

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

FREDERICK BOONE,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY

Case No. 26 MA 0040

Criminal Appeal from the
Mahoning County Court No. 4 of Mahoning County, Ohio
Case No. 2025 TR C 02230 AUS

BEFORE:

Katelyn Dickey, Cheryl L. Waite, Mark A. Hanni, Judges.

JUDGMENT:

Affirmed.

Atty. Lynn Maro, Mahoning County Prosecutor, *Atty. Kristie M. Weibling* and *Atty. Brian P. Kish*, Assistant Prosecuting Attorneys, for Plaintiff-Appellee and

Atty. Christopher P. Lacich, Roth Blair, for Defendant-Appellant.

Dated: October 1, 2026

DICKEY, J.

{¶1} Appellant, Frederick Boone, appeals from the February 9, 2026 and March 9, 2026 judgments of the Mahoning County Court No. 4 denying his motion to suppress and sentencing him for driving while under the influence of alcohol or drugs (“OVI”) following a no contest plea. On appeal, Appellant raises six assignments of error challenging the denial of his motion to suppress and arguing: (1) the trial court failed to make findings of fact and conclusions of law regarding whether the arresting officer substantially complied with standardized procedures when he administered the field sobriety tests, whether Appellant’s recorded refusal was voluntary, knowing, and uncoerced, and whether Appellant’s constitutional rights were violated because statements were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966); (2) there was insufficient evidence to support a finding that the officer had a reasonable, articulable suspicion to stop and detain Appellant; (3) there was insufficient evidence to support a finding that the officer had a reasonable, articulable suspicion in order to detain Appellant to complete field sobriety tests in violation of his constitutional rights; (4) the field sobriety tests were not administered in substantial compliance with the National Highway Traffic Safety Administration (“NHTSA”) and therefore the results were not reliable; (5) the refusal to submit to a breath test was not made knowingly and voluntarily as Appellant was not properly advised of the consequences of a refusal; and (6) the statements obtained from Appellant were in violation of his *Miranda* rights. Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

{¶2} On June 22, 2025, Appellant was charged by way of a uniform traffic citation on two counts: count one, OVI, a misdemeanor of the first degree in violation of R.C. 4511.19(A)(1)(a); and count two, improper lane usage, a minor misdemeanor in violation of R.C. 4511.25(A). The next day, Appellant pled not guilty to both charges.

{¶3} On September 4, 2025, Appellant was appointed counsel. On December 18, 2025, Appellant filed a motion to suppress raising the following:

1. Whether the initial traffic stop was supported by reasonable suspicion of a traffic violation or criminal activity;
2. Whether Defendant was unlawfully detained beyond the scope and duration of the traffic stop without reasonable suspicion of impairment;
3. Whether the field sobriety tests were administered in substantial compliance with standardized procedures, and whether the results are reliable;
4. Whether Defendant's recorded refusal of the breath test was voluntary, knowing, and uncoerced;
5. Whether Defendant's statements were obtained in violation of *Miranda* and constitutional protections.

(12/18/2025 Motion to Suppress, p. 3).

{¶4} A hearing on Appellant's motion to suppress was held on January 28, 2026. Appellee, the State of Ohio, presented testimony from one witness: Lieutenant Daniel Burich ("Lt. Burich") with the Austintown Police Department ("APD"). Appellant did not present a defense.

{¶5} Lt. Burich has worked for the APD for approximately 14 years. At the time of the stop, he held the rank of sergeant. He was promoted to lieutenant in December 2025.

{¶6} The incident at issue occurred on June 22, 2025, at about 1:30 a.m. on a Saturday night/Sunday morning, while Lt. Burich was on routine patrol. He pulled from Leharps Road onto North Meridian Road, traveling southbound behind Appellant's vehicle, a white Toyota. He first got into the curb lane, then noticed the vehicle's slow speed and pulled behind it. Lt. Burich paced the vehicle at approximately 24 miles per hour in a 35-mile-per-hour zone. He testified there was no one else on the road at that point and Appellant's vehicle was the only car traveling southbound.

{¶7} Lt. Burich then observed Appellant's vehicle cross over the double yellow center line, with about 50 percent of the vehicle crossing into the direction of oncoming

traffic. He did not stop the car at that first crossing. Lt. Burich explained that a driver might drift over once by accident and he wanted to see whether it would happen again. He said he was only minorly concerned the first time, considered together with the slow rate of speed. Lt. Burich testified the vehicle crossed the center line five more times (six times total) before he activated his overhead lights. On cross-examination, he agreed that slow speed by itself was not a traffic violation and that Appellant was not impeding traffic.

{¶8} Appellant did not pull over when the cruiser's overhead lights were activated. Rather, Appellant continued at roughly the same slow speed, so Lt. Burich activated his siren. Lt. Burich said he turned on his lights about 30 yards north of Hendricks Road, where he had anticipated making the stop, and that Appellant continued through the Hendricks intersection. Lt. Burich estimated the distance from Hendricks to Connecticut Avenue at approximately 300 yards, and testified that Appellant continued driving that distance before stopping.

{¶9} As they approached Connecticut Avenue, the vehicle's left turn signal came on, indicating an intended left turn onto Connecticut. Lt. Burich testified that Connecticut Avenue, coming out of the city, is a one-way street carrying westbound traffic only, so a left turn would have been the wrong way. Because Appellant's turn signal stayed on, Lt. Burich drove into oncoming traffic to prevent the left-hand turn. With the windows of both vehicles down, Lt. Burich called out for Appellant to pull over to the right. Appellant complied, stopping on Connecticut within about 20 yards of the intersection with North Meridian Road. Lt. Burich acknowledged there are driveways in that area but stated there were none past the point where he pulled into oncoming traffic.

{¶10} Lt. Burich approached the driver's side of Appellant's vehicle with a flashlight. Two other passengers were in the car. His first observation was Appellant's glassy, bloodshot eyes. Lt. Burich also described a strong odor of alcohol emanating from the vehicle. Lt. Burich told Appellant the reason for the stop — going extremely slow and crossing the double yellow center line six times — and asked why he had not stopped. Appellant gave no real response or explanation for crossing the line. Lt. Burich then requested Appellant's driver's license and proof of insurance, which Appellant said he did not have. Appellant provided his driver's license number from memory, which Lt. Burich

wrote down. When asked for other identification bearing his name, Appellant produced a debit or bank card.

{¶11} Lt. Burich described Appellant's retrieval of the card as not "as smooth," explaining that Appellant looked around the car as if unsure where items were before locating and handing it over. (1/28/2026 Suppression Hearing Tr., p. 31). Lt. Burich did not recall Appellant dropping the card. He characterized Appellant as having "[f]umbling fingers" when searching for the card. (*Id.* at p. 9). Lt. Burich testified that Appellant's speech was "thick and mumbled" and that an earlier statement had been inaudible. (*Id.*).

{¶12} Lt. Burich asked Appellant where he was coming from. Appellant said he was coming from a get together on the south side. He asked whether Appellant had consumed any alcoholic beverages. Appellant answered "two, maybe three." (*Id.* at p. 8). Lt. Burich explained that he asked where Appellant was coming from because it was a normal question, particularly given the driving, the traffic infractions, the odor of alcohol, and the glassy, bloodshot eyes. Lt. Burich had a suspicion that Appellant had been drinking and that he asked the question to confirm or deny that Appellant was coming from somewhere with alcohol.

{¶13} Lt. Burich testified that he asked Appellant to exit the vehicle to investigate further and that Appellant fell back into the car when he stepped out. Lt. Burich instructed Appellant to walk to the rear of the vehicle and described Appellant's walk as "very unsteady." (*Id.* at p. 8). Based on his observations, Lt. Burich told Appellant he would request that Appellant submit to standard field sobriety tests. They walked across Connecticut Avenue to an area of solid concrete by an industrial building, which Lt. Burich selected as a smooth, even surface to conduct the tests.

{¶14} Lt. Burich testified he was trained in the NHTSA manual, beginning with 40 hours of training over a week at the Ohio Peace Officer's Academy covering OVI detection, testing, and observation, followed by in-service and continued training. Lt. Burich indicated the department keeps a NHTSA manual, replaced when a new one is issued, but that he was not personally assigned a manual.

{¶15} Lt. Burich administered the horizontal gaze nystagmus ("HGN") test first. Before beginning, he asked Appellant whether he wore glasses or contacts or had any head injuries. Appellant said he did not. Lt. Burich held his pen approximately 12 to 14

inches away, confirmed Appellant could see the tip, and instructed Appellant to follow the pen with his eyes only without moving his head. Lt. Burich checked for equal tracking, which Appellant had, and then looked for lack of smooth pursuit, which he said Appellant showed in both eyes. Appellant had “equal tracking in both eyes” but “failed the other six clues.” (*Id.* at p. 11). Asked on cross-examination how many times he passed the pen across Appellant’s field of vision, Lt. Burich said he could not give an approximate number, estimating each check took about 10 to 15 seconds. Asked how many passes the NHTSA manual in effect in 2025 requires for the HGN test, Lt. Burich stated he did not know the exact number.

{¶16} Lt. Burich next attempted to administer the walk-and-turn test. Lt. Burich testified that as he began instructing, Appellant started performing the test before instructions were complete, despite being told not to. Each time Lt. Burich tried to place Appellant with his right foot on the line and left foot behind it, Appellant put his feet parallel to each other, and at one point asked which was his right foot and which was his left. Lt. Burich testified he could not even get Appellant into the prescribed starting stance and that Appellant accomplished nothing on the walk-and-turn. He said Appellant very briefly placed his feet heel to toe but then moved a foot back to be parallel and would not stay in position. Lt. Burich identified Appellant’s question about which foot was which as one of the “inconsistent responses” he had previously described. (*Id.* at p. 35).

{¶17} Lt. Burich then moved to the one-leg-stand test. Lt. Burich testified he put Appellant in the prescribed manner and began instructions but Appellant repeatedly said he had to go to the bathroom in response to every attempt to give instructions. Lt. Burich did not make arrangements for Appellant to use the bathroom during the field sobriety testing and said that Appellant waited until he was taken to the station. The one-leg stand test was never performed. Before the walk-and-turn and one-leg-stand tests, Lt. Burich testified Appellant would have been asked whether he had any injuries to his knees, legs, or ankles that would prohibit him from performing the tests.

{¶18} Based on Lt. Burich’s observations of Appellant’s driving, the observations at the vehicle (glassy, bloodshot eyes, thick and mumbled speech, inaudible statement, and falling back into the vehicle on exit), his conversation with Appellant, and the failed field sobriety tests, he placed Appellant under arrest. Lt. Burich testified he had probable

cause to arrest Appellant for OVI and to charge him for the marked-lanes violation. Appellant was transported to the APD for processing.

{¶19} At the station, Lt. Burich offered Appellant a breath test on the Intoxilyzer 8000. He read Appellant the consequences of the test and refusal on the rear of the BMV 2255 Form and provided Appellant a copy to follow along. Lt. Burich said he had to offer the test several times. After Lt. Burich entered Appellant's information and asked whether he was submitting or refusing, Appellant kept stating that he was "thinking," and the machine timed out. (*Id.* at p. 15). Lt. Burich explained again that Appellant needed to make a decision, and Appellant again said he was "thinking." (*Id.*).

{¶20} Lt. Burich testified that as he began entering the information again, Appellant said he wanted to see the law on it. Appellant was again provided the BMV 2255 Form and shown the section on the consequences of test and refusal, which Lt. Burich described as the law under R.C. 4511.19. Appellant then said he would take the test. Lt. Burich finished inputting the information. Appellant sat down and then said he was going to refuse it. The machine timed out. Lt. Burich input the information a third time to mark the refusal. Appellant also refused to sign the BMV 2255 Form.

{¶21} Lt. Burich confirmed the encounter was memorialized on body camera footage which captured the interaction once he was out of the vehicle. He testified that the crossing of the double yellow center line was not captured because there is no in-dash camera and his body camera, angled while he was seated, captured more of the dash and windshield. Lt. Burich watched the footage the night of the stop to complete his report. Lt. Burich identified Appellant in the courtroom and the trial court noted the identification on the record.

{¶22} On February 9, 2026, the trial court denied Appellant's motion to suppress, specifically stating:

On June 22, 2025 in the Township of Austintown, County of Mahoning, and State of Ohio, Lieutenant Daniel Burich of the Austintown Township Police Department initiated a traffic stop of the defendant. The officer observed the defendant operating a motor vehicle well below the posted rate of speed as well as observing the defendant's motor vehicle cross over the center line of the road at least six times. The officer testified

that over fifty percent of the vehicle crossed over the center line several times.

The officer activated the overhead lights on the police vehicle to initiate a traffic stop of the defendant. The defendant failed to stop his vehicle and continued traveling. The officer continued pursuing the defendant eventually activating the siren. After traveling an extended distance the defendant eventually stopped his vehicle. The officer approached the vehicle and upon speaking with the defendant, testified that he noticed a strong odor of alcohol emanating from the vehicle as well as the defendant's eyes being blood shot and glassy. Additionally, the defendant's speech was mumbled and inaudible, he fumbled with his fingers, had inconsistent responses and admitted to consuming alcohol. Based upon these observations, the officer requested the defendant to exit the vehicle and perform the following field sobriety tests:

- Horizontal/Vertical Gaze Nystagmus;
- Walk and Turn;
- One Leg Stand;

The officer testified that the defendant substantially failed the HGN test and was unable to complete the Walk and Turn and One Leg Stand.

The defendant was placed under arrest and transported to the Austintown Police Department, where he refused the Intoxilyzer 8000 breathalyzer machine.

The defendant was subsequently cited for OVI under O.R.C. Sec. 4511.19A1A and Improper Lane Usage under O.R.C. Sec. 4511.25A1.

The Court finds the officer had sufficient probable cause to initiate the traffic stop of the defendant. The officer presented a reasonable, articulable suspicion of indicia of impairment when directly interacting with the defendant at the vehicle. This suspicion of impairment justified the

request for the defendant to perform the field sobriety tests. The results of the field sobriety tests justified the officer in placing the defendant under arrest and transporting him to the Austintown Police Department for the breathalyzer test.

The Court finds the officer's actions to be appropriate and denies the defendant's Motion to Suppress.

(2/9/2026 Judgment Entry, p. 1-2).

{¶23} On March 9, 2026, Appellant withdrew his former not guilty plea and entered a no contest plea to count one, OVI, a misdemeanor of the first degree in violation of R.C. 4511.19(A)(1)(a). The trial court found Appellant guilty, dismissed count two, improper lane usage, and sentenced him as follows: a \$565 fine; \$95 in court costs; 180 days in jail, with 177 days suspended; Driver Intervention Program in lieu of jail time; a mandatory one-year driver's license suspension; and 12 months non-reporting probation.

{¶24} Appellant filed a timely appeal and raises six assignments of error.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS BECAUSE THE COURT FAILED TO MAKE FINDINGS OF FACTS AND CONCLUSIONS OF LAW REGARDING WHETHER THE OFFICER SUBSTANTIALLY COMPLIED WITH STANDARDIZED PROCEDURES WHEN HE ADMINISTERED THE FIELD SOBRIETY TESTS, WHETHER THE APPELLANT'S RECORDED REFUSAL WAS VOLUNTARY, KNOWING, AND UNCOERCED, AND WHETHER APPELLANT'S CONSTITUTIONAL RIGHTS WERE VIOLATED BECAUSE STATEMENTS WERE OBTAINED IN VIOLATION OF *MIRANDA*.

ASSIGNMENT OF ERROR NO. 4

THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION TO SUPPRESS BECAUSE THE FIELD SOBRIETY TESTS WERE NOT ADMINISTERED IN SUBSTANTIAL COMPLIANCE WITH NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION AND THEREFORE THE RESULTS WERE NOT RELIABLE.

ASSIGNMENT OF ERROR NO. 5

THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION TO SUPPRESS BECAUSE THE REFUSAL TO SUBMIT TO A BREATH TEST WAS NOT MADE KNOWINGLY AND VOLUNTARILY AS THE APPELLANT WAS NOT PROPERLY ADVISED OF THE CONSEQUENCES OF A REFUSAL.

ASSIGNMENT OF ERROR NO. 6

THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION TO SUPPRESS BECAUSE STATEMENTS WERE OBTAINED FROM APPELLANT IN VIOLATION OF HIS *MIRANDA* RIGHTS.

{¶25} In his first assignment of error, Appellant argues the trial court erred in denying his motion to suppress because the court failed to make findings of fact and conclusions of law regarding whether Lt. Burich substantially complied with standardized procedures when he administered the field sobriety tests, whether Appellant’s recorded refusal was voluntary, knowing, and uncoerced, and whether Appellant’s constitutional rights were violated because statements were obtained in violation of *Miranda*. In his fourth assignment of error, Appellant alleges the trial court erred in denying his motion to suppress because the field sobriety tests were not administered in substantial compliance with NHTSA standards and therefore the results were not reliable. In his fifth assignment of error, Appellant asserts the trial court erred in denying his motion to suppress because the refusal to submit to a breath test was not made knowingly and voluntarily as he was

not properly advised of the consequences of a refusal. In his sixth assignment of error, Appellant argues the statements obtained from him violated his *Miranda* rights.

{¶26} Upon review, Appellant’s first assignment of error is essentially an umbrella claim that incorporates the substance of the fourth, fifth, and sixth assignments. It argues the trial court failed to make Crim.R. 12(F) findings on three specific issues: whether Lt. Burich substantially complied with standardized procedures in administering the field sobriety tests, whether the breath-test refusal was voluntary, knowing, and uncoerced, and whether statements were obtained in violation of *Miranda*. Those three subjects are precisely the fourth (NHTSA substantial compliance), fifth (refusal voluntariness), and sixth (*Miranda*) assignments of error. Resolving the three substantive issues resolves the first. Thus, because Appellant’s first, fourth, fifth, and sixth assignments of error are interrelated, we will address them together for ease of discussion.

A trial court’s decision to deny a motion to suppress involves a mixed question of law and fact: legal questions are reviewed de novo, but factual issues are rarely disturbed as the trial court is the fact-finder at the suppression hearing and occupies the best position to evaluate witness credibility. *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, 850 N.E.2d 1168, ¶ 100. In other words, an appellate court must accept the trial court’s findings of fact if they are supported by competent, credible evidence; upon accepting the facts as true, the appellate court independently determines, without deferring to the trial court’s conclusion, whether the facts satisfy the applicable legal standard. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8.

State v. Bugno, 2022-Ohio-2008, ¶ 32 (7th Dist.), quoting *State v. Smith*, 2021-Ohio-3330, ¶ 30 (7th Dist.).

{¶27} A threshold principle governs all four assignments: the scope of the State’s burden at a suppression hearing is fixed by the specificity of the defendant’s motion.

“When a defendant’s motion to suppress raises only general claims . . . the burden imposed on the state is fairly slight. . . . With a general motion

to suppress, the state is only required to demonstrate, in general terms, that it substantially complied with the regulations. Unless the defendant raises a specific issue in a motion, specific evidence is not required.”

State v. Keene, 2009-Ohio-1201, ¶ 34 (7th Dist.), quoting *State v. Johnson*, 2007-Ohio-602, ¶ 9 (7th Dist.), citing *State v. Johnson*, 137 Ohio App.3d 847, 851 (2000).

{¶28} A defendant elevates that burden only “by identifying facts that support [the] allegations on cross-examination,” and then only as to the issues actually raised. *State v. Parks*, 2025-Ohio-191, ¶ 33 (1st Dist.). To shift the burden as to the field sobriety tests, the motion “must state the grounds for suppression with both specificity and particularity[.]” a mere statement that the tests did not comply with NHTSA “provides no factual basis[.]” *State v. Bish*, 2010-Ohio-6604, ¶ 16-17 (7th Dist.).

{¶29} In this case, Appellant’s motion to suppress raised only general claims. As the State details, the motion devoted a single sentence to the administration of the tests, asserting that Appellant “experienced confusion regarding instructions, including left and right foot placement, and repeatedly expressed a need to use the bathroom during testing.” (8/6/2026 Appellee’s Brief, p. 6). The State’s burden was therefore “fairly slight,” and a general showing of substantial compliance sufficed. *Keene* at ¶ 34.

{¶30} As to the fourth assignment, R.C. 4511.19(D)(4)(b) provides that field sobriety test results are admissible only if “it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests . . . including, but not limited to,” NHTSA standards. See *State v. Codeluppi*, 2014-Ohio-1574, ¶ 11. The State need not introduce the NHTSA manual in every case; it “may demonstrate substantial compliance through witness testimony to explain the NHTSA standards and the officer’s compliance with those standards.” *State v. Matzinger*, 2017-Ohio-324, ¶ 10 (4th Dist.). Field sobriety test results “are admissible in Ohio without expert testimony so long as the proper foundation has been shown both as to the administering officer’s training and ability to administer the test and as to the actual technique used by the officer[.]” *State v. Jackman*, 2008-Ohio-1944, ¶ 22 (8th Dist.), quoting *State v. Boczar*, 2007-Ohio-1251.

{¶31} The record satisfies that standard. As stated, Lt. Burich testified he was NHTSA-trained through a 40-hour academy course in OVI detection and testing, with continuing in-service training. He administered the tests on a smooth, even surface and described his actual HGN technique — screening for glasses, contacts, and head injury; holding the stimulus 12 to 14 inches away; confirming equal tracking to exclude a medical cause; and observing lack of smooth pursuit in both eyes. This testimony is similar to that determined sufficient in *Keene*, which also held “there is no requirement that the officer knew that the standard he uses is called NHTSA” and that an inability to recall every clue off the top of his head is not fatal. *Keene*, 2009-Ohio-1201, at ¶ 31-32 (7th Dist.).

{¶32} Appellant’s appellate complaints — that the State did not elicit the number, timing, or spacing of the HGN passes, and that Lt. Burich could not state how many passes NHTSA requires — are the very specifics he never raised below. A defendant may not lodge only a general objection and then “devis[e] a more specific objection on appeal” in an attempt to “blindsides the prosecution.” *Jackman* at ¶ 35, quoting *Johnson*, 2007-Ohio-602 (7th Dist.).

{¶33} Here, only the HGN test produced clues. The walk-and-turn was never completed and the one-leg stand test was never performed. Lt. Burich’s observations of Appellant’s inability to follow instructions and maintain balance are admissible regardless of any test result. See *Keene* at ¶ 40.

{¶34} As to the fifth assignment, any person operating a vehicle on Ohio roadways is “deemed to have given consent to a chemical test” if arrested for an OVI violation. R.C. 4511.191(A)(2). The arresting officer must read the statutory advisement — the substance of BMV 2255 Form — and the failure to submit within two hours “automatically constitutes a refusal.” See R.C. 4511.192(A)-(B). Reading the form satisfies the advisement and establishes a valid refusal. See *Bryan v. Hudson*, 77 Ohio St.3d 376 (1997), syllabus.

{¶35} Refusal is measured objectively. “[A] refusal to submit to a chemical test . . . will occur where a person, by his acts, words or general conduct, manifests an unwillingness to submit to the test. Such refusal need not have been knowingly and intentionally made.” *Hoban v. Rice*, 25 Ohio St.2d 111 (1971), paragraph three of the

syllabus. “It need not be shown that the person subjectively understood the consequences of his refusal.” *Id.* at paragraph four of the syllabus. A claim that the driver did not understand, i.e., even a “too drunk to understand” theory, is not a defense. *Id.* at 118. “The fact of refusal . . . appears whenever a preponderance of all the evidence” would justify “a reasonable person in the position of the requesting officer” in believing the driver “was capable of refusal and manifested unwillingness to take the test.” *Andrews v. Turner*, 52 Ohio St.2d 31 (1977), paragraph one of the syllabus. A verbal agreement, followed by conduct defeating the test, is itself a refusal. See *Id.* at 37.

{¶36} The record establishes a valid refusal. Lt. Burich read Appellant the consequences of testing and refusal on BMV 2255 Form and gave him a copy to follow. Offered the test several times, Appellant repeatedly said he was “thinking” as the machine timed out. (1/28/2026 Suppression Hearing Tr., p. 15). Appellant asked to “see a law” and was again shown BMV 2255 Form and the consequences section. (*Id.*). Appellant said he would take the test, then sat and stated he would refuse, and refused to sign the form. Appellant’s conduct manifested an unwillingness to submit under the objective standard. Appellant’s contention that his request to “see a law” reflected confusion rather than a knowing refusal misapprehends the standard, which requires no proof of subjective understanding. See *Hoban* at paragraph four of the syllabus. Any confusion is consistent with the impairment Lt. Burich observed.

{¶37} As to the sixth assignment, an ordinary traffic stop is analogous to a *Terry* stop rather than a formal arrest, and “persons temporarily detained pursuant to such stops are not ‘in custody’ for the purposes of *Miranda*.” *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984). “The officer may ask the detainee a moderate number of questions to . . . obtain information confirming or dispelling the officer’s suspicions.” *Id.* at 439. An officer “can ask the detained motorist if he had been drinking without providing *Miranda* warnings even though the motorist was not yet free to go[,]” and may ask how much he had to drink and require field sobriety tests. *State v. Coleman*, 2007-Ohio-1573, ¶ 19-21 (7th Dist.).

{¶38} The custody inquiry is objective. *Miranda* attaches only when “freedom of action is curtailed to a ‘degree associated with formal arrest.’” *Berkemer* at 440, quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983). “A policeman’s unarticulated plan has no bearing,” and “the only relevant inquiry is how a reasonable man in the suspect’s

position would have understood his situation.” *Berkemer* at 442. On nearly identical facts, the Supreme Court of Ohio distinguished “not free to leave” from “in custody,” explaining that if the former sufficed “every traffic stop could be considered a custodial interrogation.” *Cleveland v. Oles*, 2017-Ohio-5834, ¶ 30. Roadside questioning is non-custodial where: “(1) the intrusion is minimal, (2) the questioning and detention are brief, and (3) the interaction is nonthreatening or nonintimidating.” *Id.* at ¶ 24.

{¶39} Appellant’s statements were the product of ordinary, non-custodial traffic stop questioning. While Appellant remained in his car, Lt. Burich advised him of the reason for the stop, requested his license and insurance, asked where he was coming from and whether he had been drinking. Appellant admitted to consuming “two, maybe three” drinks. (1/28/2026 Suppression Hearing Tr., p. 8). On cross-examination, Lt. Burich acknowledged Appellant was not free to leave “[b]ecause [Lt. Burich] still did not run [Appellant’s] information on the computer or address the marked-lanes violation.” (*Id.* at p. 32).

{¶40} That concession is immaterial, because “‘not free to leave’ and ‘in custody’ are distinct concepts.” *Oles* at ¶ 30. Likewise, Lt. Burich’s testimony that he already suspected impairment and viewed the questions as part of his OVI investigation does not create custody, because the officer’s unarticulated plan is irrelevant to the objective inquiry. See *Berkemer* at 442. Lt. Burich questioned Appellant briefly at a public roadside, and Appellant was not arrested until after the field sobriety tests. Appellant’s pre-arrest statements are therefore admissible. See *Id.* at 441-442.

{¶41} The first assignment adds nothing further. The trial court made the essential findings, i.e., probable cause for the stop and reasonable, articulable suspicion of impairment justifying the tests, the results of which justified Appellant’s arrest. To the extent Appellant faults the absence of more detailed findings, the record does not reflect that he requested them. “A party cannot complain of a trial court’s failure to state its findings pursuant to Crim.R. 12(F) when no request for such findings was made.” *State v. Parrish*, 2023-Ohio-3356, ¶ 8 (8th Dist.). Regardless, the absence of findings “may not be fatal” where the record permits review; a reviewing court “will affirm the trial court’s ruling when there is sufficient evidence in the record demonstrating that the trial court’s

decision is justified.” *Id.* at ¶ 7, 9. The complete suppression transcript resolves each issue.

{¶42} Appellant’s first, fourth, fifth, and sixth assignments of error are without merit.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION TO SUPPRESS BECAUSE THERE WAS INSUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT A FINDING THAT THE ARRESTING OFFICER HAD A REASONABLE, ARTICULABLE SUSPICION TO STOP AND DETAIN THE APPELLANT.

{¶43} In his second assignment of error, Appellant contends the trial court erred in denying his motion to suppress because there was insufficient evidence to support a finding that Lt. Burich had a reasonable, articulable suspicion to stop and detain him.

There are two types of valid traffic stops: (1) where police have probable cause that a traffic violation has occurred or was occurring and (2) where police have reasonable articulable suspicion that criminal activity has occurred. *State v. Ward*, 7th Dist. Columbiana No. 10 CO 28, 2011-Ohio-3183, ¶ 35, citing *Dayton v. Erickson*, 76 Ohio St.3d 3, 11, 665 N.E.2d 1091 (1996); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

State v. Sargent, 2020-Ohio-5464, ¶ 14 (7th Dist.), quoting *State v. McMillon*, 2019-Ohio-2716, ¶ 10-11 (7th Dist.).

“Although the probable cause standard is a more stringent standard than reasonable suspicion, the two standards often exist together when a traffic stop is made.” *Ward* at ¶ 37. “[A]n officer who witnesses a traffic violation possesses probable cause, and a reasonable articulable suspicion, to conduct a traffic stop.” *Id.*, quoting *State v. Jenkins*, 3d Dist. Union No. 14-10-10, 2010-Ohio-5943, ¶ 12.

State v. Christian, 2023-Ohio-1692, ¶ 15 (7th Dist.).

{¶44} In this case, Lt. Burich possessed probable cause, and a reasonable, articulable suspicion, to conduct a stop based on witnessing a traffic violation. *Id.* R.C. 4511.25(A) provides: “Upon all roadways of sufficient width, a vehicle . . . shall be driven upon the right half of the roadway[.]” The statute proceeds to give five exceptions that are not applicable here.

{¶45} Lt. Burich initiated a traffic stop of Appellant’s vehicle after observing him cross the double yellow center line on the roadway a total of six separate times in violation of R.C. 4511.25(A). *See State v. Pfeiffer*, 2004-Ohio-4981, ¶ 24 (12th Dist.) (an officer’s observation of a vehicle crossing a double yellow center line gives the officer probable cause to initiate a traffic stop).

{¶46} As stated, Lt. Burich observed Appellant’s vehicle cross over the double yellow center line, with about 50 percent of the vehicle crossing into the direction of oncoming traffic. He did not stop the car at that first crossing. Lt. Burich explained that a driver might drift over once by accident and he wanted to see whether it would happen again. He said he was only minorly concerned the first time, considered together with the slow rate of speed. Lt. Burich testified the vehicle crossed the center line five more times (six times total) before he activated his overhead lights.

{¶47} Based on the facts presented, the trial court did not err in denying Appellant’s motion to suppress because there was sufficient evidence to support a finding that Lt. Burich had probable cause, and a reasonable, articulable suspicion, to stop Appellant’s vehicle based on the traffic violation and detain him while investigating the possibility of an OVI offense. *See Christian*, 2023-Ohio-1692, at ¶ 15 (7th Dist.).

{¶48} Appellant’s second assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 3

THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION TO SUPPRESS BECAUSE THERE WAS INSUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT A FINDING THAT THE ARRESTING OFFICER HAD A REASONABLE, ARTICULABLE SUSPICION IN ORDER TO DETAIN APPELLANT TO COMPLETE FIELD SOBRIETY TESTS IN VIOLATION OF APPELLANT’S RIGHTS UNDER THE FOURTH AND

**FOURTEENTH AMENDMENT TO THE UNITED STATES
CONSTITUTION AND ARTICLE I, SECTION 14 OF THE OHIO
CONSTITUTION.**

{¶49} In his third assignment of error, Appellant maintains the trial court erred in denying his motion to suppress because there was insufficient evidence to support a finding that Lt. Burich had a reasonable, articulable suspicion in order to detain him to complete field sobriety tests in violation of his constitutional rights.

In *State v. Reed*, 7th Dist. Belmont No. 05 BE 31, 2006-Ohio-7075, 2006 WL 3849267, we adopted a list of factors first compiled by the Eleventh District that may be considered by a court in viewing the totality of circumstances whether there exists reasonable suspicion to administer a field sobriety test:

(1) the time of day of the stop (Friday or Saturday night as opposed to, e.g., Tuesday morning); (2) the location of the stop (whether near establishments selling alcohol); (3) any indicia of erratic driving before the stop that may indicate a lack of coordination (speeding, weaving, unusual braking, etc.); (4) whether there is a cognizable report that the driver may be intoxicated; (5) the condition of the suspect's eyes (bloodshot, glassy, glazed, etc.); (6) impairments of the suspect's ability to speak (slurred speech, overly deliberate speech, etc.); (7) the odor of alcohol coming from the interior of the car, or, more significantly, on the suspect's person or breath; (8) the intensity of that odor as described by the officer ('very strong,[]' 'strong,' 'moderate,' 'slight,' etc.); [(9)] any actions by the suspect after the stop that might indicate a lack of coordination (dropping keys, falling over, fumbling for a wallet, etc.); and [(10)] the suspect's admission of alcohol consumption, the number of drinks had, and the amount of time in which they were consumed, if given. All of these factors, together with the officer's previous experience in dealing with drunken drivers, may be taken

into account by a reviewing court in determining whether the officer acted reasonably.

Id. at ¶ 11, citing *State v. Evans*, 127 Ohio App.3d 56, 711 N.E.2d 761 (1998).

State v. Lopez, 2024-Ohio-2394, ¶ 35 (7th Dist.).

{¶50} Applying the *Reed* factors to this case, the record before us reveals the following occurred prior to Appellant being asked to submit to field sobriety tests: (1) the time of day of the stop (about 1:30 a.m. on a Saturday night/Sunday morning); (2) the location of the stop (North Meridian Road to Connecticut Avenue, after Appellant left a get together on the south side of Youngstown); (3) any indicia of erratic driving before the stop that may indicate a lack of coordination (Appellant's vehicle crossed over the double yellow center line, with about 50 percent of the vehicle crossing into the direction of oncoming traffic; Appellant's vehicle crossed the center line a total of six times; Appellant intended to turn left down a one-way street that did not allow travel in his intended direction; Appellant continued driving about 300 yards after Lt. Burich first attempted to initiate a traffic stop, activating his overhead lights and siren); (4) whether there is a cognizable report that the driver, Appellant, may be intoxicated (n/a); (5) the condition of Appellant's eyes (glassy and bloodshot); (6) impairments of Appellant's ability to speak (thick and mumbled speech; an earlier statement by Appellant that was inaudible); (7) the odor of alcohol coming from the interior of the car (Lt. Burich testified that as he approached the vehicle, he smelled a strong odor of alcohol emanating from the vehicle); (8) the intensity of that odor as described by Lt. Burich (strong); (9) any actions by Appellant after the stop that might indicate a lack of coordination (movements were not smooth; fumbling fingers; after being asked to exit the vehicle, Appellant fell back into the car when he stepped out; very unsteady gait); and (10) Appellant's admission of alcohol consumption and the number of drinks had (Appellant admitted to consuming two, maybe three drinks). See *Reed*, 2006-Ohio-7075, at ¶ 11 (7th Dist.).

{¶51} Based on the foregoing, the trial court properly determined there was sufficient evidence to support a finding that Lt. Burich had a reasonable, articulable suspicion to detain Appellant to complete field sobriety tests.

{¶52} Appellant's third assignment of error is without merit.

CONCLUSION

{¶53} For the foregoing reasons, Appellant's assignments of error are not well-taken. The February 9, 2026 and March 9, 2026 judgments of the Mahoning County Court No. 4 denying Appellant's motion to suppress and sentencing him for OVI following a no contest plea are affirmed.

Waite, P.J., concurs.

Hanni, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgments of the Mahoning County Court No. 4 of Mahoning County, Ohio, are affirmed. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.