believe—I can't remember exactly if we went to the basement next or if we went into the front room. But I believe we went into the basement. And at that point when we went down, there was a room. I saw a large amount of vegetation on tables with neon lights.

Once we realized there had been people down there, we backed out. We continue to look for people in the house.

At that point, one way or another we made it to the front of the house. Again, that room was empty. And then we went upstairs and we checked the bedrooms there just to see if we could find—make sure no other persons were in there at that time.

Q Okay. And when you're doing this sweep, are you searching through drawers or are you just looking—

A No. We're just looking for a general place where we might find somebody laying.

Q Okay. Approximately, how long do you think this took altogether?

A Not even five minutes at the most.

Q Okay. The observations that you made, did you indicate those to Officer Ammerman?

A Yes, sir.

Q Okay. And while you're doing this sweep, are you calling out to see if anyone is there or do you—

A Yes. We're announcing ourselves as police, anybody show yourself now.

Q Did anyone else accompany you inside of the residence?

A Yes, Officer Travis Smith of Littlestown.

Q And was he essentially with you as you were searching the residence?

A Yes, sir.

Q Okay. And the vegetation that you described, did you—can you just—did that appear to be controlled substances being grown?

A Yes.

Q All right. Were those in plain view—

A Yes.

Q —the entire time?

A Yes.

Q Did you have to move anything for those to be seen?

A No. No, sir.

Q Were they all over the house?

A Yes.

Q Okay. And following that sweep, did you leave the residence and have Officer Ammerman prepare a search warrant?

A Yes, sir.

ATTORNEY BAIN: Nothing further for the witness at this time, sir.

THE COURT: One second, please.

ATTORNEY BAIN: Of course.

(Pause.)

THE COURT: All right. Thank you. Cross, please.

ATTORNEY FISHER: Thank you, Your Honor.

\* \* \* \*

### **CROSS-EXAMINATION**

\* \* \* \*

BY ATTORNEY FISHER:

Q Good morning, detective?

A Good morning, sir. How are you doing?

Q Good. How about yourself?

A I can't complain.

Q All right. So, you were called out to assist with this incoherent individual that appeared to be under the influence; is that correct?

A Yes, sir.

Q All right. And by the time you arrived on scene, Officer Ammerman was already there, correct?

A Yes, sir.

Q And he had already secured the Defendant in handcuffs, correct?

A Yes, sir.

Q And he and Officer—I think it's Kitzmiller—

A Yes, sir.

Q —were both with the Defendant; is that correct?

A That is correct, sir. Yes.

Q All right. So, at that point in time, Defendant no longer has access to the house, correct?

A That's correct, sir. Yes.

Q All right. To your knowledge and your observations, you didn't see any injuries, any scratches, bruises, blood, anything of that nature to indicate my client had been in—

A No. No, sir.

Q —an altercation.

A No, sir.

Q And as you're on scene and up and to the point you entered the residence, at no point in time do you hear anybody moving around in the residence, correct?

A No, sir.

Q And at no point in time do you hear anybody calling for help or anything of that nature?

A No, sir.

Q All right.

ATTORNEY FISHER: Your Honor, permission to approach?

THE COURT: Sure.

ATTORNEY BAIN: If I may approach with defense counsel.

THE COURT: Sure.

ATTORNEY BAIN: He's going to be showing some pictures.

ATTORNEY FISHER: And, Your Honor, I can actually use the screen. I have them on my computer.

THE COURT: Sure. Sounds good.

Are we going to mark these as you show them?

ATTORNEY FISHER: Your Honor, I actually have a disc with all of these exhibits saved and labeled as Defendant's Exhibits 1 through 6.

THE COURT: Okay.

ATTORNEY FISHER: And I also included a copy of the dash cam as Defense Exhibit 1.

(Defendant's Exhibit Number 1 identified.)

THE COURT: Thank you.

ATTORNEY FISHER: You're welcome.

(Defendant's Exhibit Number 1-A identified.)

BY ATTORNEY FISHER:

Q Detective, this is what's been labeled as Defense Exhibit 1. Do you recognize this?

A Yes, it appears to be the back of the house.

Q All right. And this would be the back of the house in question in this incident?

A Yes, sir.

Q All right. And as far as the door, is that about how far the door was open when you arrived?

A I believe the door was open further so that we could see directly into the house.

Q All right. And as far as that door, you can see right here where that door is pressed up against the floor, correct?

A Yes.

Q All right. And, so, it's your testimony that it was able to be opened farther on the date in question?

A Yes, sir.

(Defendant's Exhibit Number 1-B identified.)

BY ATTORNEY FISHER:

Q Okay. And, then, this is Defendant's Exhibit 2. This would be—Do you recognize this picture?

A I do not. That might be one of the—Oh, yes. That's going to be the inside of the outer porch.

Q All right. So, if we're looking to the left of this photograph, this would be the door in question that we were just talking to here in the left.

A Yes, sir.

Q Is that correct?

A Yes.

Q All right. And this view is actually out from the kitchen; is that correct?

A Yes, sir.

Q And you would agree with me from this view you cannot see outside, correct?

A That is correct, yes.

(Defendant's Exhibit Number 1-C identified.)

BY ATTORNEY FISHER:

Q All right. And then this is Defense Exhibit Number 3. Do you recognize this photograph?

A Yes.

Q All right. And what is this a photograph of?

A That is the outer porch looking into the kitchen.

Q All right. And in this instance, this picture is taken it looks like by someone standing right inside the doorway; is that correct?

A That's correct, yes.

Q And then looking into the kitchen?

A Yes, sir.

Q So, this would not have been the view that you would have had; it would have been back a little further?

A Yes, a little bit further and off to the left more.

(Defendant's Exhibit Number 1-D identified.)

BY ATTORNEY FISHER:

Q Okay. All right. This is Defendant's Exhibit Number 4. This would actually be from—Do you recognize this picture, detective?

A Yes.

Q And what view do we have here?

A That's going to be straight from the back of the house looking in.

Q All right. And if we're coming from the screen from the right to the left, that would be how you traveled to that door, correct, that would be coming from the street—

A Yes, sir.

Q —Hanover Pike towards that door?

A Yes, sir.

Q All right. And I think it's your testimony that you were able to come through over to the left—

A Yes.

Q —in order to get a view into the kitchen?

A Yes.

THE COURT: And as you testified earlier, that door was open more than it is in this—

THE WITNESS: Yes. I don't—I recall being stopped right there. It was enough that we could see into the residence from outside.

BY ATTORNEY FISHER:

Q And as far as when you went in, do you recall if you had any difficulty moving that door because, again, this picture also shows it looks like it's wedged against the floor there?



A I don't remember moving that door at all, no.

Q Okay. All right. Is it possible the door was where it is here in this photograph?

A It could be possible. I don't recall. Like I said, I had a clear view from the outside in.

Q Okay. Now, officer, do you recognize this picture?

A Yes. That is the kitchen.

Q Okay. And the door, this brown door where my cursor is on here—

ATTORNEY BAIN: Is this 5?

ATTORNEY FISHER: This is Defense Exhibit 5.

(Defendant's Exhibit Number 1-E identified.)

BY ATTORNEY FISHER:

Q —this brown door would be the door coming through that outside room—

A Yes, sir.

Q —that we've been kinda looking at pictures from?

A Yes, sir.

(Defendant's Exhibit Number 1-F identified.)

BY ATTORNEY FISHER:

Q All right. And this is Defendant's Exhibit Number 6. What's that a photograph of, detective?

A That's gonna be the entire property of the residence, 29—check my report, 2982 Hanover Pike.

Q All right. And, so, right here this would be the pathway into that side door?

A No, sir. I went through the back door.

Q Okay. So, that would be back here?

A Yes, sir.

Q Okay. So, when you arrived, based on Officer Ammerman's testimony, my client was here in the driveway—

A Yes, sir.

Q —in front of his truck in handcuffs?

A Yes, sir.

Q All right. And he had Officer Kitzmiller and Officer Ammerman with him?

A Yes, sir.

Q All right. And, so, you traveled down his driveway over this path—

A Yes, sir.

Q —to the back of the house?

A Yes, sir.

Q All right. Where along that path did you find the butane lighter?

A Can I come up and point it out to you?

Q Absolute—I can—

A It's pretty much where you're pointing to.

THE COURT: Detective, why don't you go up and just—

THE WITNESS: Okay.

THE COURT:—so it's clear and we all have a full understanding.

THE WITNESS: It would be right about here.

Your Honor, can you see that? Right about in this area right here—

THE COURT: Yes.

THE WITNESS:—between the house and the shed right there.

THE COURT: All right.

BY ATTORNEY FISHER:

Q Thank you, detective. Sorry. Help you get your steps in today.

A Oh, no, you're good.

Q And, so, with the area that you would have located the butane lighter, that would have been prior to you being able to look into the house.

A Yes, sir.

Q Is that correct?

All right. So, you would have discovered that evidence that your testimony here today would have that could be drug paraphernalia, correct?

A Yes.

Q Okay. And as far as my client goes, obviously, it would be an offense to expose yourself to the public.

A Yes, sir.

Q Is that correct?

All right. And based on the condition that you saw him in, there was also a need for medical attention; is that correct?

A Yes, sir.

Q So, at the point that he's—you see him in custody at that point, he's either going to the hospital or he's getting booked for exposing himself, correct?

A I can't speak to that but if that was—if I was the initial investigating officer, yes, that would be the case.

Q And to your knowledge, at no point during the callout and the subsequent information was it ever relayed that there was anybody else involved in this incident besides the individual that was naked?

A No, sir.

ATTORNEY FISHER: Okay. No further questions.

THE COURT: Any redirect?

ATTORNEY BAIN: Court's indulgence for one moment.

THE COURT: Sure.

(Pause.)

ATTORNEY BAIN: Nothing, sir. Thank you.

\* \* \* \*

## EXAMINATION

\* \* \* \*

BY THE COURT:

Q Detective, I just want to clarify a few things. When did you make the decision that you were going to go into the residence for the protective sweep?

- A It was shortly after Officer Ammerman was talking to him. I did error earlier. I did have a brief discussion. I did overhear a brief discussion with him. Once it was determined that, you know, he was not of sound mind, it's in the middle of December, I have a nude male running around on PA 194 at rush-hour traffic, I couldn't take his word that nobody else was in the residence. So, I wanted to enter the residence and make sure that nobody else was there.
- Q So, at that point, when you were having contact with the Defendant in the driveway, is that when you decided you were going to do the protective sweep or was it when you actually went around the rear of the—
- A It would be when I went around the rear.
- Q Okay. And around the rear of the residence you were able to look in from outside—the outside porch door to see into the kitchen.
- A Yes, sir.
- Q Now, at that point, did you have a concern that the Defendant was under the influence of a controlled substance?
- A Yes.
- Q At that point, had you received—had you heard the Defendant say no one else was in the residence?
- A I can't recall if I heard him say that. I do not—If I would have to say yes, I most likely, yes, heard him say that.
- Q I'm sorry?

A If I had to say yes, I most likely heard him say that he would have been the only one in the residence.

Q Okay. Even if you had heard that, would that have impacted your decision to go in and do the protective sweep?

A Based on everything at that time, no, I would have still entered to do the protective sweep.

Q And given all of that information before you entered the residence, then, why did you conduct a protective sweep?

A To ensure nobody else was in there that may have been either in need of medical emergency or injured.

Q And when you say in need of medical emergency, did you also have a concern at that point of any potential overdoses?

A Yes, sir.

Q What was the—Why did you have that concern based on your experience?

A Just the actions of the Defendant at that time, the un-normal behavior and then, in addition to seeing a butane lighter laying outside of the rear of the house.

Q And in your experience, is a butane lighter a device that's used to help ingest controlled substances?

A Yes, Your Honor.

THE COURT: Any questioned as a result of what I asked, Attorney Bain?

ATTORNEY BAIN: No, sir. Thank you.

THE COURT: Attorney Fisher?

ATTORNEY FISHER: Just briefly, Your Honor.

THE COURT: Sure.

\* \* \* \*

**RECROSS-EXAMINATION**

\* \* \* \*

BY ATTORNEY FISHER:

Q Detective, when you discussed any injuries or any other marks that had been on my client but as you were meeting with my client, did you observe any injection sites or anything of that nature?

A No, sir.

ATTORNEY FISHER: Okay. No further questions.

THE COURT: Thank you. You may step down, Detective.

Any additional testimony?

ATTORNEY BAIN: No, sir. Thank you.

THE COURT: The Commonwealth rests. Commonwealth 1 and 2 have been admitted.

Attorney Fisher, any testimony on behalf of the defense?

ATTORNEY FISHER: No, Your Honor.

THE COURT: No testimony.

So, the record is closed.

ATTORNEY FISHER: I would just—The only thing I would do, Your Honor, is request the admission of the Defense Exhibits 1 through 7.

THE COURT: I apologize. It's 1 through 7?

ATTORNEY FISHER: I apologize.

THE COURT: So, you have a disc?

ATTORNEY FISHER: I do. And Number 7 would have been the same MVR that we stipulated to. I included it as Defense 7—

THE COURT: Okay.

ATTORNEY FISHER:—in case the Commonwealth did not utilize that.

THE COURT: All right. So, 1 through 7 are on the disc.

ATTORNEY FISHER: Correct, Your Honor.

THE COURT: All right. So, why don't we—

ATTORNEY BAIN: We could do it 1 and then just call it 1A.

THE COURT: Why don't we do that. We'll go—If you can just make it Defense Exhibit 1.

ATTORNEY FISHER: Absolutely.

THE COURT: So, Defense—Any objection to the admission of Defense Exhibit containing 1A through 1(7) (sic).

ATTORNEY BAIN: No.

THE COURT: 1A through 1F? G?

ATTORNEY FISHER: G.



THE COURT: Thank you. Defense Exhibit 1, the disc, with 1A through 1G are admitted. Thank you. All right. Thank you.

ATTORNEY FISHER: Yep. Thank you.

THE COURT: All right. Any caselaw anyone wants to look—have me look at right now? I think I understand the issues. Obviously, there's going to be some relevant caselaw.

ATTORNEY BAIN: I don't have anything initially prepared. I can—I'm sure we could draft a memo. I had the issue come here and there.

THE COURT: Okay. Yeah. Why don't we do this: We're going to take our time on this. I believe plea day is now August 28th and trial is October 2nd.

ATTORNEY BAIN: Correct, Your Honor.

THE COURT: All right. So, we'll enter this Order—And, obviously, counsel agrees I can take the matter under advisement.

ATTORNEY FISHER: Yes, Your Honor. The only thing I would—I believe—So, my client has two pending cases. I think case 269 is actually the one scheduled for plea court on August 28th. I think, unfortunately, this one is currently—

ATTORNEY BAIN: No. I have an Order here indicating—Wait a second.

ATTORNEY FISHER: And the docket, at least as far as this morning, showed that we have plea court and it's coming up on July 24th, I believe.

ATTORNEY BAIN: I would not object to a continuance.

THE COURT: Okay.

ATTORNEY FISHER: I would request—I was going to no matter what happened today request that we keep these together.

THE COURT: Sure.

ATTORNEY FISHER: Obviously, the potential of a global resolution is to my client's benefit.

THE COURT: Okay.

ATTORNEY FISHER: And all time can run against us so that our motion is being decided, Your Honor.

THE COURT: All right. So, we'll enter this Order . . .  
(Thereupon, an Order of Court was made, it being a separate and distinct document.)

THE COURT: The case we're dealing with now is 266-2023, correct?

ATTORNEY BAIN: Correct, Your Honor.

ATTORNEY FISHER: That's correct.

THE COURT: All right. Because I do—I think that's already been continued. It doesn't matter because it—I have a docket that has that highlighted and Judge Campbell entered an Order on June 19th. But, regardless, we're looking at August 28th and October 2nd now.

ATTORNEY FISHER: Thank you.

THE COURT: All right. Anything else we need for the record?

ATTORNEY BAIN: Not from the Commonwealth.

ATTORNEY FISHER: Not from the defense.

THE COURT: All right. Thank you, everyone.

ATTORNEY FISHER: Thank you, Your Honor.

ATTORNEY BAIN: Thank you, Your Honor.

THE COURT: We're in recess I think till one o'clock. I think we have to handle a—actually, 1:15. I think we're doing a PFA downstairs and then we'll be here at 1:30.

TIPSTAFF: Court is in recess until 1:15.

(Proceeding concluded at 11:37 a.m.)

**DEFENDANT’S OMNIBUS PRE-TRIAL  
MOTION FOR SUPPRESSION OF THE  
EVIDENCE  
(APRIL 19, 2023)**

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IN THE COURT OF COMMON PLEAS OF ADAMS  
COUNTY, PENNSYLVANIA  
CRIMINAL

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COMMONWEALTH OF PENNSYLVANIA,

v.

DAVID A. MCMASTER, JR.,

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Docket No.: CP-01-CR-266-2023

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**DEFENDANT’S OMNIBUS  
PRE-TRIAL MOTION FOR  
SUPPRESSION OF THE EVIDENCE**

AND NOW, this 19th day of April 2023, comes the Defendant, by and through his counsel Richard W. Fisher, III, Esquire, of the Ferro Law Firm, LLC, and respectfully files the within Defendant’s Omnibus Pre-trial Motion for Suppression of Evidence and in support thereof avers the following:

1. David A. McMaster, Jr. (hereinafter the “Defendant”) is the Defendant in the above captioned matter.

2. Defendant is currently charged with Manufacture of a Controlled Substance – Psilocybin graded

as an ungraded Felony pursuant to Title 35 P.S. §780-113(a)(30); Possession of Psilocybin graded as an ungraded Misdemeanor pursuant to Title 35 P.S. §780 113(a)(16); Possession of a Small Amount of Marijuana graded as an ungraded Misdemeanor pursuant to Title 35 P.S. §780-113(a)(31)(i); Possession of Drug Paraphernalia graded as an ungraded Misdemeanor pursuant to Title 35 P.S. §780 113(a)(32); Disorderly Conduct graded as a Misdemeanor of the 3rd degree pursuant to Title 18 Pa. C.S.A. §5503(a)(4); Indecent Exposure graded as a Misdemeanor of the 2nd Degree pursuant to Title 18 Pa. C.S.A. §3127; and Public Drunkenness 18 Pa. C.S.A. §5505 graded as a Summary offense for an incident alleged to have occurred on December 7<sup>th</sup>, 2022.

3. Defendant had his preliminary hearing on March 1st, 2023 at which time he waived the matter into the Court of Common Pleas and was provided an arraignment date of March 20th, 2023.

4. Defendant subsequently waived his arraignment through counsel.

5. “Article I, Sec. 8 of the Pennsylvania Constitution and the Fourth Amendment of the United States Constitution protect against unreasonable searches and seizures.” *Commonwealth v. Richter*, 781 A.2d 1181, 1184 (Pa.Super. 2002).

6. Pennsylvania Rule of Criminal Procedure 581(H) states in pertinent part that, “The Commonwealth shall have the burden of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of the Defendant’s rights.”

## **I. Suppression of Defendant's Statements to Police**

7. Paragraphs 1 through 6 are incorporated herein as if more fully set forth at length.

8. "The law is clear that *Miranda* is not implicated unless the individual is in custody *and* subjected to interrogation." *Commonwealth v. Snyder*, 60 A.3d 165, 170 (Pa.Super. 2013) Quoting *Commonwealth v. Umstead* 916 A.2d 1146, 1149-1152 (Pa.Super. 2007); Referencing *Rhode Island v. Innis*, 446 U.S. 291 (1980).

9. "Police detentions only become custodial when, under the totality of the circumstances, the conditions and/or duration of the detention become so coercive as to constitute the functional equivalent of formal arrest... [T]he test focuses on whether the individual being interrogated reasonably believes his freedom of action is being restricted." *Commonwealth v. Snyder*, 60 A.3d at 170; Quoting *Commonwealth v. Baker*, 963 A.3d 495, 501 (Pa.Super. 2008).

10. "The standard for determining whether an encounter with the police is deemed "custodial" or police have initiated a custodial interrogation is an objective one based on a totality of the circumstances, with due consideration given to the reasonable impression conveyed to the person interrogated." *Commonwealth v. Mannion*, 725 A.2d 196, 200 (Pa.Super. 1999). Citing to *Commonwealth v. Gwynn*, 723 A.2d 143, 148 (1998).

11. "Custodial interrogation has been defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his [or her] freedom of action in any

significant way.”” *Commonwealth v. Mannion*, 725 A.2d at 200; Quoting *Commonwealth v. Johnson*, 541 A.2d 332, 336 (Pa.Super. 1988), Quoting *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

12. “The appropriate test for determining whether a situation involves custodial interrogation is as follows: The test for determining whether a suspect is being subjected to custodial interrogation so as to necessitate Miranda warnings is whether he is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation.” *Id.* at 200; Citing to *Commonwealth v. Busch*, 713 A.2d 97,100 (Pa.Super. 1998), Quoting *Commonwealth v. Rosario*, 652 A.2d 354, 365-66 (Pa.Super. 1994).

13. In the current matter, over Officer Ammerman’s in car camera you can overhear him making contact with the Defendant that he handcuffs him for safety purposes.

14. After that, the Defendant is kept in custody and is not allowed to get clothes or take his dog inside his home.

15. Clearly, any reasonable person would believe based upon the foregoing that they would not be free to leave or move about freely based upon being handcuffed and restricted from where they are able to move.

16. As such, the Defendant was subjected to custodial detention and was answering the questions posed by the officer without the benefit of *Miranda* warnings.

17. Wherefore, any and all statements made by the Defendant to any law enforcement officer were obtained unlawfully and warrant suppression.

**II. Suppression of all items located within the Defendant's residence without a lawfully issued search warrant**

18. Paragraphs 1 through 17 are incorporated herein as if more fully set forth at length.

19. "The expectation of privacy protected against the United States and Pennsylvania Constitutions has been held to be greatest in one's home." *Commonwealth v. Richter*, 791 A.2d, 1181, 1184 (Pa. Super. 2002); Referencing *Commonwealth v. Gutierrez*, 750 A.2d 906 (Pa.Super. 2000).

20. "A warrantless search of a residence is per se unreasonable unless justified by a specific exception to the warrant requirement." *Commonwealth v. Richter*, 791 A.2d at 1184. Citing to *Commonwealth v. Gutierrez*, 750 A.2d 906.

21. In determining whether exigent circumstances exist, a number of factors are to be considered. Among the factors to be considered are: (1) the gravity of the offense, (2) whether the suspect is reasonably believed to be armed, (3) whether there is above and beyond a clear showing of probable cause, (4) whether there is a strong reason to believe that the suspect is within the premises to be searched, (5) whether there is a likelihood that the suspect will escape if not swiftly apprehended, (6) whether the entry was peaceable, and (7) the time of the entry, i.e., whether it was made at night. These factors are to be balanced against one another in



determining whether the warrantless intrusion was justified.

Other factors may also be taken into account, such as whether there is hot pursuit of a fleeing felon, a likelihood that evidence will be destroyed if police take the time to obtain a warrant, or a danger to police or other persons inside or outside the dwelling.” *Commonwealth v. Richter*, 791 A.2d 1181, 1185 (Pa. Super. 2002), *Commonwealth v. Santiago*, 736 A.2d 624, 631-632 (Pa. Super. 1999).

22. In the current matter it is clear that the factors weigh heavily against the police warrantless entry into the Defendant’s residence.

23. In the current matter, prior to the entry, the police had already taken the Defendant into custody and placed him in handcuffs.

24. As the Defendant indicated he lived alone and there was no one else present to destroy any potential evidence, the police certainly could have obtained a search warrant.

25. Furthermore, due to the Defendant’s nakedness, it is clear he was not in possession of any weapons and that the officers on scene were not in any danger.

26. Even though the Defendant was under the influence of some drug or combination of drugs upon the officer’s arrival, there was no indication there would be any more drugs located within the residence.

27. Review of the factors the only two that weigh in favor of law enforcement’s unlawful entry are the time of the entry was not at night and that the entry was peaceable as the door was left open.

28. The officer in his police report indicates that the residence was searched for a protective sweep due to it being in disarray and concern for other parties in the residence.

29. However, in listening to the dash cam footage, the Defendant advised the officer that he lived alone and the Defendant did not have any visible marks or injuries that would be indicative of a fight or assault that were documented within the police report.

30. As such, and due to the factors weighing against a warrantless entry and search of the Defendant's residence, the police entry and search of the Defendant's residence was unlawful and in violation of the Defendant's constitutional rights.

31. WHEREFORE, any and all evidence located during the unlawful search of the Defendant's residence warrants suppression.

### **III. Request for Permission to Amend Motion upon Receipt of Supplemental Discovery**

32. Paragraphs 1 through 32 are incorporated herein as if more fully set forth at length.

33. Discovery was mailed to counsel on March 23rd, 2023 and was received by Counsel on March 27th, 2023.

34. Counsel had a second shoulder surgery due to complications from the first surgery on March 24th, 2023.

35. Counsel has reviewed fully initial discovery and upon review is filing the current motion in good faith and based on the information currently available to him.

36. Counsel has requested the Adams County District Attorney's Office look into any additional dash cam or body worn camera footage for assisting officers on scene in this matter as only the affiant, Officer Ammerman's dash cam was initially provided to the District Attorney's office and subsequently to Counsel.

37. Counsel has also requested a copy of the search warrant that was applied for and received in this matter.

38. ADA Bain indicated that he has reached out and is working on obtaining the supplemental discovery that Counsel has requested and is working in a diligent and timely fashion.

39. However, as there could be additional supplemental discovery, Counsel is respectfully requesting that hearing on the within motions not be scheduled for at least 45 days to afford the District Attorney's Office to receive any supplemental discovery and for Counsel to have an opportunity to receive and review same.

40. All time would run against Defense for purposes of Pa.R.Crim.P. 600 as it is the Defense Omnibus Pre-trial Motion causing delay of the case and was filed for the Defendant's benefit and that the delay in the scheduling of hearing on said motion to receive additional discovery is requested on the Defendant's behalf and for his benefit.

41. Counsel would also respectfully request that this Honorable Court grant him leave to amend the within Omnibus Pre-trial motion within 30 days of his receipt of supplemental discovery.

Respectfully submitted,

/s/ Richard W. Fisher, III

Counsel for the Defendant

Richard W. Fisher, III, Esq.

PA ID #: 312097

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