

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Todd Kirk Graham,	:	
Appellant	:	
	:	No. 631 C.D. 2025
v.	:	
	:	Submitted: July 24, 2026
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing	:	

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE DUMAS**

FILED: September 1, 2026

Todd Kirk Graham (Appellant) appeals from the order entered by the Court of Common Pleas of Westmoreland County (trial court) on April 15, 2025, which denied Appellant's statutory appeal of a 12-month suspension of his driving privileges imposed by the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (DOT). DOT imposed the suspension pursuant to Section 1547(b)(1)(i) of the Vehicle Code, 75 Pa.C.S. § 1547(b)(1)(i), which is commonly known as the Implied Consent Law, after Appellant refused

chemical testing following his arrest for driving under the influence of alcohol or a controlled substance (DUI).¹ Upon review, we affirm.

I. BACKGROUND²

On September 10, 2021, at approximately 11:20 p.m., Pennsylvania State Police Troopers Trent Thomas (Trooper Thomas) and Ditzen (Trooper Ditzen)³ stopped Appellant's vehicle after observing it travel through a stop sign. Trooper Thomas approached the driver's side window and spoke with Appellant,

¹ Section 1547 of the Vehicle Code sets forth the civil penalties for a driver arrested for driving under the influence of alcohol or a controlled substance who refuses to submit to chemical testing, providing in relevant part:

(a) General rule.--Any person who drives, operates or is in actual physical control of the movement of a vehicle in this Commonwealth shall be deemed to have given consent to one or more chemical tests of breath or blood for the purpose of determining the alcoholic content of blood or the presence of a controlled substance if a police officer has reasonable grounds to believe the person to have been driving, operating or in actual physical control of the movement of a vehicle in violation of [S]ection . . . 3802 (relating to driving under the influence of alcohol or controlled substance)

(b) Civil penalties for refusal.--

(1) if any person placed under arrest for a violation of Section 3802 is requested to submit to chemical testing and refuses to do so, the testing shall not be conducted; but, upon notice by the police officer, [DOT] shall suspend the operating privilege of a person as follows:

(i) . . . for a period of 12 months.

75 Pa.C.S. § 1547(a), (b)(1)(i).

² In lieu of testimony, the trial court accepted dashcam video footage of the incident. *See* Hr'g Tr., 2/6/25, at 2-3; *id.*, Appellant's Ex. 1 (Dashcam Video), 10/3/24. The parties submitted proposed findings of fact and conclusions of law based on the video. *See* Appellant's Proposed Findings of Fact & Conclusions of Law, 3/6/25; DOT's Proposed Findings of Fact & Conclusions of Law, 3/7/25. Except as otherwise stated, we derive this background from the trial court's Pa.R.A.P. 1925(a) Opinion, which is supported by the video evidence. *See* Trial Ct. 1925(a) Opinion (1925(a) Op.), 7/11/25. It appears the trial court misidentified the troopers involved in this incident. *See* 1925(a) Op. at 2-4. The parties agree that Trooper Trent Thomas led the interaction with Appellant. This error is inconsequential.

³ Trooper Ditzen's first name is not of record.

who was operating the vehicle. Based on his observations and Appellant's responses, Trooper Thomas asked Appellant to exit the vehicle. Upon exiting the car, Trooper Thomas detected an odor of alcohol and asked Appellant to perform field sobriety testing.

Over the next several minutes, the troopers attempted to administer various field sobriety tests. Appellant stopped each test before its completion, citing either physical limitations or his confusion. Moreover, throughout each exercise, Appellant repeatedly asked Trooper Thomas to re-explain the instructions.

During the encounter, Trooper Ditzen can be heard saying, "just let him go." *See* Dashcam Video at 9:31. The troopers nonetheless continued their field sobriety testing. Following the attempted testing, Trooper Thomas asked Appellant more than once if he would submit to a Preliminary Breath Test (PBT), which Appellant declined. Trooper Thomas then informed Appellant that he did not believe Appellant was capable of safely driving home. After approximately 20 minutes of interaction, Trooper Thomas placed Appellant under arrest.

Once Appellant was in the back of the patrol vehicle, Trooper Thomas read the DL-26A form aloud to Appellant.⁴ Trooper Thomas then asked Appellant

⁴ The DL-26A form's warnings read as follows:

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 requesting that you submit to a chemical test of breath. You must successfully complete two consecutive breath samples in order to complete a chemical test of breath.
3. If you refuse to submit to the breath 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, your operating privilege will be suspended for up to 18 months. If your operating privilege

(Footnote continued on next page...)

11 consecutive times whether he would submit to a chemical breath test. Appellant failed to provide a direct response to Trooper Thomas and mainly repeated variations of, “I am really scared right now,” along with complaining of pain in his arms from the handcuffs. *See id.* at 22:20-25:40. After Trooper Thomas informed Appellant that he had effectively refused the test by remaining silent, Appellant immediately responded, “I have not refused anything.” *See id.* at 25:36. The troopers then transported Appellant to the Greensburg police barracks for processing.

On September 24, 2021, DOT issued Appellant a notice that his driver’s license would be suspended for 12 months because he had refused chemical testing. Appellant filed a statutory appeal, and the trial court scheduled a hearing. After several continuances, the trial court held a hearing in February 2025. By agreement of the parties, the trial court admitted the dashcam video of the traffic stop and allowed the parties to submit proposed findings of fact in lieu of live testimony.

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. In addition, if you refuse to submit to the breath 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, up to a maximum of five years in jail and a maximum fine of \$10,000.

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 breath test, you will have refused the test.

See DOT’s Proposed Findings of Fact & Conclusions of Law, Ex. No. 2 (DL-26A form).

On April 15, 2025, the trial court affirmed the suspension and denied Appellant’s statutory appeal. Appellant timely appealed and filed a court-ordered Pa.R.A.P. 1925(b) statement. Thereafter, the trial court issued a responsive opinion.

II. ISSUES

Appellant asserts several errors on appeal, which we reorder and summarize as follows.⁵ First, Appellant asserts that, based on the dashcam footage, the trial court erred in its credibility determinations. *See* Appellant’s Br. at iii. Second, Appellant contends that the trial court erred in concluding that his conduct constituted a refusal to submit to chemical testing. *See id.* at iii. Third, Appellant asserts that the trial court erred in rejecting his claim that he was unable to make a knowing and conscious decision regarding chemical testing because the troopers’ actions and statements confused him. *See id.* at iii-iv.

⁵ We note that Appellant’s brief does not conform to the Pennsylvania Rules of Appellate Procedure. Rule 2111 requires an appellant to include a “[s]tatement of the questions involved” in its brief. Pa.R.A.P. 2111(a)(4). Importantly, “[n]o question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby.” Pa.R.A.P. 2116(a). Here, Appellant’s Pa.R.A.P. 1925(b) statement lists five alleged errors complained of on appeal, including the assertion that the trial court erred in finding that he had refused chemical testing. *See* Appellant’s 1925(b) Statement, 6/4/25. However, Appellant’s statement of questions involved does not challenge the trial court’s refusal finding. *See* Appellant’s Br. at iii-iv. Despite this omission, Appellant references his contention that he was “not refusing anything.” *See id.* at 7. This is a violation of Rule 2116(a) and Rule 2119(a). *See* Pa.R.A.P. 2116(a), 2119(a) (“The argument shall be divided into as many parts *as there are questions to be argued . . .*”) (emphasis added). We caution Appellant that the failure to identify an issue or argument may result in waiver. *See Commonwealth v. Spatz*, 716 A.2d 580, 585 n.5 (Pa. 1998) (holding that failure to develop issue in appellate brief results in waiver). Nevertheless, because the issue was preserved in Appellant’s 1925(b) statement and is referenced in his brief, we address it herein.

III. DISCUSSION⁶

First, Appellant essentially challenges the trial court's credibility determinations, focusing in particular on Trooper Ditzen's "let him go" comment. *See* Appellant's Br. at iii. In Appellant's view, Trooper Ditzen's comment created "irreparable confusion" as to whether the troopers were releasing him. *See id.* Yet, Appellant fails to explain how this alleged confusion undermines the trial court's findings. *See generally id.*

"It is well settled that the trial court's credibility determinations in a license-suspension appeal will not be second-guessed on appeal." *Factor v. Dep't of Transp., Bureau of Driver Licensing*, 199 A.3d 492, 497 (Pa. Cmwlth. 2018) (quoting *Park v. Dep't of Transp., Bureau of Driver Licensing*, 178 A.3d 274, 284 (Pa. Cmwlth. 2018)). Determining the credibility of witnesses and the weight assigned to the evidence are matters solely within the discretion of the trial court as factfinder. *See Park*, 178 A.3d at 284.

Here, the trial court reviewed the Dashcam Video and found the troopers' "statements and behaviors credible." 1925(a) Op. at 4. Our review of the Dashcam Video footage confirms the trial court's findings. The troopers administered the DL-26A form warning and repeatedly asked Appellant to submit to chemical testing. *See* Dashcam Video at 22:20-25:40. Notably, the trial court's Pa.R.A.P. 1925(a) Opinion does not suggest that Trooper Ditzen's comment affected the court's conclusion. *See generally* 1925(a) Op. Because the trial court's

⁶ Our standard of review in a license suspension case is limited to whether the factual findings of the trial court are supported by substantial evidence and whether the trial court committed an error of law or an abuse of discretion. *See Negovan v. Dep't of Transp., Bureau of Driver Licensing*, 172 A.3d 733, 735 n.4 (Pa. Cmwlth. 2017).

credibility findings are supported by substantial evidence, we will not second-guess the court's credibility determinations on appeal. *Factor*, 199 A.3d at 497-98.

Next, Appellant contends that he never refused Trooper Thomas' request to submit to a chemical breath test because he never expressly declined the request. *See* Appellant's Br. at 4-5, 7. Appellant maintains that, after his arrest, he expressly stated that he was not "refusing anything" and merely complained that his "arms are hurting" from the handcuffs. *Id.* at 4-5. DOT counters that Appellant's conduct constituted a refusal. *See* Resp't's Br. at 9-12.

To sustain a suspension of a licensee's operating privilege under Pennsylvania's Implied Consent Law, DOT must first establish that the licensee: (1) was arrested for DUI by a police officer with reasonable grounds to believe the licensee was operating a vehicle while under the influence of alcohol or a controlled substance; (2) was requested to submit to chemical testing; (3) refused to submit to chemical testing; and (4) was warned by the officer that his license would be suspended if he refused to submit to chemical testing. *See Park*, 178 A.3d at 280.⁷

"The question of whether a licensee refuses to submit to a chemical test is a legal one, based on the facts found by the trial court." *Nardone v. Dep't of Transp., Bureau of Driver Licensing*, 130 A.3d 738, 748 (Pa. 2015). "[A]nything less than an unqualified, unequivocal assent to submit to chemical testing constitutes a refusal." *Factor*, 199 A.3d at 497. An explicit refusal expressed in words is not necessary, as a licensee can refuse chemical testing through their conduct. *See Dep't of Transp. v. Renwick*, 669 A.2d 934, 938-39 (Pa. 1996).

Under the Implied Consent Law, whether a licensee has refused the test by conduct turns on whether the licensee's overall behavior "demonstrates an

⁷ Here, Appellant only disputes the third element, *i.e.*, whether he refused to submit to a chemical test. *See generally* Appellant's Br.

unwillingness to assent to an officer's request for chemical testing.” *Nardone*, 130 A.3d at 749; *see Factor*, 199 A.3d at 497. An individual's silence, evasiveness, or general avoidance in response to the officer's question can constitute an unwillingness to assent. *See Renwick*, 669 A.2d at 939. A licensee's express statement that he has not refused the test does not preclude finding refusal where his conduct reflects an unwillingness to assent. *See Nardone*, 130 A.3d at 751.

Here, Appellant's arguments are unpersuasive. The Dashcam Video shows that Trooper Thomas read the DL-26A form aloud to Appellant and provided Appellant with at least 11 clear opportunities to state whether he would submit to a chemical breath test. *See Dashcam Video* at 22:20-25:40. Appellant did not answer the trooper's question, instead responding with unrelated complaints about his fear of police or discomfort from the handcuffs. *See id.* at 24:52-25:40. This non-responsive behavior clearly falls within the category of evasive or avoidant conduct that our courts effectively treat as a refusal under the Implied Consent Law. *See Renwick*, 669 A.2d at 939.

Appellant's statement to the troopers that he was not “refusing anything” does not alter this conclusion. *See Nardone*, 130 A.3d at 751 (holding that a motorist's statement to officers that he was “not refusing” was immaterial where his persistent denial demonstrated an “intractable unwillingness to consent”). As shown in the video footage, Appellant denied that he was refusing the test, yet his overall conduct otherwise failed to indicate that he would submit to testing. *See Dashcam Video* at 24:52-25:40. The trial court thus found that Appellant failed to “provide[a] response that could even approach the level of” unequivocal assent. *See 1925(a) Op.* at 3. Accordingly, the trial court properly concluded that Appellant's

overall conduct had evinced an unwillingness to assent, thereby constituting a refusal. *See Nardone*, 130 A.3d at 751.

Lastly, Appellant asserts that the troopers “created unnecessary confusion” that prevented him from making “a knowing and conscious decision” whether to submit to chemical testing. *See* Appellant’s Br. at iii. According to Appellant, Trooper Ditzen’s remark of “let him go” and the troopers’ general failure to explain the difference between a PBT and a chemical breath test caused confusion that impeded his ability to assent. *See id.* at 5-7. In response, DOT maintains that Appellant’s claims of confusion are unavailing and do not negate his refusal. *See* Resp’t’s Br. at 6-8.

“Once DOT satisfies [its] burden, the burden shifts to the licensee to prove that he was physically incapable of performing the test or that his refusal was not knowing and conscious.” *See Park*, 178 A.3d at 280. “The determination of whether a licensee was able to make a knowing and conscious refusal is a factual one that is to be made by the trial court.” *Kollar v. Dep’t of Transp., Bureau of Driver Licensing*, 7 A.3d 336, 340 (Pa. Cmwlth. 2010).

Once an officer reads the DL-26A form⁸ to a motorist, the officer “has done all that is legally required” to enable the individual to make a knowing and conscious decision on chemical testing. *See Dep’t of Transp., Bureau of Driver Licensing v. Scott*, 684 A.2d 539, 546 (Pa. 1996); *Park*, 178 A.3d at 282. At that point, the “motorist’s subjective beliefs” cannot excuse a “refus[al] to comply with

⁸ The DL-26A form, as shown above, includes the *O’Connell* warning, which originates from our Supreme Court’s decision in *Commonwealth v. O’Connell*, 555 A.2d 873 (Pa. 1989). In *O’Connell*, the Court held that when an officer requests chemical testing under Pennsylvania’s Implied Consent Law, the officer must explain to the motorist that the Miranda Rights recognized in the United States Supreme Court decision in *Miranda v. Arizona*, 384 U.S. 436 (1966), do not apply to that request. *See O’Connell*, 555 A.2d at 878.

the . . . Implied Consent Law.” *Scott*, 684 A.2d at 543; *see Park*, 178 A.3d at 282 (finding that, once the officer reads the warning, “any subjective confusion . . . [is] cured as a matter of law”). Moreover, a motorist’s own misunderstanding of the testing requirement does not invalidate his refusal. *See Sitoski v. Dep’t of Transp., Bureau of Driver Licensing*, 11 A.3d 12, 20 (Pa. Cmwlth. 2010).

Here, Appellant’s argument lacks merit. The recording shows that the two events Appellant identifies as confusing – Trooper Ditzen’s “let him go” remark and the troopers’ discussion of the PBT – had occurred prior to his arrest and before Trooper Thomas read the form to Appellant. *See* Dashcam Video at 9:25-9:35, 9:50-17:50. Because these events had preceded Trooper Thomas’ reading of the DL-26A form, they do not affect whether Appellant’s later refusal was knowing and conscious. *See Scott*, 684 A.2d at 543; *Park*, 178 A.3d at 282. Moreover, Appellant’s claimed confusion about the difference between a PBT and a chemical breath test stemmed from his own misunderstanding, and such self-induced confusion likewise has no effect on whether his refusal was knowing or conscious. *See Sitoski*, 11 A.3d at 20.

The trial court correctly observed that any confusion before Trooper Thomas read the form was “immaterial,” noting that the footage shows several minutes of attempted field sobriety testing followed by the *O’Connell* warning. *See* 1925(a) Op. at 4. Based on this evidence, the trial court reasonably found that the recording contains “no evidence . . . [of] unnecessary confusion.” *Id.* Accordingly, the trial court properly concluded that Appellant failed to prove that his refusal was not knowing and conscious. *See Park*, 178 A.3d at 282.

IV. CONCLUSION

In this case, the trial court's credibility findings are supported by substantial evidence, and we will not disturb them on appeal. *Factor*, 199 A.3d at 497-98. Based on these findings, Appellant's evasive replies and non-responsive conduct constituted a refusal to submit to chemical testing under the Implied Consent Law. *See Nardone*, 130 A.3d at 751; *Factor*, 199 A.3d at 497. Finally, Appellant's alleged confusion did not negate his ability to make a knowing and conscious decision regarding his refusal of chemical testing. *See Park*, 178 A.3d at 282; *Sitoski*, 11 A.3d at 20. Accordingly, we affirm.

LORI A. DUMAS, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Todd Kirk Graham,	:	
Appellant	:	
	:	No. 631 C.D. 2025
v.	:	
	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing	:	

ORDER

AND NOW, this 1st day of September, 2026, the order entered by the Court of Common Pleas of Westmoreland County on April 15, 2025, is AFFIRMED.

LORI A. DUMAS, Judge