

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
EUGENE VOLANSKY	:	
	:	
Appellant	:	No. 2204 EDA 2025

Appeal from the Judgment of Sentence Entered July 21, 2025
In the Court of Common Pleas of Bucks County
Criminal Division at No(s): CP-09-CR-0003324-2024

BEFORE: PANELLA, P.J.E., LANE, J., and BENDER, P.J.E.

MEMORANDUM BY PANELLA, P.J.E.:

FILED AUGUST 21, 2026

Eugene Volansky appeals from the judgment of sentence entered in the Bucks County Court of Common Pleas for his convictions of two counts of driving under the influence ("DUI") and two counts of driving while operating privilege is suspended. Volansky challenges the trial court's denial of his motion to suppress because he claims he did not voluntarily consent to the blood draw and he challenges the trial court permitting certain officer testimony at trial. After careful review, we affirm.

The trial court summarized the relevant factual and procedural history.

On May 5, 2024[,], around 5:30 P.M., Officer Brian Celauro ("Officer Celauro") from the Bensalem Township Police Department was called to a scene of a possible cardiac arrest in which [Volansky] was found in a car at the end of the driveway of [Volansky's] house at State Road in Bensalem Township. Notes of Testimony, 06/16/2025, at 31-33, 37. [Volansky] was in the driver's seat with his head against the steering wheel, sounding the horn and passed out. [*Id.*] at 33-34. Officer Celauro tried to

use a lockout tool to unlock the car, but [Volansky] woke up. **Id.** at 34. Officer Celauro then asked him to exit the car. **Id.** at 43.

While [Volansky] was standing outside the car, Officer Patrick Treadwell ("Officer Treadwell") observed [Volansky] noticeably impaired, head hanging, dazed, and confused. Notes of Testimony, 06/17/2025, at 8-9. [Volansky] told Officer Treadwell that he had relapsed, that he used heroin the day before and that morning. **Id.** at 9. [Volansky's] cell phone was found in the car with a [GPS] destination to [his] house. **Id.** at 12. Officer Treadwell then noticed that the car had some damage, so to make sure there was not a crash in the surrounding area, Officer Treadwell pulled up traffic cameras along State Road to observe the car's prior movements. **Id.** at 14-15. The cameras and license plate reader captured the car between 4:50 P.M. and 5:00 P.M. coming from Interstate 95 and going towards State Road with lane control issues. **Id.** at 15, 38.

At police headquarters, Officer Kyle Tuthill ("Officer Tuthill") asked [for Volansky's] consent for a blood draw. [N.T.,] 03/31/2025, at 5. At first [Volansky] refused, so Officer Treadwell explained to [him] the procedures for obtaining a search warrant. **Id.** at 7. [Volansky] then signed the form for chemical testing and had his blood drawn. **Id.** at 8-9. During the blood draw, [Volansky] did not say anything to stop it. **Id.** at 9. Lab results found methamphetamine and fentanyl. N.T., 06/17/2025, at 32.

On March 21, 2025, [Volansky] filed a Motion to Suppress Evidence Obtained as a Result of a Blood Draw Where Consent Was Not Knowingly and Voluntarily Given, which was denied by [the trial court after a hearing]. N.T., 03/31/2025, at 3, 31.

The parties agreed to a severance of the charges with Count 3 [and Count 4] to be heard by a jury, while Counts 1 and 2 would be heard by the judge alone.

On June 16-17, 2025, a jury trial was held, and [Volansky] was convicted of Count 3: Driving While Operating Privilege Is Suspended or Revoked – Controlled Substance and Count 4: Driving While Operating Privilege Is Suspended or Revoked.¹ N.T., 06/17/2025, at 90-91. On the same day, a bench trial was

¹ 75 Pa.C.S.A. § 1543(b)(1.1)(iii) and 75 Pa.C.S. § 1543(b)(1)(iii).

held immediately following the jury trial, and [Volansky] was convicted of Count 1: [DUI]: Controlled Substance and Count 2: [DUI]: Controlled Substance – Impaired Ability.^[2] **Id.** at 95. On July 21, 2025, [Volansky] was sentenced on Count 1: seventy-two hours to six months and Count 3: twenty-four to forty-eight months[, imposed concurrently. He was sentenced to no further penalty for Count 2 and Count 4.] Notes of Testimony, 07/21/2025, at 8. On August 20, 2025, [Volansky] filed a Notice of Appeal to the Superior Court.

Trial Court Opinion, 10/27/25, at 1-2.

Both Volansky and the trial court complied with Pennsylvania Rule of Appellate Procedure 1925. **See** Pa.R.A.P. 1925(a)-(b).

Volansky raises the following issues for our review.

1. Did the trial court err in denying suppression where after unequivocally refusing to consent to a blood draw, Mr. Volansky was badgered by police who pressured Mr. Volansky to consent such that the subsequent consent was not voluntarily given under the totality of the circumstances?
2. Did the trial court abuse its discretion in permitting Officer Treadwell to testify as to contents of video footage that could purportedly be observed if “zoom[ed] in,” where such observations did not appear on the footage as admitted and displayed to the jury, thereby improperly intruding into the domain of the fact-finder and offering impermissible, speculative lay-opinion testimony?

Appellant’s Brief, at 4 (alteration in original).

In his first issue Volansky challenges the denial of his motion to suppress his blood test results.

² 75 Pa.C.S.A. §3802(d)(1)(ii) and 75 Pa.C.S.A. §3802(d)(2).

In addressing this issue, we consider the following standard and scope of review:

Our standard of review in addressing a challenge to a trial court's denial of a suppression motion is limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. We are bound by the suppression court's factual findings so long as they are supported by the record; our standard of review on questions of law is *de novo*. Where, as here, the defendant is appealing the ruling of the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted. Our scope of review of suppression rulings includes only the suppression hearing record and excludes evidence elicited at trial.

Commonwealth v. Spence, 290 A.3d 301, 312 (Pa. Super. 2023) (citation omitted). Additionally, we observe the following standards when reviewing the voluntariness of a consent:

In determining the validity of a given consent, the Commonwealth bears the burden of establishing that a consent is 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. The standard for measuring the scope of a person's consent is based on an objective evaluation of what a reasonable person would have understood by the exchange between the officer and the person who gave the consent. Gauging the scope of a defendant's consent is an inherent and necessary part of the process of determining, on the totality of the circumstances presented, whether the consent is objectively valid, or instead the product of coercion, deceit, or misrepresentation.

Commonwealth v. Torres, 176 A.3d 292, 297 (Pa. Super. 2017) (citations omitted).

In considering the totality of the circumstances, some relevant considerations are:

1) the defendant's custodial status; 2) the use of duress or coercive tactics by law enforcement personnel; 3) the defendant's knowledge of his right to refuse to consent; 4) the defendant's education and intelligence; 5) the defendant's belief that no incriminating evidence will be found; and 6) the extent and level of the defendant's cooperation with the law enforcement personnel.

Commonwealth v. Krenzel, 209 A.3d 1024, 1028-29 (Pa. Super. 2019) (citation omitted).

Volansky asserts three facts that, under the totality of the circumstances, he claims made his consent coerced and involuntary: (1) police asking for his consent after his initial refusal, (2) being under arrest and in a holding cell, and (3) the officer's statements regarding the legal consequences if a warrant is obtained and Volansky continues to refuse to consent. **See** Appellant's Brief, at 16-31. We are unpersuaded.

For the first prong of his argument, Volansky relies on two federal district court cases, ***United States v. Clark***, No. CR 2018-0009, 2019 WL 3456813, at *12 (D.V.I. July 30, 2019) and ***United States v. Eberhart***, 1998 WL 34113374 (N.D. Iowa Oct. 9, 1998). Setting aside the lack of precedential value of those cases, Volansky overlooks a crucial factual distinction between those cases and his case—the number of times that the defendant was asked for consent. Here, in contrast to ***Eberhart*** and ***Clark***, the officer only asked him once more after his initial denial. In those cases, the court was clear that it was the *repeated* requests for consent after the defendant's refusal that made the consent involuntary, not the fact that the officers again asked for

consent after the initial refusal. **See Clark**, 2019 WL 3456813, at *12 (“While the case law does not prohibit police from asking for a consent a second time, the question ultimately becomes how many times do you have to say “no” to a police officer before he can be expected to stop asking for consent to search your residence? Having been denied four times and specifically told to get a warrant, this court concludes that Deputy Chapman crossed the line and that the defendant’s capitulation was not the product of free and voluntary consent.” (quoting **Eberhart**, 1998 WL 34113374 at *4)). Therefore, we disagree that Volansky being asked a second time whether he would like to consent to the blood draw made his consent involuntary.

Next, Volansky relies on his arrest and being in custody as adding to the coercive atmosphere such that his consent was involuntary. We disagree. As the trial court explained, “while [] certainly being in a police station is inherently intimidating, here in this circumstance the police officers could not have been more calm, considerate. They used no form of trickery or coercion in explaining the consequences of the refusal.” N.T., 3/31/25, at 30. We agree with the trial court, and Volansky fails to provide us with any persuasive binding law for his proposition that because he was under arrest and in a police station, his consent was *per se* involuntary.

Lastly, Volansky asserts that the officer contributed to the coercive atmosphere by threatening to obtain a search warrant and suggesting that if Volansky refused consent after a valid search warrant was obtained, then

Volansky could be charged with obstruction of justice. Again, we disagree that such statements were coercive.

In ***United States v. Birchfield***, 579 U.S. 438 (2016), the United States Supreme Court held that “motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense.” ***Id.*** at 477; ***see also Commonwealth v. Johnson***, 188 A.3d 486, 490 (Pa. Super. 2018) (“The critical inquiry following ***Birchfield*** is whether the officer conveyed the threat of enhanced criminal penalties at the time of the arrest when seeking a warrantless blood-draw.”).

Here, however, the officer did not tell Volansky that there were enhanced criminal penalties if he refused to consent to a warrantless blood draw. Rather, the officer told Volansky that if he refused, the officer could and would seek a search warrant for his blood, and if the warrant were obtained and Volansky continued to refuse at that point, then he could be charged with the offense of obstruction of justice. ***See*** N.T., 3/31/25, at 28-31. As we have previously explained, “[w]e reject the notion that a suspect’s consent to search is rendered *per se* involuntary in situations where the police merely advise the suspect that they have enough information to get a search warrant should he refuse the search.” ***Commonwealth v. Metz***, 332 A.3d 92, 101-02 (Pa. Super. 2025) (emphasis omitted). Further, the officer correctly informed Volansky that any refusal to comply with a valid warrant could result in further criminal charges. ***See Commonwealth v. Palchanes***, 224 A.3d

58, 60-62 (Pa Super. 2019) (sustaining conviction for obstruction of administration of law, 18 Pa.C.S.A. § 5101, where a motorist refused to comply with a warrant for a blood draw). Providing such information was not a coercive threat to get Volansky to involuntarily consent to a warrantless blood draw. Instead, it informed Volansky of the officer's anticipated future action of seeking a search warrant for a blood draw and Volansky's obligation to comply with a valid warrant.

Based upon the totality of the circumstances, the record supports that Volansky's consent was voluntary. While Volansky was under arrest and at the police station, the atmosphere was calm and the officers displayed no threatening conduct. Volansky was read and signed the DL-26 form regarding his rights to refuse a warrantless blood draw. A few minutes later, another officer again discussed the matter with Volansky and informed him that he would seek a search warrant and if Volansky continued to refuse to comply after the warrant was obtained, then he could face additional criminal charges. With that information, Volansky made an informed decision to consent to the blood draw before a search warrant was obtained. Consent under those circumstances is entirely voluntary. Therefore, we discern no abuse of discretion or error of law with the trial court denying Volansky's motion to suppress.

In his second issue, Volansky argues that the trial court abused its discretion by allowing impermissible lay witness testimony in the form of

Officer Treadwell testifying that, if the surveillance footage were “zoomed in,” you could see that the driver was the only person in the vehicle and was wearing a “fancy” T-shirt. **See** Appellant’s Brief, at 31-35. He argues that this testimony was impermissible because the jury was not presented a “zoomed in” video that depicted the observations to which Officer Treadwell testified. **See id.** The Commonwealth argues, *inter alia*, that even assuming *arguendo* that such testimony was impermissible, it was a harmless error. **See** Appellee’s Brief, at 41-43. We agree with the Commonwealth.

An erroneous ruling by a trial court on an evidentiary issue does not require us to grant relief where the error was harmless. The Commonwealth bears the burden of demonstrating harmless error. Harmless error exists where: (1) the error did not prejudice the defendant or the prejudice was *de minimis*; (2) the erroneously admitted evidence was merely cumulative of other untainted evidence which was substantially similar to the erroneously admitted evidence; or (3) the properly admitted and uncontradicted evidence of guilt was so overwhelming and the prejudicial effect of the error was so insignificant by comparison that the error could not have contributed to the verdict.

Commonwealth v. Vucich, 194 A.3d 1103, 1110 (Pa. Super. 2018) (brackets and citation omitted).

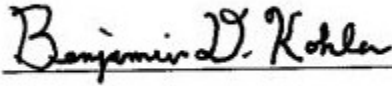
The testimony that Volansky challenges relates to his identification as the driver of the vehicle. However, there was ample evidence for the jury to conclude that he drove the vehicle. Volansky was found passed out in the driver’s seat of his vehicle at the end of his driveway. His phone had a GPS destination to his house, and he told the officers that he was previously at church. **See** N.T. 6/17/25, at 36-37. Damage was observed on his vehicle,

and traffic video footage and a license plate reader confirmed that about thirty minutes before he was found, his vehicle was driven erratically nearby. The evidence was overwhelming that Volansky had driven his vehicle. Therefore, assuming *arguendo* that the trial court erred, any such error was harmless.

For the foregoing reasons, we affirm.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 8/21/2026