

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

25-P-502

COMMONWEALTH

vs.

CHRISTIAN M. VERDE.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

A jury convicted the defendant of improper storage of a firearm, possession of ammunition without a firearm identification (FID) card, possession of a firearm without a license outside of the defendant's home or business, and disturbing the peace. On appeal, the defendant argues that the judge erred in denying his motion to suppress the firearm and ammunition recovered from his apartment because he did not freely and voluntarily consent to the warrantless search of his home. The defendant also contends that his convictions of unlawful possession of a firearm and ammunition should be vacated because the nonresident firearm licensing scheme in

effect at the time of his arrest was subsequently ruled unconstitutional. We affirm.

1. Background. a. Motion to suppress. We summarize the judge's factual findings, supplemented by undisputed evidence derived from witness testimony¹ and our de novo review of the defendant's recorded postarrest statement.² On January 21, 2021, numerous North Attleboro police officers responded to a dispatch involving a resident brandishing a firearm at an employee in the management office of the apartment complex where the defendant lived. Upon their arrival, the officers, displaying rifles and handguns, positioned themselves outside the main door to the defendant's apartment building. Upon a request from police dispatch, the defendant exited the building with his hands raised and complied with officers' commands to kneel. An

¹ See Commonwealth v. Jones-Pannell, 472 Mass. 429, 431 (2015) ("appellate court may supplement a motion judge's subsidiary findings with evidence from the record that is uncontroverted and undisputed and where the judge explicitly or implicitly credited the witness's testimony . . . only so long as the supplemented facts do not detract from the judge's ultimate findings" [quotations and citations omitted]).

² See Commonwealth v. Tremblay, 480 Mass. 645, 646 (2018) ("appellate court may independently review documentary evidence but should accept subsidiary findings based partly or wholly on oral testimony, unless clearly erroneous"). The defendant does not challenge the voluntariness of the statement.

officer placed the defendant in handcuffs and advised him of his Miranda rights.

Detective Grunewald asked the defendant for permission to enter his apartment unit to locate the firearm. The defendant told Detective Grunewald that he could enter the unit, and he informed the detective that the firearm was located on top of his refrigerator. The defendant identified for officers which key to use to access his unit and how to use it after Detective Grunewald had difficulty opening the door. Specifically, the defendant advised Detective Grunewald that he needed "to jiggle the lock in a certain way" to unlock the apartment door.

Officers entered the defendant's apartment and located an unloaded firearm on top of the refrigerator. Detective Grunewald then asked the defendant if he had ammunition, and the defendant responded that he had ammunition on the top shelf of his bedroom closet. An officer recovered the ammunition from the identified location.

At no point did officers obtain the defendant's written consent to search his apartment or advise the defendant that he was not obligated to consent to a search of his apartment.

b. Trial. At trial, the defendant's recorded interview was entered into evidence. In it, he acknowledged that he had moved to Massachusetts in early 2019, about one year and nine

months prior to the incident. The defendant also testified in his own defense, stating that he purchased the firearm and ammunition in Florida prior to moving to Massachusetts. Additionally, in his postarrest interview, the defendant acknowledged that he did not have a Massachusetts license to carry a firearm or an FID card.

2. Discussion. a. Motion to suppress. The defendant argues that police did not obtain voluntary consent to enter his home because officers used "extraordinary force" to apprehend him and did not inform him that he had the right to refuse the search, and therefore the evidence seized should be suppressed. We disagree.

"In reviewing a decision on a motion to suppress, we accept the judge's subsidiary findings of fact absent clear error but conduct an independent review of [the] ultimate findings and conclusions of law" (citation omitted). Commonwealth v. Carrasquillo, 489 Mass. 107, 116-117 (2022). "When the police rely on consent to justify a warrantless entry, under both the Fourth Amendment and art. 14, the prosecution has the burden of proving that the consent was, in fact, freely and voluntarily given" (quotation and citation omitted). Commonwealth v. Rogers, 444 Mass. 234, 237 (2005). To demonstrate consent for a warrantless entry, the Commonwealth must show "consent

unfettered by coercion, express or implied, and also something more than mere acquiescence to a claim of lawful authority" (quotation and citation omitted). Commonwealth v. Voisine, 414 Mass. 772, 783 (1993). "The voluntariness of an individual's consent to a warrantless entry is an issue of fact, and must be examined in light of the totality of the circumstances of the case." Rogers, supra at 238. In determining the voluntariness of consent, a court may consider, among other factors, "the presence of armed, uniformed officers; whether the defendant was informed of his right to refuse consent; the age, intelligence, and other personal characteristics of the defendant; and whether the defendant was in custody when consent was given." Commonwealth v. Carr, 458 Mass. 295, 302 (2010).

Here, the presence of five to eight armed, fully uniformed officers did not in itself create an overly coercive environment that rendered involuntary the defendant's permission to enter his apartment. There is no indication that the officers threatened the defendant or brandished their weapons for any longer than necessary to secure the scene, and the judge did not find the police response to be disproportional to the call for service. See Commonwealth v. Harmond, 376 Mass. 557, 561-562 (1978) ("the presence of several uniformed officers . . . may suggest absence of consent" but does not "necessarily compel[]

such a finding"). In response to the detective's request for permission to enter his apartment -- after the scene had been secured, and after having been informed of his Miranda rights -- the defendant told officers they could enter and search his unit and then instructed them on how to use his apartment key and where to find the firearm and ammunition inside the unit. See Commonwealth v. Aguiar, 370 Mass. 490, 496 (1976) ("Even if a search and seizure is involved here, consent vitiating the need for a search warrant may be found in cooperative conduct"); United States v. Wilkinson, 926 F.2d 22, 25 (1st Cir. 1991) (defendant's act of telling officers they could search his bag and location of bag with guns in it supported voluntariness). The officers "did not utilize trickery or threats to gain entrance to the dwelling," cutting against any claim of coercion. Commonwealth v. Walker, 370 Mass. 548, 555, cert. denied, 429 U.S. 943 (1976). See Commonwealth v. Burgess, 434 Mass. 307, 310-311 (2001). In fact, during his postarrest interrogation, the defendant admitted to telling an officer the location of the ammunition and to "absolutely" giving the officer permission to retrieve it.³

³ On appeal, the defendant does not challenge the admission of either his prearrest or postarrest statements.

The circumstances in this case are distinguishable from the precedent the defendant cites in his brief. Unlike Carr, 458 Mass. at 303, where officers created a custodial environment before pronouncing, in a manner a judge found was "more like an order than a request," that they "would like to search the [defendant's dormitory] room," the detective here asked the defendant for his consent to search while the defendant was in a public space after he had exited his apartment building on his own volition and agreed to speak with the police after receiving Miranda warnings. Contrast Rogers, 444 Mass. at 241, citing Johnson v. United States, 333 U.S. 10, 12-13 (1948) ("consent invalid as granted in submission to authority rather than as an understanding and intentional waiver of a constitutional right where defendant stepped back acquiescently and admitted police into hotel room").

Additionally, the judge did not find that the defendant was impaired in any manner when he allowed the police to enter his apartment. Instead, the evidence, including the defendant's postarrest statements, demonstrates that the defendant was aware of his right to refuse to consent but gave it freely and voluntarily. See Harmond, 376 Mass. at 562 (factors pointing toward police coercion included defendant's intoxication and "limited intelligence").

Finally, that the police failed to inform the defendant that he had a right to refuse consent is only one factor to consider in determining voluntariness, and it is not dispositive. See Commonwealth v. Ortiz, 478 Mass. 820, 826 (2018) ("To establish that the consent to a search is valid, the Commonwealth need not prove that the consenting person knew that he or she had a right to refuse consent, or that the person was informed of that right"); Carr, 458 Mass. at 302. Here, Detective Grunewald admitted he did not comply with the department's preferred policy of providing a written consent form, and he did not recall advising the defendant he could refuse consent. However, the detective's failure does not render the defendant's consent involuntary considering the totality of the circumstances. See Rogers, 444 Mass. at 237-238.

b. Nonresident licensing scheme. Relying on Commonwealth v. Donnell, 495 Mass. 471, 483-484 (2025), the defendant next argues that his convictions for unlawful possession of ammunition and unlawful possession of a firearm outside the defendant's home or business must be vacated because the nonresident firearm licensing scheme in effect at the time of his arrest, G. L. c. 140, § 131F, was unconstitutional. The defendant's argument is unavailing for at least two reasons.

First, in Commonwealth v. Rodriguez, 496 Mass. 627, 642 n.8 (2025), the Supreme Judicial Court abrogated its holding in Donnell that the nonresident firearm licensing scheme, as in effect prior to August 10, 2022, was facially unconstitutional. To the extent the defendant's appeal relies entirely on the facial unconstitutionality of the nonresident firearm licensing scheme, the Rodriguez holding is fatal to his claims.

Second, the statute at issue, G. L. c. 140, § 131F, does not apply to the defendant because he was a resident of Massachusetts at the time of his arrest, and there is no evidence to suggest that he ever applied for a Massachusetts firearm license. At trial, there was evidence that the defendant moved to Massachusetts approximately one year and nine months before his arrest, and he does not dispute his residency status on appeal. Thus, the defendant was not a nonresident subject to G. L. c. 140, § 131F. Additionally, G. L. c. 140, § 131F, concerns the broad discretion of the colonel of the State police to issue temporary licenses to carry a firearm to nonresidents. Where there is no evidence that the defendant applied for such a license -- and the defendant testified to having never applied for such a license -- the statute is,

again, inapplicable to this defendant. See Commonwealth v. Marquis, 495 Mass. 434, 436 (2025).

Judgments affirmed.

By the Court (Massing,
Neyman & Smyth, JJ.⁴),

A handwritten signature in blue ink, appearing to read "Paul Little".

Clerk

Entered: August 7, 2026.

⁴ The panelists are listed in order of seniority.