NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JUSTIN ANDREW DIBERT	:	
Appellant	:	No. 1472 MDA 2025

Appeal from the Judgment of Sentence Entered September 9, 2025
In the Court of Common Pleas of Fulton County Criminal Division at
No(s): CP-29-CR-0000002-2024

BEFORE: LAZARUS, P.J., STABILE, J., and BENDER, P.J.E.

MEMORANDUM BY LAZARUS, P.J.: **FILED NOVEMBER 06, 2026**

Justin Andrew Dibert appeals from the judgment of sentence, entered in the Court of Common Pleas of Fulton County, after being convicted of one count each of driving under the influence (DUI)—general impairment,[1] DUI—highest rate,[2] and careless driving.[3] After careful review, we affirm.

On November 20, 2023, Dibert reported for work as a Pennsylvania State Police (PSP) trooper. ***See*** N.T. Suppression Hearing, 6/25/24, at 5-6. Dibert had recently been assigned to the McConnellsburg barracks. ***See id.*** at 15. Around 3:00 p.m., Trooper Matt Rader called Corporal Dylan Gelvin, the shift supervisor at the McConnellsburg barracks, and informed him that he

---

[1] 75 Pa.C.S.A. § 3802(a)(1).

[2] ***Id.*** at § 3802(c).

[3] ***Id.*** at § 3714(a).

had observed Dibert having trouble parking and backing up his pick-up truck. ***See id.*** at 5, 47-48. Around 3:30 p.m., Corporal Gelvin saw Dibert in the parking lot, now in a PSP vehicle, and went to speak with him. ***See id.*** at 5. Corporal Gelvin spoke with Dibert for fifteen to twenty minutes, during which Corporal Gelvin introduced himself, told Dibert that another trooper had observed him having trouble parking his vehicle, and asked Dibert if he had any alcohol that day, the night prior, or over the weekend.[4] ***See id.*** at 7-8. Dibert responded that he had not but told Corporal Gelvin that he has a hard time around Veteran's Day. ***See id.*** Corporal Gelvin did not smell an odor of alcohol on Dibert during this conversation but did observe that his speech was slow and slurred. ***See id.*** at 29.

Corporal Gelvin then informed Sergeant Melissa Sneath, his supervisor, about his interaction with Dibert and the concerns that Trooper Rader had relayed to him. ***See id.*** at 9, 46-47. Based on this information, Sergeant Sneath used a PSP computer system to determine which patrol vehicle Dibert was in and saw that the vehicle was stationed in an odd location.[5] ***See id.*** at 47-49. Sergeant Sneath, reaching the end of her shift and wanting to check in on Dibert, left the barracks around 4:10 p.m., drove by the intersection where Dibert's vehicle had last registered on the PSP program, and saw his

---

[4] November 20, 2023 was a Monday.

[5] Sergeant Sneath considered the location "kind of odd" because it was "not an intersection or an area of road where troopers would usually sit to monitor traffic or to run radar[.]" ***Id.*** at 49.

patrol vehicle in a pull-off area outside the travel lane. ***See id.*** at 50-51. Sergeant Sneath turned her car around, drove back in the direction of Dibert's vehicle, and pulled up parallel with it. ***See id.*** at 51. Sergeant Sneath could see Dibert sitting in his car but could not see his entire face; Dibert's body was turned towards the passenger side, and Sneath could only see the left side of his face and the back of his neck. ***See id.*** at 51. Sergeant Sneath waited for thirty seconds, during which Dibert did not appear to notice her presence. ***See id.*** Sergeant Sneath then drove back toward the station and called Corporal Gelvin, telling him what she had seen and asking him to radio Dibert to return to the station. ***See id.*** at 51.[6]

Once Sergeant Sneath was told that Dibert had made it back to the station, she and Corporal Gelvin watched Dibert via surveillance cameras in the parking lot and waited for Dibert to come into the barracks.[7] ***See id.*** at 11, 53. Dibert did not enter after a couple of minutes, so they went out to his car to meet him. ***See id.*** Sergeant Sneath approached Dibert's driver's side door and asked Dibert to come into her office. ***See id.*** at 53. Sergeant Sneath and Corporal Gelvin observed that Dibert was slow to exit his vehicle, but he did not otherwise stumble or have difficulty getting out of the car. ***See id.*** at 12, 53. Sergeant Sneath testified that Dibert could have refused Sergeant

---

[6] When asked on cross-examination whether Dibert could have refused the radio to return to the office, Sergeant Sneath testified that "[i]t would be unusual if a trooper did that." ***Id.*** at 69.

[7] Sergeant Sneath was out of uniform and in plain clothes at this time. ***Id.*** at 59-60. Corporal Gelvin remained in his PSP uniform.

Sneath's initial request to exit his vehicle and come into the station, but that his refusal would have resulted in disciplinary action or other ramifications. ***See id.*** at 69-70.

Sergeant Sneath, Corporal Gelvin, and Dibert then went into Sergeant Sneath's office, closing the door behind them for privacy. ***See id.*** at 12, 57-58. Sergeant Sneath did not request that any other troopers stand at the door or inside the office. ***See id.*** at 60. No one told Dibert that he was not free to leave the barracks at this point. ***See id.*** at 54. Sergeant Sneath's reason for bringing Dibert in to talk was "first and foremost for his welfare[,]" because Dibert told Corporal Gelvin that he struggled around Veteran's Day and because she saw him "sleeping or at least not cognizant of his surroundings" in his patrol vehicle. ***See id.*** at 55.

In her office, Sergeant Sneath sat behind her desk with Dibert seated in a chair across from her and Corporal Gelvin seated on a couch off to the side. ***See id.*** at 15-16, 58. Sergeant Sneath explained to Dibert that she was concerned for his well-being. ***See id.*** at 58. Dibert explained that he had stress around Veteran's Day and Memorial Day, and that he felt that he did not have anyone to talk with about that stress. ***See id.*** at 58-59. Dibert also stated that he had a problem but did not elaborate further. ***See id.*** at 59. Sergeant Sneath and Corporal Gelvin tried to get him to talk about this problem, asking whether they could help him and how he was feeling. ***See id.*** Corporal Gelvin thought Dibert seemed apprehensive about answering

their questions and found Dibert's speech to be "low and almost whispery." ***Id.*** at 16.

At one point, after the three had been talking for roughly twenty to thirty minutes about Dibert's background, Dibert was asked[8] if he had consumed any alcohol the night before. ***See id.*** at 59. Dibert initially said that he did not have alcohol the previous night before eventually admitting that he had been drinking at his sister's house the night prior but had stopped by 9 p.m., when his mother drove him home. ***See id.*** at 17. Sergeant Sneath and Corporal Gelvin asked Dibert how many drinks and what kind of drinks he had consumed. ***See id.*** at 59. Dibert did not provide a direct answer, saying he did not recall. ***Id.*** 17, 59.

When asked to describe how the interview progressed, Sergeant Sneath explained:

> I mean, the tone remained conversational. It wasn't confrontational. It was—there was no yelling or screaming or raised voices. I think it was pointed out to him that his speech was slurred, his speech was slow and he was taking awhile to respond to the questions. I think it was pointed out to him, hey, these are all indicators that you might have been drinking, you know, have you had anything to drink. He was asked more than once.

---

[8] Neither Sergeant Sneath nor Corporal Gelvin specified who asked the question. ***See id.*** at 16, 59.

Id. at 61. Sergeant Sneath asked Dibert if he would submit to either a preliminary blood test (PBT)[9] or a blood test, both of which Dibert declined. ***See id.*** at 18, 61. Corporal Gelvin asked why he would not submit to either test, and Dibert responded that he was afraid of what the results would be. ***Id.*** at 61-62. Corporal Gelvin asked Dibert if he was still intoxicated and Dibert stated that he should not be at work. ***Id.*** at 18, 63. These responses led Sergeant Sneath to believe that "the reason for [Dibert's] behavior is because he's under the influence of alcohol, not a stressor or PTSD or something like that." ***Id.*** at 62. After Dibert stated that he should not be at work, Sergeant Sneath requested Dibert step out of the office, change into his civilian clothes, and sit with another trooper, Trooper Ellis,[10] in the barracks conference room. ***See id.*** at 18-19. Sergeant Sneath called her supervisor, Captain Thomas Hertlein, and told him about the situation and why she thought Dibert was under the influence. ***See id.*** at 18, 63, 71-72. Captain Hertlein decided that the interview would proceed as a DUI investigation, and that Corporal Gelvin would administer the standardized field sobriety tests (SFSTs).[11] ***Id.*** at 18, 63-64.

---

[9] A PBT is used to measure blood alcohol concentration (BAC). ***See*** Trial Court Opinion, 11/7/24, at 5.

[10] Trooper Ellis' first name is not stated in the record.

[11] Sergeant Sneath testified that she spoke with Captain Hertlein several times during the discussion with Dibert, but she could not state with specificity when each call occurred throughout and what was relayed during each call. ***See id.*** at 63, 72.

Before administering the SFSTs, Corporal Gelvin had Dibert change from his uniform into his plain clothes. ***See id.*** at 19. Trooper Ellis returned with Dibert to Sergeant Sneath's office, where Corporal Gelvin administered the SFSTs. ***See id.*** at 19-20, 64. The SFSTs included the horizontal gaze nystagmus (HGN), walk-and-turn, and one-leg stand tests. ***See id.*** at 20. Corporal Gelvin observed several indicators of impairment and relayed these observations to Sergeant Sneath. ***See id.*** at 20, 64. Corporal Gelvin asked Dibert if he would submit to a PBT, Dibert agreed, and the test was positive for alcohol. ***See id.*** at 20-21. Sergeant Sneath testified that Dibert could have chosen to leave the interview at any time, but his leaving may have triggered disciplinary action, and the situation would have been documented and forwarded along the proper channels. ***See id.*** at 70. At no point was Dibert advised of his ***Miranda***[12] rights or that he could refuse to speak with Sergeant Sneath. ***See id.*** at 73.

Sergeant Sneath and Corporal Gelvin again called Captain Hertlein, who contacted Major Matthew Nickey, who assigned Trooper Curtis Killian from the PSP Chambersburg barracks to conduct a DUI investigation of Dibert. ***See id.*** at 21, 64. Sergeant Sneath walked Dibert to the conference room and had no further interactions with him. ***See id.*** at 65.

When Trooper Killian arrived, Corporal Gelvin provided him with the background on Dibert's situation—what occurred between Trooper Rader

---

[12] ***See Miranda v. Arizona***, 384 U.S. 436 (1966).

informing Corporal Gelvin that Dibert was struggling to park and Trooper Killian's arrival at the barracks—and explained to him the indicators of intoxication he observed during the SFSTs. ***See id.*** at 21, 79-81. Trooper Killian was informed that different troopers had kept Dibert under observation the entire time he was at the barracks to prevent him from consuming alcohol while the situation unfolded. ***See id.*** at 89.

Trooper Killian spoke with Dibert in a separate room off of the barracks kitchen, identified himself, and explained why he was there. ***See id.*** at 82. During this interaction, Trooper Killian detected an odor of alcohol coming from Dibert. ***See id.*** at 89-90. Dibert was never placed in handcuffs throughout the encounter. ***See id.*** at 82, 84. Trooper Killian asked if Dibert was willing to take a blood test, which Dibert agreed to. ***See id.*** Trooper Killian read Dibert the DL-26B form,[13] which Dibert signed, acknowledging that Trooper Killian read him the form verbatim. ***See id.***

---

[13] The Commonwealth entered the DL-26B form, which contains the following warnings that must be read to an arrestee suspected of driving under the influence and subject to a blood test:

> It is my duty as a police officer to inform you of the following:
>
> 1. You are under arrest for driving under the influence of alcohol or a controlled substance in violation of Section 3802 of the Vehicle Code.
> 2. I am requiring that you submit to a chemical test of blood.
> 3. If you refuse to submit to the blood test, your operating privilege will be suspended for at least 12 months. If you previously refused a chemical test or were previously convicted

(Footnote Continued Next Page)

Trooper Killian, Corporal Gelvin, and Dibert left the barracks and went to the Fulton County Medical Center. ***See id.*** at 84. Dibert reiterated his consent and underwent a blood draw. ***See id.*** at 85. Trooper Killian was provided with the results, which indicated a low-end range BAC of .153. ***See id.*** at 86;[14] Commonwealth's Exhibit 2, Fulton County Medical Center Blood Alcohol Test Report. Following the results of the blood test, Trooper Killian prepared an affidavit of probable cause and the criminal complaint underlying the instant matter. ***See id.*** at 86. Trooper Killian did not read Dibert his ***Miranda*** rights prior to or after the blood draw. ***See id.*** at 84.

> of driving under the influence, your operating privilege will be suspended for up to 18 months. If your operating privilege is suspended for refusing chemical testing, you will have to pay a restoration fee of up to $2,000 in order to have your operating privilege restored.
>
> **4. You have no right to speak with an attorney or anyone else before deciding whether to submit to testing. If you request to speak with an attorney or anyone else after being provided these warnings or you remain silent when asked to submit to a blood test, you will have refused the test.**

See Commonwealth's Exhibit 1, DL-26B Form (emphasis added). These warnings are referred to as the ***O'Connell*** warnings. ***See Pa. Dep't of Transp., Bureau of Traffic Safety v. O'Connell***, 555 A.2d 873 (Pa. 1989).

[14] The trial court opinion and testimony both incorrectly identify Dibert's low-end range BAC of .118. ***See*** Trial Court Opinion, 11/7/24, at 7 ("The result of the test from FCMC's lab was between .118% and .153% blood alcohol concentration"); N.T. Suppression Hearing, 6/25/24, at 86 (Trooper Killian testifying that high-end range was ".118 percent"). The Fulton County Medical Center Blood Alcohol Test Report clearly indicates a low-end range of .153% high-end range of .188%. ***See*** Commonwealth's Exhibit 2, Fulton County Medical Center Blood Alcohol Test Report.

After charges were filed, the then-Fulton County District Attorney, Travis Kendall,[15] and Corporal Gelvin had a discussion regarding the blood sample taken at the Fulton County Medical Center. ***See id.*** at 41. District Attorney Kendall advised Corporal Gelvin to have the blood sent for additional testing at NMS Laboratories. ***See id.*** Corporal Gelvin requested the additional testing by NMS Laboratories, which resulted in a report indicating a BAC of .173 plus or minus .011. ***See id.*** at 42; Commonwealth's Exhibit 3, NMS Laboratories Report, 12/5/23.

On November 22, 2023, the Commonwealth charged Dibert with DUI—general impairment, DUI—high rate,[16] and careless driving. On December 8, 2023, the Commonwealth amended the complaint, withdrawing the charge for DUI—high rate and replacing it with DUI-highest rate. Dibert filed an omnibus pre-trial motion on March 14, 2024, seeking suppression of evidence and dismissal of the DUI—highest rate charge. The trial court held a hearing on the motion on June 25, 2024. On November 5, 2024, the trial court denied the motion. The case proceeded to a stipulated non-jury trial on July 31, 2025, after which the trial court convicted Dibert of DUI—general impairment,

---

[15] Travis Kendall was the District Attorney for Fulton County at the time of Dibert's arrest but retired at the end of 2023. ***See*** Trial Court Opinion, 11/7/24, at 7 n.58. Eric Weisbrod is the current District Attorney of Fulton County. ***See id.***

[16] 75 Pa.C.S.A. 3802(b).

DUI—highest rate,[17] and careless driving. On September 9, 2025, the trial court sentenced Dibert to six months of restrictive probation.[18]

Dibert timely appealed on October 2, 2025. Both Dibert and the trial court have complied with Pa.R.A.P. 1925. Dibert raises the following issues for our review:

> 1. Whether the [] trial court erred in denying [Dibert]'s motion to suppress for an unlawful detention in the parking lot of the barracks? More specifically, whether [Dibert] was subjected to an investigative detention without reasonable suspicion?
>
> 2. Whether the [] trial court erred in denying [Dibert]'s motion to suppress for an unlawful detention at the barracks when [Dibert] was ordered into [Sergeant Sneath]'s office? More specifically, whether [Dibert]'s detention at the [b]arracks was an arrest that was not supported by probable cause?
>
> 3. Whether [Dibert]'s statements were involuntary pursuant ***Garrity v. New Jersey***, 385 U.S. 493 (1967)[,] because [Dibert] had the option to lose his livelihood or incriminate himself?
>
> 4. Whether [Dibert]'s statements should be suppressed because he was not provided his ***Miranda*** rights after being taken into custody and interrogated? More specifically, whether the fact he was a police officer negates the need for ***Miranda***?
>
> 5. Whether [Dibert]'s [SFSTs] should be suppressed because they constituted an involuntary search?

---

[17] The DUI offenses merged for the purposes of sentencing.

[18] The sentence contained an additional restrictive condition of thirty days of electronic monitoring with alcohol monitoring, or, in the alternative, if electronic monitoring was not available in Bedford County, seventy-two hours in the Bedford County Correctional Facility.

6. Whether [Trooper] Killian lacked probable cause to arrest [Dibert]?

7. Whether [Dibert]'s blood test should be dismissed because his consent was not voluntary?

8. Whether Count 2 should be dismissed because it is a product of selective prosecution[?] More specifically, whether the Commonwealth took arbitrary actions based on [Dibert]'s status as a law enforcement officer?

See Appellant's Brief, at 9-11 (unnecessary capitalization omitted).

In his first two issues, Dibert alleges that the trial court erred in denying his motion to suppress because he was subject to an illegal detention in the parking lot and an illegal arrest inside the barracks. ***See id.*** at 27-34.

Our standard of review in addressing a challenge to the denial of a suppression motion is

> limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court's factual findings are supported by the record, [the appellate court is] bound by [those] findings[.]

Commonwealth v. Fletcher, 307 A.3d 742, 745–46 (Pa. Super. 2023) (citation omitted; brackets in original). We maintain de novo review of the suppression court's legal conclusions. ***See Commonwealth v. Joyner***, 348 A.3d 230, 236 (Pa. Super. 2025).

Dibert first argues Corporal Gelvin subjected him to an unlawful detention in the parking lot of the barracks. ***See*** Appellant's Brief, at 27-30. Dibert claims he was "compelled, pursuant to [PSP] regulations, to answer

questions posed to him and to follow all orders by those of higher rank and authority[.]" ***Id.*** at 28. Dibert contends that, when Corporal Gelvin initiated the first parking lot interaction and asked him questions related to his use of alcohol, he was unable to leave or refuse to answer the questions because he was subordinate to Corporal Gelvin. ***See id*** at 30. Dibert claims that Corporal Gelvin lacked reasonable suspicion to believe criminal activity was afoot at this time. ***See id.*** Therefore, according to Dibert, during this interaction, he was subject to an unlawful detention, and any evidence derived therefrom must be suppressed. ***See id.***

The trial court concluded that the initial parking lot interaction did not reach the level of an investigatory detention. ***See*** Trial Court Opinion, 11/7/24, at 11.[19] The trial court reasoned that Corporal Gelvin was charged with ensuring the safety of the troopers under his command, wanted to introduce himself to Dibert, and testified that Dibert was free to leave the conversation and not prevented from leaving by PSP regulations. ***See id.*** at 11-12.

> "Both the Fourth Amendment of the United States Constitution and Article I, § 8 of the Pennsylvania Constitution protect citizens from unreasonable searches and seizures." ***Commonwealth v. Cook***, [] 735 A.2d 673, 675 ([Pa.] 1999) (citation omitted). "Not every encounter between a law enforcement officer and a citizen constitutes a seizure warranting constitutional protections." ***Commonwealth v. Adams***, [] 205 A.3d 1195, 1199 ([Pa.]

[19] In its Pa.R.A.P. 1925(a) opinion the trial court incorporates and relies upon the reasoning set forth in its opinion denying Dibert's omnibus pretrial motion. ***See*** Trial Court Opinion, 11/7/24, at 4-7 (unpaginated). Accordingly, we cite the trial court's November 7, 2024 opinion.

> 2019). "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." ***Id.***, quoting ***Florida v. Bostick***, 501 U.S. 429, 434[ ] (1991). There are three types of interactions between the police and private citizens: mere encounter, investigative detention, and arrest. ***See*** [***Commonwealth v.***] ***Hicks***, 208 A.3d [916,] 927 [(Pa. 2019)]. A mere encounter "does not constitute a seizure . . . and requires no particular suspicion of criminality[.]" ***Id.*** An investigative detention, on the other hand, "constitutes a seizure of a person, and to be constitutionally valid[,] police must have a reasonable suspicion that criminal activity is afoot." ***Adams***, 205 A.3d at 1200 (citation omitted). An arrest is also, of course, a seizure, "and must be supported by probable cause." ***Id.*** (citation omitted).
>
> While "[n]o bright lines separate these types of encounters," the United States Supreme Court and this Court have endorsed "an objective test by which courts may ascertain whether a seizure has occurred to elevate the interaction beyond a mere encounter." ***Id.*** (citation omitted). This test considers whether, under the totality of the circumstances, "a reasonable person would have felt free to leave or otherwise terminate the encounter." ***Commonwealth v. Lyles***, [] 97 A.3d 298, 303 ([Pa.] 2014). A "reasonable person" under this test is one who is "innocent of any crime[.]" ***Commonwealth v. Livingstone***, [] 174 A.3d 609, 621 ([Pa.] 2017), quoting ***Commonwealth v. Jones***, [] 378 A.2d 835, 840 ([Pa.] 1977). "[W]hat constitutes a restraint on liberty prompting a person to conclude that he is not free to 'leave' will vary, not only with the particular police conduct at issue, but also with the setting in which the conduct occurs." ***Lyles***, 97 A.3d at 303, quoting ***Michigan v. Chesternut***, 486 U.S. 567, 573–74[ ] (1988).

Commonwealth v. Foster, 356 A.3d 747, 758 (Pa. 2026).

The test for whether a mere encounter has risen to the level of an investigative detention, often referred to as the "'free to leave test,' requires the court to determine 'whether, taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence

and go about his business.'" ***See Adams***, 205 A.3d at 1200 (quoting ***Bostick***, 501 U.S. at 437). When analyzing whether a seizure occurred or whether a reasonable person would feel free to leave, courts may consider the following non-exclusive list of factors:

> the number of officers present during the interaction; whether the officer informs the citizen they are suspected of criminal activity; the officer's demeanor and tone of voice; the location and timing of the interaction; the visible presence of weapons on the officer; and the questions asked. Although no single factor controls our analysis, both the United States and Pennsylvania Supreme Courts have held that the approach of a police officer followed by questioning does not constitute a seizure.

Joyner, 348 A.3d at 236–37 (citations and quotations omitted). With respect to the show of authority needed to escalate an encounter into a detention, the circumstances must present some level of coercion, beyond the mere fact of the police officer's role, that conveys a demand for compliance or threat of tangible consequences from refusal. ***See Commonwealth v. Luczki***, 212 A.3d 530, 544 (Pa. Super. 2019). Otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person. ***Commonwealth v. Jones***, 266 A.3d 1090, 1095 (Pa. Super. 2021) (quoting ***Commonwealth v. Beasley***, 761 A.2d 621, 624–25 (Pa. Super. 2000)).

> Reasonable suspicion justifying an investigative detention must be "based upon specific and articulable facts . . . that criminality is afoot." ***Commonwealth v. Zhahir***, [] 751 A.2d 1153, 1156 ([Pa.] 2000), citing ***Terry v. Ohio***, 392 U.S. [1,] 21, 30[ ] [(1968)]. The police must have "a particularized and objective basis for suspecting the particular person stopped of criminal activity." ***United States v. Cortez***, 449 U.S. 411, 417–18[ ]

> (1981). This is not a particularly demanding standard. "Although a mere 'hunch' does not create reasonable suspicion, the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause." ***Kansas v. Glover***, 589 U.S. 376, 380[ ] (2020), quoting ***Navarette v. California***, 572 U.S. 393, 397[ ] (2014). "The reasonable suspicion inquiry 'falls considerably short' of 51% accuracy[.]" ***Id.*** at 381[,] quoting ***United States v. Arvizu***, 534 U.S. 266, 274[ ] (2002). The assessment of whether reasonable suspicion exists "requires an evaluation of the totality of the circumstances[.]" ***Zhahir***, 751 A.2d at 1156. This totality is based on all facts, and "[e]ven a combination of innocent facts, when taken together, may warrant further investigation by the police officer." ***Cook***, 735 A.2d at 676. The investigative detention must be "justified at its inception[;"] circumstances arising after the suspect was detained cannot retroactively provide a lawful basis for the stop. ***Zhahir***, 751 A.2d at 1156, quoting ***Terry***, 392 U.S. at 20[.]

Foster, 356 A.3d at 758–59.

We find support in the record for the trial court's factual findings and turn to our de novo review of its legal conclusions. Taking into account the circumstances surrounding the first parking lot interaction, we agree with the trial court's conclusion that the encounter did not rise to the level of an investigative detention. Corporal Gelvin was the only officer present during the interaction in the barracks parking lot. ***See*** N.T. 6/25/24, at 7-8. Corporal Gelvin did not inform Dibert that he was suspected of criminal activity. ***See id.*** Corporal Gelvin did not testify as to his demeanor or tone during the conversation but did state that he started the conversation by introducing himself because he had not met Dibert before, that he thought the conversation "ended well[,]" and that he "was under the impression that [] Dibert would come in and try to meet some guys" due to it being one of

Dibert's first shifts at the barracks. ***Id.*** at 8. The conversation lasted between fifteen and twenty minutes. ***See id.*** at 7.

The interaction between Corporal Gelvin and Dibert, from the perspective of a reasonable person, innocent of any crime, did not rise to the level of an investigative detention; instead, it was a relatively innocuous conversation between a supervising officer and his supervisee. While Corporal Gelvin did ask Dibert questions about potential alcohol use, the approach of an officer, followed by questioning, does not constitute a seizure. ***See Lyles***, 97 A.3d 298, at 303, 305–06 (no investigative detention where officers asked defendant his reasons for sitting on steps of vacant building and requested identification). This remains the case even where the questions relate to potential criminal conduct. ***See Commonwealth v. Robinson***, 355 A.3d 383, 391–92 (Pa. Super. 2026) (en banc) (no investigative detention where two officers asked defendant if he was okay, exited their vehicles and approached defendant, asked if defendant had any weapons, and asked if he had a permit to carry a firearm); ***Young***, 162 A.3d at 529 (no investigative detention where three officers asked defendant "what he was doing" and "if he had anything on his person that could harm [the officers]").

Although Dibert argues that his status as a subordinate trooper to Corporal Gelvin and the existence of the PSP regulations rendered the encounter an investigative detention, we disagree. On the contrary, we consider a discussion between a state trooper and his supervisor to be inherently less coercive than a discussion between a state trooper and a

member of the public. ***See Livingstone***, 174 A.3d at 621 (taking into account "consideration of the realities of everyday life, particularly the relationship between ordinary citizens and law enforcement"). As for the PSP regulations, they were not entered into evidence, and the testimony as to their relevance to the interview was mixed. ***See*** N.T. Suppression Hearing, 6/25/24, at 23 (Corporal Gelvin answering affirmatively when asked if PSP administrative regulations require troopers to truthfully answer questions asked by superior officer); ***see id.*** at 29 (Corporal Gelvin testifying PSP regulations did not prevent Dibert from ending and leaving interaction). Regardless, we decline to give an internal PSP regulation the force of law that Dibert asks of us, particularly when no explicit reference was made to the regulations or Dibert's obligations thereunder during the interview.[20] Accordingly, as the circumstances would not have indicated to a reasonable person in Dibert's position that he was not free to leave, the initial parking lot interaction remained a mere encounter. ***See Foster***, ***supra***.

Dibert next claims that he was subject to an unlawful arrest at the barracks after being ordered to return to the barracks and subjected to questioning by Sergeant Sneath and Corporal Gelvin. ***See*** Appellant's Brief, at 31-34.

The key difference between an investigative detention and a custodial one is that the latter "involve[s] such coercive conditions as to constitute the

---

[20] We emphasize that neither Sergeant Sneath nor Corporal Gevin invoked, mentioned, or pressured Dibert with the PSP regulations.

functional equivalent of an arrest." ***Commonwealth v. Pakacki***, 901 A.2d 983, 987 (Pa. 2006) (quoting ***Commonwealth v. Ellis***, 662 A.3d 1043, 1047 (Pa. 1995)). Put otherwise, in determining whether an individual was in custody, the "ultimate inquiry is . . . whether there [was] a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." ***See Commonwealth v. Boczkowski***, 846 A.2d 75, 90 (Pa. 2004) (quoting ***Stansbury v. California***, 511 U.S. 318, 322 (1994) (citations omitted)). The standard for determining whether a police encounter is custodial "is an objective one, with due consideration given to the reasonable impression conveyed to the person interrogated rather than the strictly subjective view of the troopers or the person being seized [and] must be determined with reference to the totality of the circumstances." ***Pakacki***, 901 A.2d at 987 (quoting ***Commonwealth v. Edmiston***, 634 A.2d 1078, 1085–86 (Pa. 1993)).

An interaction that begins as an investigative detention may develop into a custodial detention. ***Commonwealth v. Spence***, 290 A.3d 301, 314 (Pa. Super. 2023). When determining whether an encounter is investigative or custodial in nature, relevant factors include, *inter alia*:

> the cause for the detention, the detention's length, the detention's location, whether the suspect was transported against his or her will, whether physical restraints were used, whether the police used or threatened force, and the character of the investigative methods used to confirm or dispel the suspicions of the police.

Id. (quoting ***Commonwealth v Clinton***, 905 A.2d at 1026, 1032 (Pa. Super. 2006)). A "custodial interrogation" has been defined as questioning initiated

by the police after a person has been taken into custody or otherwise deprived of his or her freedom of action in any significant way. ***See Spence***, 290 A.3d at 314–15. An interrogation occurs when the police should know that their words or actions are reasonably likely to elicit an incriminating response from the suspect. ***See id.*** at 315.

Here, Dibert posits he was subject to an unlawful arrest after his supervisors directed him to enter the barracks and interviewed him, asking whether he was under the influence of alcohol. ***See*** Appellant's Brief, at 32-33. Dibert alleges it was only after he was subject to an unlawful interrogation that it was determined he may have operated a vehicle under the influence of alcohol and, accordingly, his arrest was unconstitutional. ***See id.*** at 34.

The trial court found that the encounter between Sergeant Sneath, Corporal Gelvin, and Dibert was not a custodial detention until Dibert admitted that he probably should not have reported for duty. ***See*** Trial Court Opinion, 11/7/24, at 17. As the trial court analyzed, it was, up until that point, a work-related conversation intended to determine if Dibert was fit for duty and nothing more. ***See id.*** Accordingly, the trial court held Dibert was not subject to an arrest without probable cause. ***See id.*** at 15-16.

We find support in the record for the trial court's factual findings and turn to our de novo review of its legal conclusions. Considering the totality of the circumstances and the reasonable impression conveyed to Dibert throughout the encounter, we hold that Dibert was not subject to a custodial detention until Trooper Killian read him the DL-26B and informed him that he

was under arrest.[21] ***See Commonwealth v. Edmiston***, 634 A.2d 1078, 1086 (Pa. 1993) (holding police encounter non-custodial until defendant formally arrested).

Most instructive is our Supreme Court's decision in ***Commonwealth v. Ziegler***, 470 A.2d 56 (Pa. 1983). In ***Ziegler***, the appellee, a Philadelphia police officer, became the subject of a homicide investigation after his pursuit and apprehension of a speeding driver ended with the driver's death. ***See id*** at 56–57. The appellee's supervising lieutenant questioned him over the radio and in person regarding the encounter, asking how the decedent had been shot and confronting him regarding the fact that his gun had been fired. ***See id.*** at 57. The lieutenant then ordered the appellee to report to the police department staff inspector headquarters with another officer accompanying him. ***See id.***

The appellee met his lieutenant at the staff inspector headquarters. ***See id.*** The lieutenant offered to telephone the appellee's family since, under department regulations, he could not make any phone calls himself. ***See id.*** Appellee's gun was also taken for ballistics tests. ***See id.*** At approximately 6:40 p.m., the staff inspector arrived and began questioning appellee. Between then and midnight, the appellee gave oral and written statements to

---

[21] While we do not agree with the trial court's determination as to when the encounter turned into a custodial detention and interrogation, an appellate court may uphold an order of a lower court for any valid reason appearing from the record. ***See Ario v. Ingram Micro, Inc.***, 965 A.2d 1194, 1200 (Pa. 2009).

the staff inspector and drew a sketch illustrating where the events occurred leading to the altercation. ***See id.*** The appellee was never given ***Miranda*** warnings. ***See id.***

The appellee was subsequently charged with murder and involuntary manslaughter. ***See id.*** The appellee filed motions to suppress for failure to administer ***Miranda*** warnings, arguing that the statement he made at the hospital, as well as the oral and written statements and sketch made for the staff inspector, should be suppressed. ***See id.*** The trial court granted the motions to suppress, and this Court affirmed on appeal, concluding that the statements the appellee made were the product of custodial interrogation. ***See id.*** at 57–58.

On appeal, our Supreme Court reversed, holding that the questioning of the appellee was part of a non-custodial, non-criminal, administrative investigation for which ***Miranda*** warnings were not required. ***See id.*** at 58. The Supreme Court reasoned that the post-shooting debriefing and questioning of the appellee were done pursuant to routine administrative procedure, and that the appellee was not being held as a criminal suspect. ***See id.*** Our Supreme Court rejected the appellee's argument that the circumstances of his questioning, specifically, that he was required to appear for questioning, established a sufficient restriction upon his freedom of action so as to constitute "custody" for ***Miranda*** purposes. ***See id.*** It held, instead, that the appellee was not in custody because he had driven himself to the staff inspector headquarters, he was given a replacement revolver when his

gun was taken from him, and the staff inspector testified the appellee would not have been restrained if he attempted to leave. ***See id.*** Ultimately, having rejected the argument that ***Miranda*** warnings were required because the questioning was conducted by the police, our Supreme Court held that "[w]hile a policeman is certainly entitled to no less a panoply of constitutional rights than is any other citizen, neither may it be contended that he deserves the greater degree of protection that would be afforded by extending ***Miranda*** to routine administrative investigations in employer-employee relationships such as the instant." ***See id.*** at 59 (internal citation omitted).

In other cases involving non-law enforcement defendants, our Supreme Court has held that, where police transported the defendants to the police station and asked questions that were either intended to or could have solicited criminal admissions, in one instance over the course of several hours, the encounters were not custodial detentions. ***See Commonwealth v. Yandamuri***, 159 A.3d 503 (Pa. 2017); ***see also Commonwealth v. Edmiston***, ***supra***.

In ***Edmiston***, state troopers asked the defendant if he would voluntarily appear at the police barracks for questioning related to a child's disappearance. ***Id.*** at 1086. The defendant appeared of his own volition and was ***Mirandized*** prior to questioning. ***Id.*** The defendant allowed the police to search his truck, and the troopers repeatedly advised him that he was not under arrest and was free to go. ***Id.*** At the end of the questioning, the defendant drew a map leading to the location of the victim's remains and

explained what the troopers would find there. ***Id.*** The troopers then left him alone for five minutes before formally arresting him. ***Id.***

The Supreme Court of Pennsylvania held that the interaction was a mere encounter up and until the defendant handed over the map, confessed, and was formally arrested. ***Id.*** at 1087. Our High Court noted that the appellant never asked for the assistance of an attorney, the troopers never told him that he did not need an attorney, and the defendant never requested and was denied the assistance of an attorney. ***Id.*** Once he handed over the map and confessed, however, he was subject to a "custodial detention because he was subject to an accusatory interrogation and was not at liberty to leave the state police supervision." ***Id.***

In ***Yandamuri***, the defendant was questioned by police in connection with the disappearance of a baby girl and the murder of her grandmother. ***Id.*** at 509. The defendant voluntarily accompanied detectives to the Upper Merion Police Station, arriving at 3:15 p.m., where he underwent over twelve hours of questioning and gave numerous statements. ***See id.*** at 509–11. The defendant was questioned in a room with the door closed but unlocked. ***See id.*** at 509. The detectives told the defendant that they were investigating a kidnapping, he was free to leave, and he was not under arrest. ***See id.*** The detectives also offered the defendant food and water, and they informed him that he could use the restroom unaccompanied. ***See id.*** The detectives requested a DNA sample, which the defendant agreed to. ***See id.*** The detectives asked if they could search the defendant's cell phone; the

defendant agreed and executed a consent form. ***See id.*** Ultimately, between 4:12 and 6:34 a.m., after remaining at the police station overnight, giving five non-incriminating statements, and being confronted with inconsistencies between his and his wife's statements, the defendant confessed. ***See id.*** at 510–11. The defendant was formally arrested and taken to a holding cell upon finishing a recorded confession at 7:31 a.m. ***See id.*** at 511.

The Supreme Court of Pennsylvania held that the defendant was not subject to a custodial detention until he was formally arrested upon giving a recorded confession the morning after entering the station. ***See id.*** at 523. Although the defendant was subject to over twelve hours of questioning, our Supreme Court reasoned that the defendant was not subject to a custodial detention prior to his formal arrest because, *inter alia*, the police told him he was free to leave at any time and he could have chosen to do so, he was able to go to the restroom unaccompanied, he never indicated that he wanted to leave and had that requested denied, and he never stated that he wanted questioning to end or refused to answer any questions. ***See id.*** at 520.

Here, we hold that the circumstances of Dibert's interview with Sergeant Sneath and Corporal Gelvin were not sufficiently coercive to constitute a custodial detention. Akin to ***Ziegler***, Dibert was not being held as a criminal suspect at the time of his interviews, and his questioning began as a non-criminal interview by other law enforcement officers. ***See*** N.T. Suppression Hearing, 6/24/25, at 55 (Sergeant Sneath explaining she wanted to speak with Dibert out of concern for his welfare and his fitness to work). Although

Dibert might have faced disciplinary action had he denied the requests to return to or enter the barracks or left during the interview, similar to the ***Ziegler*** appellee whose required presence for questioning was to comply with police administrative regulations, "this restriction on his freedom of action was in no sense 'custody' for ***Miranda*** purposes." ***Ziegler***, 470 A.2d at 58. Further, while Dibert's questioning was not conducted pursuant to administrative regulations like the questioning in ***Ziegler***, we consider an interview between supervisors and a supervisee, initiated out of concern for the supervisee's welfare and ability to perform their job, to be closer to an administrative investigation than a criminal investigation. The fact that Dibert was questioned by other troopers does not, in and of itself, entitle him to "the greater degree of protection" that ***Miranda*** provides. ***See id.*** at 59.

Nor did Corporal Gelvin administering the SFSTs turn the encounter into a custodial detention. Our jurisprudence makes clear that these same tests, in the context of a traffic stop, do not give rise to a custodial detention. ***See Commonwealth v. Ochoa***, 304 A.3d 390, 399 (Pa. Super. 2023) (considering traffic stop and administration of field sobriety tests to be investigative detention); ***Commonwealth v. Sloan***, 303 A.3d 155, 166 (Pa. Super. 2023) (considering traffic stop and administration of field sobriety tests to be investigative detention); ***Commonwealth v. Cauley***, 10 A.3d 321, 326 (Pa. Super. 2010) (considering traffic stop and administration of field sobriety tests to be investigative detention). Additionally, Dibert consented to the SFSTs, ***see*** N.T. Suppression Hearing, 6/24/25, at 38, and there was no

testimony in the record that Dibert was told he could not refuse the SFSTs or that he would face discipline for doing so. ***See generally id.***

There are additional factors that support the conclusion that Dibert was not subject to a custodial detention and interrogation. Dibert drove himself and was not transported to the barracks by a law enforcement officer in a PSP vehicle. ***See*** N.T. Suppression Hearing, 6/24/25, at 52. Dibert was never told that he was not free to leave, that he could not speak with an attorney, or that he could not refuse to answer questions. ***See id.*** at 54. The encounter lasted under two hours before Trooper Killian arrived. ***See id.*** at 50 (Sergeant Sneath testifying she pulled out of parking lot to check on Dibert at 4:10 p.m.); ***id.*** at 79 (Trooper Killian testifying he arrived at Chambersburg barracks five or ten minutes after 6:00 p.m.). Dibert was not put in handcuffs or otherwise restrained. ***See id.*** at 82. Sergeant Sneath and Corporal Gelvin never used or threatened force, and the tone of the discussion remained conversational and non-confrontational throughout. ***See id.*** at 61. An objective review of the record indicates that the circumstances were not the functional equivalent of an arrest until Dibert was formally arrested and, therefore, no illegal detention occurred. ***See Ziegler***, ***supra***; ***Yandamuri***, ***supra***; ***Edmiston***, ***supra***.

Dibert next argues that the statements he made were involuntary because he had to make them to maintain his employment, and, therefore, the statements should be suppressed. ***See*** Appellant's Brief, at 34-44 (citing ***Garrity v. New Jersey***, 385 U.S. 493 (1967)).

Dibert's argument hinges on the Pennsylvania State Police's Field and Administrative Regulations and Dibert's supervisors' alleged failure to follow them during the underlying encounter. ***See*** Appellant's Brief, at 36-44. He claims that, under ***Garrity***, because he was not told that his statements could be used against him in a criminal proceeding, the statements were involuntary. ***See id.*** at 39 ("[I]n compliance with the tenets of ***Garrity***, the member/trooper must be advised of [a]dministrative [w]arnings to distinguish between the administrative and criminal investigation of the alleged conduct."); ***id.*** ("[T]he [PSP] have [a]dministrative [w]arnings which delineate between administrative questioning and criminal interrogation. This follows the decision in ***Garrity***."); ***id.*** at 41 ("Because Dibert was required, pursuant to PSP policy, to submit to questions proffered to him by his superior officers, Dibert should have been afforded the protections of ***Garrity*** [] and PSP [d]epartmental regulations.").

In ***Garrity***, police officers were summoned to an inquiry conducted by the New Jersey Attorney General concerning the fixing of traffic tickets. ***See id.*** at 494. Each officer was told prior to questioning that: (1) anything he said might be used against him a state criminal proceeding; (2) he had the privilege to refuse to answer if the disclosure would tend to incriminate him; but, (3) if he refused to answer, he would be subject to removal from office.[22]

---

[22] These warnings were provided pursuant to a then-existing New Jersey statute, which provided, in relevant part, that

(Footnote Continued Next Page)

See id. at 495. The officers' answers were later used, over objection, as evidence to convict them of criminal conspiracy. ***See id.*** On appeal, the United States Supreme Court reversed the convictions. ***See id.*** at 500. It considered the officers' admissions coerced and involuntary because "[t]he choice given petitioners was either to forfeit their jobs or to incriminate themselves." ***Id.*** at 497. The ***Garrity*** Court ultimately held that "the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements **obtained under threat of removal from office**, and that it extends to all, whether they are policemen or other members of our body politic." ***Id.*** at 500 (emphasis added).

> Any person holding or who has held any elective or appointive public office, position[,] or employment (whether State, county or municipal), who refuses to testify upon matters relating to the office, position[,] or employment in any criminal proceeding wherein he is a defendant or is called as a witness on behalf of the prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself or refuses to waive immunity when called by a grand jury to testify thereon or who willfully refuses or fails to appear before any court, commission[,] or body of this state which has the right to inquire under oath upon matters relating to the office, position[,] or employment of such person or who, having been sworn, refuses to testify or to answer any material question upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, shall, if holding elective or public office, position[,] or employment, be removed therefrom or shall[,] thereby[,] forfeit his office, position[,] or employment[.]

N.J.S.A. § 21:81-17.1 (repealed as of May 21, 1970).

Subsequent cases in this Court and the Pennsylvania Supreme Court have considered suppression challenges brought pursuant to ***Garrity*** by police officers. ***See Commonwealth v. Triplett***, 341 A.2d 62 (Pa. 1975); ***Commonwealth v. Thomas***, 425 A.2d 1151 (Pa. Super. 1981). In ***Triplett***, our Supreme Court affirmed the trial court's suppression of statements made by a police officer after he was read the "charter warnings," which stated "I wish to inform you that this is an official investigation, and under the provisions of the Philadelphia Home Rule Charter, Section 10-110,[23] you are required to cooperate fully and answer all questions. Do you understand?" ***id.*** at 63. Our Supreme Court, relying on ***Garrity***, held that the statements preceded by the charter warnings, carrying the implied threat of termination for refusing to answer, were properly suppressed. ***See id.*** at 63–64.

In ***Thomas***, we affirmed the denial of a suppression motion where the defendant-police officer argued that his statements should have been suppressed under ***Garrity***. ***See Thomas***, 425 A.2d at 1154–55. Upon arriving at the scene of a shooting and finding the defendant, a police officer, present, the defendant's supervisor said to him: "Don't you understand that you have to give a statement? You are involved in some activity here, and I have to investigate this under the City Charter, under 10-110 Section [sic] . . . I said I have to get this done this evening." ***Id.*** at 1153. The defendant

---

[23] Section 10-110 of the Philadelphia Home Rule Charter contained language providing for the termination of an officer or employee of the city if he refused to answer questions on the grounds that the answers would potentially incriminate him. ***See Triplett***, 341 A.2d at 63.

then made a statement to his supervisor hours later that was eventually entered into evidence at the appellant's trial. ***See id.***

On appeal, our Court distinguished ***Thomas*** from ***Garrity*** on the grounds that the defendant's supervisor did not tell him that he would be terminated if he chose not to provide a statement. ***See id.*** at 1155. Further, we distinguished ***Thomas*** from ***Triplett*** on the grounds that the defendant in ***Thomas*** was not explicitly warned that he was required to cooperate pursuant the City Charter. ***See id.***

Notwithstanding Dibert's arguments to the contrary, as its progeny make clear, ***Garrity*** touches on what law enforcement officers may *not* say when conducting an internal investigation or interview; it does not require that a law enforcement agency follow its administrative regulations when questioning one of its officers for the statements obtained to later be admitted at a criminal proceeding. ***See Garrity***, 385 U.S. at 500; ***see also Thomas***, 425 A.2d at 1155. ***Garrity*** only held that the Fourteenth Amendment "prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office" and says nothing about what procedures or warnings a law enforcement agency must follow or provide when questioning its own officers. ***See id.*** at 500. Here, Dibert was never threatened with the loss of his employment during the underlying encounter. Accordingly, Dibert's argument, premised upon protections that ***Garrity*** does not provide, is meritless.

Dibert next argues that he was subject to a custodial detention without being provided his ***Miranda*** rights. ***See*** Appellant's Brief, at 44-49. The United States Supreme Court has held that, before law enforcement officers may question an individual who has been taken into custody or has been deprived of his freedom in any significant way, the officers must first warn the individual 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. ***Yandamuri***, 159 A.3d at 519–20 (citing ***Miranda***, 384 U.S. at 478–79). These safeguards are only required when a suspect is both taken into custody and subjected to interrogation. ***Yandamuri***, 159 A.3d at 520 (citing ***Commonwealth v. Bland***, 115 A.3d 854, 857 (Pa. 2015)).

Dibert avers that he was subject to a custodial interrogation during his initial conversation with Corporal Gelvin in the parking lot and during the subsequent interview with Sergeant Sneath and Corporal Gelvin without having been read his ***Miranda*** rights. ***See*** Appellant's Brief, at 46-48. According to Dibert, because neither Sergeant Sneath nor Corporal Gelvin advised him of his right to remain silent, his right to counsel, or that his statements could be used against him in a criminal proceeding, all of his statements at the barracks and the results of the SFSTs and blood tests must be suppressed. ***See id.*** at 48-49.

The trial court concluded that Dibert was not under arrest, and, accordingly, that ***Miranda*** was not implicated, "until [Dibert] admitted that

he probably should not have reported for duty." Trial Court Opinion, 11/7/24, at 17.

We agree with the trial court to the extent that it held ***Miranda*** did not apply throughout to the parking lot encounter or the interview because Dibert had not been subject to a custodial detention or interrogation. As we held above, Dibert was not subject to a custodial detention until Trooper Killian explicitly told Dibert he was under arrest. Accordingly, Sergeant Sneath and Corporal Gelvin were under no obligation to inform Dibert of his rights under ***Miranda*** throughout the barracks interview, and his argument to the contrary is without merit. ***See Yandamuri***, ***supra***.

Dibert next argues that the results of the SFSTs should be suppressed because he did not voluntarily submit to testing. ***See*** Appellant's Brief, at 49-53. Dibert claims that SFSTs constitute a search under the Fourth Amendment. ***See id.*** at 50. He argues that, given the attendant circumstances, his consent to undergo the SFSTs was not voluntary and, therefore, the results of the SFSTs must be suppressed. ***See id.*** at 53.

The trial court held that the SFSTs were lawfully conducted, positing that SFSTs do not constitute a search for Fourth Amendment purposes. ***See*** Trial Court Opinion, 11/7/24, at 21. We agree.

Dibert does not cite a single Pennsylvania case, and we are aware of none, holding that SFSTs constitute a search. ***See*** Appellant's Brief, at 49-53. Accordingly, whether Dibert's consent to perform the SFSTs was voluntary is not relevant to the admission of the tests' results. ***See Commonwealth***

v. Strickler, 757 A.2d 884, 888 (Pa. 2000) (explaining relevance of voluntariness in unreasonable search analysis). Further, we have found reasonable suspicion of a DUI offense sufficient to conduct SFSTs. ***See Commonwealth v. Dabney***, 274 A.3d 1283, 1293 (Pa. Super. 2022) (holding trooper had reasonable suspicion to conduct field sobriety tests); ***Commonwealth v. Ragan***, 652 A.2d 925, 929 (Pa. Super. 1995) (because officer "had good reason to believe that appellant was intoxicated, he was justified in asking appellant to perform the [field] sobriety tests"). Here, Sergeant Sneath and Corporal Gelvin had reasonable suspicion that Dibert was intoxicated and had operated a vehicle while intoxicated given their observations of Dibert prior to the interview, their observations of Dibert during the interview, Dibert's admission that he did not believe he should be at work, and his admission that he was afraid of what the results of a PBT or blood draw would be. Therefore, because Sergeant Sneath and Corporal Gelvin had reasonable suspicion to believe that Dibert was intoxicated, the trial court did not err in admitting the results of the SFSTs. ***See Dabney***, ***supra***.

Dibert next argues that Trooper Killian did not have probable cause to effectuate an arrest. ***See*** Appellant's Brief, at 53-57. Dibert contends that "[a]bsent the unlawfully obtained evidence obtained by [Sergeant] Sneath and [Corporal] Gelvin, [Trooper] Killian lacked probable cause to place Dibert

under arrest." ***Id.*** at 56-57.[24] As we have already determined that the evidence obtained by Sergeant Sneath and Corporal Gelvin from the interview, SFSTs, and PBT was legally obtained, Dibert's argument is without merit.

Dibert next argues that the evidence obtained from his blood test should be suppressed because his consent was not voluntary. ***See*** Appellant's Brief, at 57-60. Dibert notes that Trooper Killian did not obtain a search warrant before taking Dibert for the blood draw and, instead, relied on Dibert's consent. ***See id.*** Dibert maintains that his consent was not voluntarily given because he had been subject to an unlawful arrest. ***See id.*** As with his prior arguments, Dibert relies on the notion, which we have rejected, that he was subject to unlawful detention and interrogation. ***See id.*** at 59-60 ("[Dibert] had been subjected to a two-hour unlawful detention and interrogation based upon the arguments advanced in the preceding sections of this brief."). Dibert relies on the fact that he was not "afforded the protection of a lawyer" nor "permitted to remain silent as [doing so] would subject Dibert to addition[al] penalties[, including administrative penalties through his government employer." ***Id.*** at 60.

The trial court, relying on its conclusion that Dibert was not subject to an unlawful detention and that any evidence gained from the interview was

---

[24] We note that Dibert does not argue that the evidence admitted did not support a probable cause determination; instead, he argues that because the evidence was improperly obtained before being passed along to Trooper Killian, there was insufficient *admissible* evidence to support a finding of probable cause. ***See id.*** at 53, 56-57.

legally obtained, held that Dibert's argument based upon lack of consent to a blood test was without merit. ***See*** Trial Court Opinion, 11/7/24, at 23. We agree.

> [P]olice officers may not conduct a warrantless search or seizure unless one of several recognized exceptions applies. ***Commonwealth v. Blair***, [] 575 A.2d 593, 596 ([Pa. Super.] 1990). One such exception is a search conducted pursuant to consent voluntarily given. ***Id.*** at 597. The Fourth Amendment analysis in consent cases entails a two-prong assessment: first, the constitutional validity of the citizen/police encounter giving rise to the consent and, second, the voluntariness of said consent. ***See Strickler***, ***supra***[,] at [] 888. Where the underlying encounter is found to be lawful, voluntariness becomes the exclusive focus. ***Id.*** at 889. If a defendant's detention violates the Fourth Amendment, then any evidence seized during that stop must be excluded as fruit of an unlawful detention. ***Id.***

Commonwealth v. Mattis, 252 A.3d 650, 654 (Pa. Super. 2021).

As we have already concluded that the encounter giving rise to the consent was valid, we start with the second prong of the consent analysis. ***See Strickler***, ***supra***. "[V]oluntariness may be established by the Commonwealth if all the facts and circumstances indicate that the consent was voluntarily given." ***Commonwealth v. Gallagher***, 263 A.3d 1207, 1212 (Pa. Super. 2021) (citation omitted).

We hold that Dibert voluntarily consented to the blood draw requested by Trooper Killian. Trooper Killian read Dibert the DL-26B form, which provided that Dibert could refuse the blood draw. ***See*** N.T. Suppression Hearing, 10/31/25, at 82; ***see also*** Commonwealth's Exhibit 1, DL-26B

Form.[25] Thereafter, Dibert agreed to submit to the blood draw. Dibert cites to no indicia of coercion, and our review of the record reveals none, that would support his argument that he did not give his consent voluntarily. Accordingly, this argument, too, is without merit. ***See Commonwealth v. Miller***, 186 A.3d 448, 452 (Pa. Super. 2018) (finding appellee voluntarily consented to blood draw after being read DL-26B form); ***see also Commonwealth v. Myers***, 164 A.3d 1162, 1180–82 (Pa. 2017) ("[A] DUI arrestee must be provided with an opportunity to make a 'knowing and conscious choice' between providing voluntary consent to a chemical test or accepting the consequences that will follow from the refusal to do so.").

Dibert's remaining argument is that his conviction for DUI—highest rate should be vacated because it was the result of selective prosecution. ***See*** Appellant's Brief, at 60-63. Dibert contends that the Fulton County District Attorney's decision to have his blood tested at a second lab was "based solely upon [his] status as a [PSP,]" and that the decision was, therefore, arbitrary and unlawful. ***See id.*** at 63. The trial court held that Dibert could not establish selective prosecution because he neither identified similarly situated individuals who were not prosecuted nor provided any precedent that law enforcement officers are a protected classification for purposes of selective

---

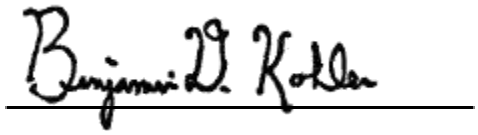
[25] The ***O'Connell*** warnings also explicitly provide that an arrestee suspected of a DUI offense does **not** have a right to speak with an attorney or to remain silent when asked to undergo a blood test. ***See*** Commonwealth's Exhibit 1, DL-26B Form. This negates Dibert's contention that his inability to speak with an attorney or to remain silent rendered his consent involuntary.

prosecution claims. ***See*** Trial Court Opinion, 11/7/24, at 23-24. We agree with the trial court.

Dibert's claim fails for two reasons—because he points to no similarly situated individuals who were not prosecuted and because law enforcement officers are not a protected class for purposes of selective prosecution claims. To prove selective prosecution, an appellant must show "first, others similarly situated were not prosecuted for similar conduct, and, second, the Commonwealth's discriminatory selection of them for prosecution was based on impermissible grounds such as race, religion, the exercise of some constitutional right, or any other such arbitrary classification." ***In re Lokuta***, 11 A.3d 427, 446 (Pa. 2011) (quoting ***Commonwealth v. Mulholland***, 707 A.2d 1027, 1034 (Pa. 1997)). Dibert has not identified any other similarly situated individuals who were not prosecuted and has not identified any case law deeming employment as a law enforcement officer an "arbitrary classification" for purposes of a selective prosecution claim. We decline to do so here. Therefore, this claim, too, is without merit. ***See Lokuta***, ***supra***.

Judgment of sentence affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/06/2026