IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	No. CR 1546-2016
	:	
MICHAEL SNISCAK,	:	
	:	
Defendant	:	

Megan V. Madaffari, Esquire — Counsel for Commonwealth
Deputy Attorney General

James R. Nanovic, Esquire — Counsel for Defendant

MEMORANDUM OPINION

Matika, J. – October 11, 2017

Before this Court is a Motion to Suppress filed by Defendant, Michael Sniscak. Defendant seeks to suppress all evidence in this case, including any inculpatory statements he made, his blood taken during the blood draw, and the blood draw's resulting toxicology report. For the reasons stated within this Opinion, upon consideration of Defendant's "OMNIBUS PRETRIAL MOTION," after a hearing held thereon, and after consideration of the briefs lodged in support thereof and in opposition thereto, Defendant's Motion is **DENIED.**

FACTUAL AND PROCEDURAL BACKGROUND

On June 14, 2016 at approximately 11:31 p.m., Officer Michael Chica of the Kidder Township police was driving northbound on State Route 903 near Pine Point Plaza when he saw a black Jeep driving

in the opposite direction. The Jeep crossed over the white fog line for a couple of seconds and, from Officer Chica's perspective, appeared to nearly drive off the road. There were no other vehicles around at the time. Officer Chica changed course and began following the Jeep. As he was turning his cruiser around, he observed the Jeep cross the white fog line a second time, again appearing to nearly drive off the road. He pursued the Jeep for roughly half a mile, attempting to catch up to it. During this time, he saw the Jeep cross the double yellow line on the driver's side once and the white fog line on the passenger's side for a third time. Upon testifying, Officer Chica was unsure of the width of the pavement between the white fog line and the edge of the street.[1] When the Jeep crossed over the white fog line on the second and third occasions, Officer Chica stated it "just swerved over and came right back."[2] The one time the Jeep crossed over the double yellow line, Officer Chica stated it was only for an instant.[3]

Officer Chica eventually caught up to the Jeep, activated his emergency lights, and initiated a vehicle stop. He made contact with the driver, Michael Sniscak, Defendant in this case. Officer Chica asked for Defendant's license, registration, and proof of

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[1] N.T. Suppression, 3/23/17, at 11, 13.
[2] *Id.* at 13.
[3] *Id.* at 14.

insurance. Defendant replied he had left them all at home. During this exchange, Officer Chica detected an odor of alcohol emanating from Defendant's facial area, saw he had bloodshot eyes, and noticed Defendant was slurring his words. Officer Chica asked Defendant if he had had anything to drink, to which Defendant responded that he had not. Officer Chica stated to Defendant that he could smell alcohol, at which point Defendant admitted to having had one drink. Officer Chica then asked Defendant to exit his vehicle. Defendant did so, and Officer Chica observed that Defendant was moving with an unsteady gait. He had Defendant perform three field sobriety tests: the finger-to-nose, the walk-and-turn, and the one-legged stand. Defendant did not perform these tests satisfactorily.

After the tests, Defendant admitted to having consumed more than one drink at Shenanigans, a bar in Kidder Township from which he had just come. At that time, Officer Chica placed Defendant under arrest. At no point during the encounter did Officer Chica apprise Defendant of his Miranda rights.

According to Officer Chica, he asked Defendant if he would submit to a blood test, to which Defendant responded "No breath [test]?"[4] Officer Chica explained that he did not want to do a breath test because that would require taking Defendant into the

[4] N.T. Suppression, 3/23/17, at 7.

police barracks in handcuffs, and, knowing that Defendant was employed as a Pennsylvania State Trooper, Officer Chica felt that that would be disrespectful.[5]

Officer Chica averred that Defendant consented to having his blood drawn before he was taken to the Lehighton hospital.[6] Defendant denies ever consenting to a blood draw before arriving at the hospital.[7] Once they arrived at the hospital, Officer Chica read the DL-26 form warnings[8] to Defendant verbatim. Defendant signed the form and consented to having his blood drawn. Defendant's blood was drawn at approximately 12:30 a.m. Laboratory test results later indicated his blood had an alcohol content of 0.12%.

Defendant was charged with one count of Driving Under the Influence of Alcohol or Controlled Substance—General Impairment, one count of Driving Under the Influence of Alcohol or Controlled Substance—High Rate of Alcohol, a summary offense for Careless

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[5] *Id.*
[6] *Id.* at 7-8.
[7] *Id.* at 18.
[8] Included in these warnings is the following passage: "If you refuse to submit to the chemical test, your operating privilege will be suspended for at least 12 months. If you previously refused a chemical test or were previously convicted of driving under the influence, you will be suspended for up to 18 months. In addition, if you refuse to submit to the chemical test, and you are convicted of violating Section 3802(a)(1) (relating to impaired driving) of the Vehicle Code, then, because of your refusal, you will be subject to more severe penalties set forth in Section 3804(c) (relating to penalties) of the Vehicle Code. **These are the same penalties that would be imposed if you were convicted of driving with the highest rate of alcohol, which include a minimum of 72 consecutive hours in jail** and a minimum fine of $1,000.00, up to a maximum of five years in jail and a maximum fine of $10,000."

Driving, and a summary offense for Driving on Right Side of Roadway.[9]

DISCUSSION

Defendant has filed a Suppression Motion arguing that Officer Chica did not possess the requisite reasonable suspicion or probable cause to instigate a vehicle stop upon him and to arrest him for driving under the influence. Further, Defendant argues that, after he was placed in custody, he allegedly made inculpatory statements without first being advised of his *Miranda* rights. Lastly, Defendant argues that his consent to the blood draw was involuntary under *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016).

I. CONSTITUTIONALITY OF THE VEHICLE STOP

A. Standards Governing Vehicle Stops

In a motion to suppress evidence, it is the Commonwealth's burden to establish that the evidence in question was not obtained in violation of the defendant's rights. *Commonwealth v. Ryan*, 407 A.2d 1345, 1348 (Pa. Super. Ct. 1979). "The Fourth Amendment of the United States Constitution and Article I, Section VIII of the Pennsylvania Constitution guarantee individuals freedom from unreasonable searches and seizures." *Commonwealth v. El*, 933 A.2d 657, 660 (Pa. Super. Ct. 2007).

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[9] 75 Pa.C.S.A. §§ 3802(a)(1), 3802(b), 3714(a), 3301(a).

When analyzing the propriety of a vehicle stop, the threshold question that must be addressed is whether the context of the stop necessitated mere reasonable suspicion or the heightened standard of probable cause. More specifically, when a police officer believes a violation of the Motor Vehicle Code has occurred:

> If reasonable suspicion exists, but a stop cannot further the purpose behind allowing the stop, the "investigative" goal as it were, it cannot be a valid stop. Put another way, if the officer has a legitimate expectation of investigatory results, the existence of reasonable suspicion will allow the stop—if the officer has no expectations of learning additional relevant information concerning the suspected criminal activity, the stop cannot be constitutionally permitted on the basis of mere suspicion.

Commonwealth v. Chase, 960 A.2d 108, 115 (Pa. 2008).

Suspicion that a vehicle's operator is driving under the influence of drugs or alcohol is a scenario where an officer would have a legitimate expectation of investigatory results. *Commonwealth v. Sands*, 887 A.2d 261, 270 (Pa. Super. Ct. 2005). Conversely, in an instance where a vehicle stop would not serve an investigatory purpose relevant to the suspected violation, "it is encumbent [sic] upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, *which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code.*" *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. Ct. 2010)(quoting *Commonwealth v. Gleason*, 785 A.2d 983, 989 (Pa. 2001)).

In the case *sub judice*, Officer Chica never testified or alluded that his motivation for stopping Defendant's vehicle was because he suspected Defendant of driving under the influence. Rather, he only stated that he stopped Defendant because he had witnessed him crossing over the white fog line and the double yellow line on several occasions. Since Defendant was ultimately charged with violations of 75 Pa.C.S.A. §§ 3301(a) and 3714(a),[10] this Court is left to conclude that those violations were the bases for the stop. That being the case, Officer Chica was required to have probable cause for the vehicle stop, not mere reasonable suspicion, as there would not have been a legitimate expectation of investigatory results when Officer Chica made the stop. In other words, with regard to his determination of whether those particular violations had occurred, there was no further information Officer Chica could have gathered after stopping and confronting Defendant. *See Commonwealth v. Wilson*, 111 A.3d 747, 755 (Pa. Super. Ct. 2015)(stating that §§ 3301 and 3714 are non-investigable offenses).

B. The Existence of Probable Cause

The question next turns to whether Officer Chica had probable cause to believe a violation of either § 3301(a) or § 3714(a) had occurred. Probable cause exists when "the facts and circumstances

[10] Driving upon the right half of the roadway and careless driving, respectively.

which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime." *Commonwealth v. Thompson*, 985 A.2d 928, 931 (Pa. 2009)(citation omitted).

There is a wide array of relevant caselaw factually similar to the present case, though the Superior Court's holdings do not appear to offer anything akin to a bright-line rule of when there is or is not probable cause for a vehicle stop when drivers stray from their lanes of travel. Rather, trial courts are left to make narrow distinctions based on any given set of facts.

For instance, in *Commonwealth v. Garcia*, 859 A.2d 820 (Pa. Super. Ct. 2004), as an officer approached the appellant's vehicle from the opposite direction, the appellant drove to the right and straddled the white fog line. *Id.* at 821. The officer turned his vehicle around and began following the appellant. *Id.* As he was following, the officer observed the appellant again pull to the right and cross the white fog line when an approaching car passed from the opposite direction. *Id.* at 821-22. At that point, the officer initiated a traffic stop for violations of both 75 Pa.C.S.A. §§ 3301 and 3309.[11] *Id.* at 822, n.1. The Superior Court

[11] Driving upon the right half of the roadway and driving within a single lane, respectively.

held that the appellant's two acts of giving oncoming vehicles "wide berth" were "momentary and minor," noting the officer only observed the appellant's driving over a distance of two blocks. *Id.* at 823. The Court found that that was insufficient for the establishment of probable cause. *Id.*

Conversely, in *Commonwealth v. Chernosky*, 874 A.2d 123 (Pa. Super. Ct. 2005), an officer was driving on a winding two-lane road when she came upon a vehicle ahead of her traveling in the same direction at a very slow speed. *Id.* at 125. As she was about to overtake the vehicle, the vehicle suddenly accelerated to the speed limit. *Id.* As the vehicle continued on, the officer observed it travel onto the shoulder on the right side of the road and nearly strike a telephone pole. *Id.* The officer proceeded to follow the vehicle and saw it drive across the double yellow line and swerve back over to the right side of the roadway on several occasions. *Id.* The officer followed the vehicle for several more minutes and over the course of several different roads, during which time the vehicle continually drifted to the left and right sides of the road. *Id.* The vehicle eventually pulled into and stopped in a private parking lot, where the vehicle's driver, the appellee, was soon confronted and questioned by law enforcement. *Id.* The Superior Court determined that the appellee's driving onto the shoulder and nearly striking a telephone pole was hardly "a fleeting transgression," but rather a safety hazard that created

a risk of harm to herself. *Id.* at 128. Moreover, the Court found that the appellee created a risk of harm to others during the several occasions that she crossed the double yellow line and swerved back over to the right side of the roadway. *Id.* Given the length of time and the distance over which this behavior occurred, this public risk of harm existed even though the officer could not specifically recall seeing other vehicles on the roadway—the risk coming in part from the fact that the officer herself was also traveling on the roadway, even though she was following behind the appellee. *Id.* The Court also noted that because the appellee crossed over the double yellow line and into the oncoming lane of traffic, she was in violation of § 3301(a). *Id.* All of these factors taken together were sufficient for the establishment of probable cause to initiate the traffic stop. *Id.*

Likewise, in *Commonwealth v. Feczko*, 10 A.3d 1285 (Pa. Super. Ct. 2010), the left tires of the appellant's vehicle briefly crossed over the double yellow line and entered the oncoming lane of traffic while the appellant negotiated a curve. *Id.* at 1286. The vehicle then gradually swayed within its lane and crossed over the white fog line two or three times, then briefly crossed over the double yellow line a second time before being stopped by a state trooper. *Id.* The basis for the stop was a § 3309(1) violation. *Id.* at 1291. The Superior Court noted no other vehicles were required to take evasive action in response to the appellant's

weaving, but concluded that because the trooper testified there was traffic present in the oncoming lane, the "[a]ppellant's deviations from his lane of travel created a significant safety hazard on the roadway." *Id.* The Court ultimately held there was probable cause for the stop. *Id.* at 1292.

Finally, in *Commonwealth v. Enick*, 70 A.3d 843 (Pa. Super. Ct. 2013), an officer was traveling northbound and observed a southbound-traveling vehicle cross over the double yellow line into oncoming traffic for two to three seconds. *Id.* at 844. Approximately half of the vehicle was protruding into the oncoming lane. *Id.* The officer conducted a traffic stop for a § 3301(a) violation. *Id.* at 845. The vehicle's operator, the appellant, argued that her single breach of the double yellow line was a "momentary and minor" deviation, which was not enough to establish probable cause for the stop. *Id.* at 847. However, the Superior Court distinguished that while the statutory language of 75 Pa.C.S.A. § 3309 allows for momentary and minor deviations from a marked lane of travel, the language of § 3301 makes no such allowances. *Id.* But in the next breath, somewhat confoundingly, the Court stated that under a different set of facts, a "momentary and minor" analysis might be appropriate for a determination of the existence of probable cause for a stop premised upon a § 3301 violation. *Id.* at 848. Notwithstanding these contradictory sentiments, the Court proceeded to engage in a "momentary and

minor" analysis anyway, concluding that because half of the appellant's vehicle had crossed over the double yellow line for three seconds, it was not a minor violation of § 3301, even though the Court had stated just two paragraphs prior that "[it] need not analyze whether [the appellant] complied with § 3301 'as nearly as practicable.'"[12] *Id.* at 847-48. The Court further applied the "safety hazard" analysis, concluding that the appellant's driving posed a safety hazard to the officer, who was approaching from the opposite direction. *Id.* at 848. Ultimately, the Court held the officer had probable cause for the stop. *Id.*

This Court's takeaway from these cases is that the "momentary and minor" analysis is a murky one with no clearly defined parameters, and that it may or may not be appropriate to apply it in cases centered around § 3301 violations. The risk of harm/safety hazard test, however, seems to be consistently applied by the Superior Court in conjunction with the "momentary and minor" analysis, yet it is much simpler in its approach and achieves the same end. There also has been no discrimination between § 3301 and § 3309 when this test is applied. Therefore, it is the conclusion of this Court that, based on the caselaw, the risk of harm/safety

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[12] The "momentary and minor" analysis stems from the implication that § 3309 allows for momentary and minor lane deviations, due to the inclusion of the statutory language that a vehicle shall be driven within a single lane "as nearly as practicable." So, in essence, an analysis of whether single-lane compliance was effected "as nearly as practicable" and an analysis of whether lane deviations were "momentary and minor" are virtually the same thing.

hazard test is the simplest and most logical approach when determining the existence of probable cause for § 3301 and § 3309 violations.

As such, what remains is to apply this test to the facts herein. Of the cases just recounted, the one presently under consideration bears the most resemblance to that of *Chernosky*. There, the officer was following behind the appellee when she witnessed the appellee drive her vehicle onto the shoulder on the right side of the road and nearly strike a telephone pole. 874 A.2d at 125. The Superior Court found that that act was a safety hazard that created a risk of harm to the appellee herself. *Id.* at 128. In the present case, Officer Chica testified that he witnessed Defendant cross the white fog line and nearly drive off the road on two occasions within a short period of time.[13] Officer Chica was unsure of how wide the pavement was between the white fog line and the edge of the macadam, but this lack of technical specificity seemed to have no bearing upon his firm stance that Defendant appeared to nearly drive off the road twice.[14] Such actions on Defendant's part were most certainly a safety hazard that created a risk of harm to himself. And while it is true that the first one of these fog line crossings occurred as Officer Chica was approaching from the opposite direction, like in *Garcia*, unlike

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[13] N.T. Suppression, 3/23/17, at 4-5, 11-13.
[14] *Id.* at 11, 13.

that case the facts here go beyond merely giving an oncoming vehicle "wide berth." *See* 859 A.2d at 823. This is evidenced by the fact that the second fog line crossing occurred after Officer Chica was positioned behind Defendant and there was no oncoming traffic.

Further, *Chernosky* also suggests that Officer Chica's presence behind Defendant when Defendant drove over the double yellow line and "swerved"[15] over and back from the white fog line on the second and third occasions caused Officer Chica to be subjected to a risk of harm. *See* 874 A.2d at 128. Therefore, because Defendant's manner of driving was a safety hazard that created a risk of harm to both himself and to Officer Chica, it is the conclusion of this Court that Officer Chica had probable cause to believe Defendant had committed a § 3301(a) violation, and was justified in effecting a stop upon Defendant.

II. CONSTITUTIONALITY OF DEFENDANT'S ARREST

Arrest warrants are not required in cases of DUI violations when there is probable cause to believe the violation has occurred:

> In addition to any other powers of arrest, a police officer is authorized to arrest an individual without a warrant if the officer has probable cause to believe that the individual has violated section . . . 3802 (relating to driving under influence of alcohol or controlled substance) . . . regardless of whether the alleged violation was committed in the presence of the police officer.

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[15] N.T. Suppression, 3/23/17, at 13.

75 Pa.C.S.A. § 3811(a).

In this case, when Officer Chica first made contact with Defendant upon approaching his vehicle, Officer Chica detected an odor of alcohol emanating from Defendant's facial area, saw he had bloodshot eyes, and noticed Defendant was slurring his words. After initially denying he had had anything to drink, Defendant admitted to having had one drink. When Officer Chica had Defendant exit his vehicle, he observed that Defendant was moving with an unsteady gait. Defendant submitted to three field sobriety tests: the finger-to-nose, the walk-and-turn, and the one-legged stand. He did not perform these tests satisfactorily. After failing the tests, Defendant admitted to having consumed more than one drink and that he had just come from a bar called Shenanigans. It was at this point that Officer Chica arrested Defendant. This Court finds that the totality of these indicators was sufficient to warrant a man of reasonable caution in the belief that Defendant had committed a DUI violation, *see Thompson*, 985 A.2d at 931, and thus Officer Chica had probable cause to arrest Defendant in accordance with 75 Pa.C.S.A. § 3811(a).

III. VOLUNTARINESS OF DEFENDANT'S STATEMENTS

A law enforcement officer must administer *Miranda* warnings prior to custodial interrogation. *Commonwealth v. Johnson*, 541 A.2d 332, 336 (Pa. Super. Ct. 1988).

> 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.

Commonwealth v. Busch, 713 A.2d 97, 100 (Pa. Super. Ct. 1998) (citation omitted).

The usual traffic stop constitutes an investigative rather than a custodial detention, unless, under the totality of the circumstances, the conditions and duration of the detention become the functional equivalent of arrest. *Commonwealth v. Haupt*, 567 A.2d 1074, 1078 (Pa. Super. Ct. 1989). "An ordinary traffic stop becomes 'custodial' when the stop involves coercive conditions, including, but not limited to, the suspect being forced into a patrol car and transported from the scene or being physically restrained." *Commonwealth v. Mannion*, 725 A.2d 196, 202 (Pa. Super. Ct. 1999). Other factors relevant to determining whether a detention has become custodial include: "the basis for the detention; its length; its location; whether the suspect was transported against his or her will, how far, and why; whether restraints were used; whether the law enforcement officer showed, threatened or used force; and the investigative methods employed to confirm or dispel suspicions." *Commonwealth v. Williams*, 941 A.2d 14, 31 (Pa. Super. Ct. 2008)(citation omitted).

Defendant was undoubtedly in "custody" upon his arrest and transport to the hospital. It is also apparent that Defendant was being interrogated throughout the duration of the stop, as Officer Chica was investigating whether Defendant had been driving under the influence. The relevant inquiry, therefore, is whether Defendant was in "custody" prior to being arrested and ushered into the patrol vehicle, or if he was merely being subjected to an investigative detention during that time. This Court believes it was the latter.

In this case, the traffic stop was not unnecessarily prolonged beyond the amount of time required for Officer Chica to conduct his investigation. There was no evidence suggesting there was a point before actually being taken into custody that Defendant was restrained, nor did Officer Chica show, threaten, or use force when he was questioning Defendant. And while Officer Chica did state to Defendant that he could smell alcohol after Defendant denied having had anything to drink, this lone statement did not amount to coercion. In light of these facts, this Court does not find that Defendant was subjected to a custodial interrogation during the course of the stop. Therefore, *Miranda* warnings were not mandatory before Defendant was arrested, and any statements he made at that time were voluntarily given.[16]

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[16] As an aside, it could have been problematic that Defendant was not apprised of his *Miranda* rights upon being arrested. However, there being no evidence

IV. VOLUNTARINESS OF DEFENDANT'S CONSENT TO THE BLOOD DRAW

Every citizen is entitled to freedom from unreasonable searches and seizures. U.S. CONST. amend. IV; PA. CONST. art. I, § 8. A blood draw is considered a search within the purview of the Fourth Amendment of the United States Constitution, as well as Article I, Section 8 of the Pennsylvania Constitution. *Birchfield v. North Dakota*, 136 S.Ct. 2160, 2173 (2016); *Commonwealth v. Smith*, 77 A.3d 562, 566 (Pa. 2013). Absent a warrant exception, the Fourth Amendment does not permit warrantless blood tests incident to arrests for impaired driving. *Birchfield* at 2184. "One of the standard exceptions to the warrant requirement is consent, either actual or implied." *Commonwealth v. March*, 154 A.3d 803, 808 (Pa. Super. Ct. 2017). However, "motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense." *Birchfield* at 2186. Under *Birchfield*, "a state may not 'impose criminal penalties on the refusal to submit to [a warrantless blood] test.'" Therefore, the Pennsylvania DL-26 warnings are rendered partially inaccurate, and a defendant's consent must be evaluated by the trial court based upon the totality of the circumstances in light of that inaccuracy. *Commonwealth v. Evans*, 153 A.3d 323, 331 (Pa. Super. Ct. 2016).

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that Defendant was interrogated after his arrest or that he made any further incriminating statements after being arrested, it is a non-issue.

The burden is on the Commonwealth to prove that a defendant voluntarily consented to a warrantless search. *Commonwealth v. Acosta*, 815 A.2d 1078, 1083 (Pa. Super. Ct. 2003). To establish voluntariness, the Commonwealth must prove that the consent was "the product of an essentially free and unconstrained choice—not the result of duress or coercion, express or implied, or a will overborne—under the totality of the circumstances." *Commonwealth v. Mack*, 796 A.2d 967, 970 (Pa. 2002)(quoting *Commonwealth v. Strickler*, 757 A.2d 884, 901 (Pa. 2000)). Factors pertinent to a determination of whether consent to search was voluntarily given include:

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

Commonwealth v. Kemp, 961 A.2d 1247, 1261 (Pa. Super. Ct. 2008) (citation omitted).

Evaluating the factors surrounding Defendant's consent, the evidence does not suggest Defendant's acquiescence to the blood draw was involuntary. Defendant was not under duress; Officer Chica acted in a professional manner, even going so far as to be considerate by not subjecting Defendant to the embarrassment of walking handcuffed past his co-workers at the police barracks for

a breath test; and Officer Chica did not use excessive force or act in a threatening way.

Further, it is uncontested that Officer Chica read the DL-26 form verbatim to Defendant at the hospital and that after being read the form and signing it, Defendant allowed his blood to be drawn. There is, however, some contention about whether Defendant initially consented to having his blood drawn before he was transported to the hospital, or if he only consented once he was at the hospital and read the DL-26 form. The relevant testimony on this point was as follows:

> Officer Chica: . . . I then asked him if he would submit to a blood draw. At that time, he said; no breath? I said; no, and explained the reason why I didn't want to take him for a breath test.
>
> Commonwealth: Which was what?
>
> Officer Chica: I knew Mr. Sniscak was a state police trooper, a Pennsylvania State Trooper, and I felt that taking him in handcuffs to the barracks in front of his co-workers would be disrespectful.
>
> Commonwealth: And the barracks does breath tests, is that correct?
>
> Officer Chica: Correct.
>
> Commonwealth: Okay. Did you ask that he sign a DL-26 form?
>
> Officer Chica: He did say he was going to submit to a blood draw. So when I transported him to Lehighton Hospital, I read him the DL-26 verbatim. I signed it. He signed it stating I read it to him and he consented to the blood draw.

N.T. Suppression, 3/23/17, at 7-8.

. . .

Defense Counsel: Would you have -- Officer Chica said that he had talked to you about consenting to a blood draw before you got to the hospital.

Defendant: He did not.

Defense Counsel: You didn't talk about it before the hospital?

Defendant: No.

Id. at 18.

Particularly telling on this point is Officer Chica's statement that Defendant asked him why he was not taking him for a breath test, and the explanation he provided to Defendant in response. The implication is that Officer Chica would have otherwise taken Defendant for a breath test, but for the fact that Officer Chica wanted to spare Defendant from embarrassment. Officer Chica then stated Defendant gave a preliminary consent to a blood draw before being transported to the hospital, where he formally consented and signed the DL-26 form. The conclusion to be drawn here is that Defendant opted for the blood draw because he agreed that he did not want to be subjected to the unpleasantries attendant to electing a breath test. Otherwise, he presumably would have dismissed Officer Chica's concerns about being embarrassed in front of his co-workers and the two would instead have gone to the barracks for a breath test. Therefore, despite Defendant's statements to the contrary, this Court is inclined to believe that

Defendant did provide an initial consent to a blood draw before being transported to the hospital and read the DL-26 warnings, and that this consent was "the product of an essentially free and unconstrained choice." *Strickler*, 757 A.2d at 901.

Regarding the formal consent given at the hospital after being read the DL-26 warnings, this Court notes that "the maturity, sophistication and mental or emotional state of the defendant (including age, intelligence and capacity to exercise free will), are to be taken into account." *Strickler*, 757 A.2d at 901. Defendant testified that he has been a Pennsylvania State Trooper for approximately twenty-four years[17] and has participated in several dozen DUI arrests over the course of his career.[18] There are few individuals who, on the subject of the processes and consequences of blood draws and the DL-26 warnings, could be argued to have more "sophistication" and "intelligence" than someone in Defendant's position. He knew what was coming when he was arrested, and between his initial consent at the scene of the stop and his years of experience on the other end of the equation, this Court does not believe Defendant's will was overborne upon being read the DL-26 warnings. Thus, under the totality of the circumstances, his consent to the blood draw was voluntary.

Accordingly, the Court enters the following order:

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[17] N.T. Suppression, 3/23/17, at 17.
[18] *Id.* at 19.

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

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MICHAEL SNISCAK,	:	
	:	
Defendant	:	

Megan V. Madaffari, Esquire	Counsel for Commonwealth Deputy Attorney General
James R. Nanovic, Esquire	Counsel for Defendant

ORDER OF COURT

AND NOW, this 11th day of October, 2017, upon consideration of Defendant's "OMNIBUS PRETRIAL MOTION," and after a hearing held thereon, and after reviewing Defendant's Brief in Support, as well as the Commonwealth's Brief in Opposition, it is hereby **ORDERED** and **DECREED** that Defendant's Suppression Motion is **DENIED**.

BY THE COURT:

Joseph J. Matika, J.

FILED
2017 OCT 11 PM 2:09
CARBON COUNTY
CLERK OF COURTS
WM. C. MCGINLEY