No. _____

IN THE
Supreme Court of the United States

COMMONWEALTH OF PENNSYLVANIA,
Petitioner

v.

EDWARD THOMAS ADAMS,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The issue in this case is based upon an encounter between Adams and an officer that occurred at approximately 3:00 a.m. while Adams was sitting in his parked car in a dimly lit area behind two closed businesses. Prior to that encounter, the officer watched Adams drive his car behind two closed businesses and, after Adams failed to reemerge, the officer drove his patrol vehicle behind the businesses, parked, and approached Adams' parked vehicle on foot to inquire about why Adams was parked behind two closed businesses at that early hour. At some point during the encounter, the officer noticed signs of impairment and Adams was arrested for driving under the influence. The focus of this petition is the time before the officer noticed Adams' impairment and the issues in the petition concern whether Adams was unreasonably seized and whether the officer had reasonable suspicion.

The question presented is whether the Pennsylvania Supreme Court erred in finding that Adams was subjected to an unreasonable seizure in violation of the 4th Amendment to the United States Constitution?

PARTIES TO THE PROCEEDING

Petitioner, the Commonwealth of Pennsylvania, was the appellee before the Pennsylvania Supreme Court. Respondent, Edward Thomas Adams, was the appellant before the Pennsylvania Supreme Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, the Commonwealth of Pennsylvania, respectfully petitions this Court for a writ of certiorari to review the judgment of the Pennsylvania Supreme Court in this case.

OPINIONS BELOW

The Opinion of the Supreme Court of Pennsylvania entered on March 26, 2019, is published at *Commonwealth v. Adams*, 205 A.3d 1195 (Pa. 2019). A copy of that Opinion is attached hereto in the Appendix.

The Opinion of the Superior Court of Pennsylvania is unpublished but can be found at *Commonwealth v. Adams*, 2017 WL 2424726 (Pa.Super. 2017). A copy of that Opinion is attached hereto in the Appendix.

The Opinion of the Trial Court in the Criminal Division of the Court of Common Pleas of Allegheny County, Pennsylvania, is unpublished. A copy of that Opinion is attached hereto in the Appendix.

STATEMENT OF JURISDICTION

The Opinion of the Pennsylvania Supreme Court in *Commonwealth v. Adams,* 205 A.3d 1195 (Pa. 2019), was entered on March 26, 2019, and this petition is filed within ninety days of that date in compliance with Rule 13.1 of this Court. The

jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution forbids unreasonable searches and seizures: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ." U.S. Const. Amend. IV.

STATEMENT OF THE CASE

Procedural History

Respondent, Edward Thomas Adams, was charged on May 26, 2016, by Criminal Information filed at No. CC 2016-02870 (CP-02-CR-0002870-2016) in the Criminal Division of the Court of Common Pleas of Allegheny County, Pennsylvania, with two offenses related to Driving Under the Influence (DUI) for an incident that occurred on January 10, 2016. Prior to trial, one of the DUI offenses was withdrawn by the Commonwealth.

On June 9, 2016, Adams' privately retained (and current) counsel, Robert E. Mielnicki, Esq., filed an Omnibus Pretrial Motion to Suppress based upon the argument that Adams was subjected to an illegal detention in violation of the Fourth Amendment during his interaction with the police on January 10, 2016. (Appendix, herein "App.", p. 7A).

On August 25, 2016, the trial court held a suppression hearing on Adams' motion and, after testimony and argument, the trial court denied the suppression motion. (App., p. 7A).

Immediately thereafter, the parties proceeded to a non-jury trial where the parties incorporated the suppression testimony into the trial record by way of stipulation and, based upon that record, the trial court found Adams guilty of driving under the influence of alcohol (75 Pa.C.S. § 3802). (App., p. 7A).

On August 31, 2016, Adams was sentenced to six months of probation and a $300.00 fine. (App., p. 7A).

On September 29, 2016, Adams (through counsel) filed a Notice of Appeal to the Superior Court of Pennsylvania, which was docketed at No. 1445 WDA 2016. (*See* App., p. 8A). On December 5, 2016, the trial court issued an Opinion explaining why it denied Adams' Motion to Suppress. (*See* App., p. 40A-47A). On June 5, 2017, a three-judge panel of the Pennsylvania Superior Court issued an unpublished Memorandum Opinion affirming the judgment of sentence and the denial Adams' Motion to Suppress. (*See* App., p. 33A-39A).

On August 29, 2017, Adams (through counsel) filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court, which was docketed

at No. 337 WAL 2017. On February 12, 2018, the Pennsylvania Supreme Court granted the Petition for Allowance of Appeal and the case was then transferred to docket number No. 7 WAP 2018. (*See* App., p. 3A).

Following briefs and oral argument, the Pennsylvania Supreme Court issued a published opinion on March 26, 2019, that reversed the order of the Pennsylvania Superior Court affirming Adams' judgment of sentence. (*See* App., p. 3A-4A). The Pennsylvania Supreme Court held, based purely on the Fourth Amendment, (*see* App., p. 9A, n. 9), that Adams was subjected to an illegal detention and that the trial court erred in denying Adams' suppression motion. (*See* App., p. 3A-26A).

The Commonwealth now files this petition for writ of certiorari.

Factual History

In Allegheny County, Pennsylvania, Borough of Pleasant Hills Police Officer James Falconio was patrolling the general business district during the night shift that he was working. (NT[1] 3-4). At approximately 2:56 a.m. on January 10, 2016, he was driving alongside of the Walgreen's next to Curry Hollow Road. (NT 5). As Officer Falconio was

[1] Numerals in parenthesis proceeded by the notation "NT" refers to pages of the August 25, 2016 Suppression Hearing and Bench Trial transcript.

approaching Green Drive, which runs perpendicular to Curry Hollow Road, he noticed a white Dodge Dart driving north on Green Drive towards Curry Hollow Road. (NT 5). The vehicle made a left into Toby Tyler, a hobby shop, and Showcase Pizza, and drove around to the rear of the building. (NT 5-6). Both businesses were closed, and the stores were dark. (NT 5-6). Officer Falconio exited the Walgreen's lot and crossed Green Drive. (NT 5). He kept an eye on the building to see if the vehicle would reemerge as he thought it might have inadvertently turned in there instead of turning into the apartment building. (NT 5). When the vehicle did not exit, Officer Falconio drove around the rear of the building. (NT 5-6).

Parked behind the pizza store was the Dodge Dart with its lights and engine off. (NT 7, 20). While the front of the building had lined parking spots for general parking, there were no marked parking spots in the rear area and it appeared to Officer Falconio to be where deliveries were made and employees parked. (NT 6, 22). The officer, in his patrolling experience, had not seen many cars parked in the rear of the building at 3:00 a.m. (NT 22-23).

Officer Falconio pulled into the rear lot and called into dispatch his location and the vehicle he was pulling behind. (NT 6-7). Officer Falconio parked his vehicle behind the Dodge Dart and he did not

activate the police vehicle's emergency lights or sirens. (NT 7).

Officer Falconio approached the vehicle on foot shining his flashlight.[2] The officer knocked on the driver's side window. (NT 7). Adams, who is a larger man, attempted to open the driver's side door. (NT 7, 21). Officer Falconio pushed the door shut and asked Adams to roll down the window so he could speak to him. (NT 7-8, 21-22). Adams replied that he could not because he did not have the keys. (NT 7, 22). Officer Falconio saw keys laying on the rear passenger's side floor behind the seat. (NT 7, 23-24).

When backup arrived a minute later, Officer Falconio opened the door and asked Adams for his driver's license, which Adams provided. (NT 8). During this exchange, the officer noticed Adams had a strong odor of alcoholic beverage on his breath, glassy eyes, and slurred speech. (NT 8). Based on these observations, Officer Falconio requested Adams exit the vehicle to perform field sobriety tests. (NT 9). Adams became argumentative, demanded to know what the probable cause was for the stop, and stated it was private property. (NT 9, 27). The officer responded that he was not

[2] There was no lighting in the area. (NT 23). However, at the back of the lot above a six to seven-foot retaining wall, there was a parking lot for the apartment complex and it had lights. (NT 23).

conducting a traffic stop, and he did not activate his emergency lights. (NT 9). Officer Falconio explained that he was simply checking on why the car drove behind the two dark closed businesses at 3:00 a.m. as it was odd and he needed to ensure that no drug activity or a burglary was occurring. (NT 9-10). Adams stated he owned the pizza shop and he was coming from the shop. (NT 25, 27-28). Officer Falconio did not know whether or not Adams was being truthful about owning the shop, but he knew Adams was not coming from the pizza shop since he saw the vehicle drive into the lot moments earlier from Green Drive.[3] (NT 26-27).

When Adams finally exited the vehicle, he exhibited poor balance. (NT 9). He continued to be argumentative, asked what the probable cause was, and stated it was private property. (NT 9). During the HGN test, Adams exhibited six clues of impairment. (NT 10). Adams continued to sway and have poor balance. (NT 10). Officer Falconio tried to administer the nine-step walk-and-turn test four times. (NT 10). Each time Adams failed to maintain his balance and the test could not be performed. (NT 10-11). Officer Falconio determined Adams was impaired and could not safely operate the vehicle. (NT 11, 18). Adams was placed in custody, and

[3] Adams testified that he owned the pizza shop, and the trial court found his testimony about ownership credible. (NT 25, 43).

taken to Jefferson Hospital where he agreed to a blood draw at 3:30 a.m. (NT 11, 18-19). Since Adams refused to provide a name for someone to pick him up, at 3:45 a.m. he was taken the police station where he was placed in a cell until he was released at approximately 10:00 a.m. (NT 18-19).

REASONS FOR GRANTING THE WRIT

I. The Pennsylvania Supreme Court has wrongly decided an important question of Fourth Amendment law that should be corrected by this Court. Moreover, the Pennsylvania Supreme Court has decided the federal question in a way that conflicts with relevant decisions of other states, other circuits and this Court.

The Pennsylvania Supreme Court's decision in this case is wrong for two principal reasons; the holding is erroneous under the Fourth Amendment and the method of analysis used by the Pennsylvania Supreme Court departs from this Court's framework for Fourth Amendment inquiries. These two errors by the Pennsylvania Supreme Court pollute both the seizure question and the reasonable suspicion questions that will be discussed below.

A. The Pennsylvania Supreme Court wrongly concluded that an unreasonable seizure occurred under the Fourth Amendment by engaging in a flawed analysis. The Pennsylvania Supreme Court's erroneous conclusion on this issue is in conflict with other jurisdictions and, importantly, it also raises a significant and reoccurring question of Fourth Amendment law that should be addressed by this Court.

The Pennsylvania Supreme Court wrongly concluded that a seizure occurred in this case solely

because Officer Falconio shut the door of Adams' parked car when Adams attempted to open it.

More importantly, though, the Pennsylvania Supreme Court engaged in an incomplete analysis of whether the officer's action constituted an "unreasonable" seizure under the Fourth Amendment. Specifically, while the Pennsylvania Supreme Court was quick to conclude that Adams was seized because he would not have felt free to leave the encounter with the officer after his car door was shut, the Court failed to consider the more nuanced question of whether the officer's action was *unreasonable* under the Fourth Amendment by balancing the countervailing interest of officer safety against the brief and minimal restriction of Adams' liberty under the specific circumstances of the encounter in this case. (*See* App., p. 12A-13A ("We agree with Adams that he was 'seized' for Fourth Amendment purposes when Officer Falconio would not allow Adams to exit his vehicle, closing the door as Adams opened it. **This action**, constituting both an act of physical force and a show of authority, is precisely the type of escalatory factor that **compels a finding that a seizure occurred**") (footnote omitted, bold font added); *see also* App., p. 13A ("That the detention was only temporary is **irrelevant** to our analysis of whether a seizure occurred") (bold font added)).

Consequently, this case presents the important and difficult question of what constitutes an *unreasonable* seizure under the Fourth Amendment in an encounter between an officer and a citizen where reasonable suspicion under *Terry*, *infra*, may not yet exist, but where a reasonable jurist could find that an objective possibility of danger to the officer was manifest under the specific circumstances of the case. Stated another way, assuming that reasonable suspicion is not yet present under *Terry*, does a momentary protective action taken by a lone officer to maintain the status quo of a consensual encounter necessarily constitute an *unreasonable* seizure under the Fourth Amendment, regardless of the degree of intrusion on the citizen's liberty and regardless of the countervailing interests of officer safety that may be present under the specific circumstances of the case?

Based upon its decision in this case, the Pennsylvania Supreme Court appears to believe that any seizure for officer safety that is unaccompanied by reasonable suspicion is *necessarily* unreasonable under *Terry* and that this Court's Fourth Amendment jurisprudence precludes courts from balancing that countervailing consideration under the Fourth Amendment. (*See* App., p. 19A ("In the cases that have followed *Terry* over the last fifty years, the high Court has emphasized that considerations of officer safety must be **preceded** by

a finding that the individual was lawfully subjected to an investigative detention, i.e., that the officer had reasonable suspicion that criminal activity was afoot") (bold font in original); *see also* App., p. 21A ("Although an officer's subjective concern for his safety is, of course, a legitimate interest, it does not enter into a Fourth Amendment analysis unless the investigative detention was initially supported by reasonable suspicion of criminal activity"); *see also* App., p. 21A ("Simply put, in the absence of reasonable suspicion of criminal activity justifying an investigative detention, officer safety is not a permissible basis for police to seize an individual during a mere encounter") (footnote omitted)). The Commonwealth believes that this Court may feel differently about its Fourth Amendment jurisprudence and see a more nuanced question about consensual encounters since the Fourth Amendment does not prohibit *all* seizures, only *unreasonable* seizures.

The Fourth Amendment of the United States Constitution states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ." U.S. Const. Amend. IV.

Accordingly, not all encounters between an officer and a citizen offend the Fourth Amendment and, thus, a Court must examine the totality of the circumstances to determine whether a person was

unreasonably seized under the Fourth Amendment. That intricacy is not lost in this Court's jurisprudence because the specific circumstances of the encounter between the officer and the citizen help shape the precise inquiry of whether an unreasonable seizure occurred under the facts of the case.

For instance, this Court has examined whether a person is unreasonably seized by using a slightly different analytical focus based upon factors of the encounter that include: where the encounter takes place, (*compare U.S. v. Mendenhall*, 446 U.S. 544 (1980) (encounter on airport concourse); *with Florida v. Bostick*, 501 U.S. 429 (1991) (encounter on bus)); whether physical force or a show of authority was used by the officer, (*compare Terry v. Ohio*, 392 U.S. 1 (1968) (citizen grabbed by officer); *with California v. Hodari D.*, 499 U.S. 621 (1991) (citizen chased by officer on foot)); and the importance of the government interest involved in the encounter and its relationship to the degree of intrusion, (*compare Sitz, infra* (sobriety highway checkpoint); *with City of Indianapolis v. Edmond*, 531 U.S. 32 (2000) (drug interdiction highway checkpoint)). One conceptual through-line of this Court's Fourth Amendment jurisprudence that can be gleaned from these cases is that, when considering whether a Fourth Amendment violation has occurred, this Court has repeatedly recognized that the totality of the

circumstances, the degree of intrusion on the citizen's liberty and governmental interests involved in the encounter all must be critically examined and balanced to determine whether a seizure was unreasonable under the Fourth Amendment. *See e.g. Michigan Department of State Police v. Sitz*, 496 U.S. 444, 455 (1990) ("In sum, the balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the state program. We therefore hold that it is consistent with the Fourth Amendment").

Here, because Adams was seated in his car when the officer arrived and it is not clear whether Adams had a desire to physically leave the encounter with the officer, the following inquiry may be used as a broad framework to determine whether Adams was seized: "[W]hen a person 'has no desire to leave' for reasons unrelated to the police presence, the 'coercive effect of the encounter' can be measured better by asking whether 'a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter[.]'" *Brendlin v. California*, 551 U.S. 249, 255 (2007); *quoting Bostick*, 501 U.S. at 435-436. Importantly, the *Mendenhall* Court elaborated on other relevant factors that may be

considered to determine whether a seizure has occurred:

> Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.

Mendenhall, 446 U.S. at 554–55 (internal citations omitted).

Initially, if one only considers the question of whether a reasonable person in Adams' position would have felt free to terminate the encounter with Officer Falconio, then it is relevant to note that analogous decisions from jurisdictions outside of Pennsylvania, both state and federal, support a contrary conclusion to the one reached by the Pennsylvania Supreme Court in this case.

For instance, in *U.S. v. Barry*, 394 F.3d 1070 (8th Cir. 2005), the Eighth Circuit found that no seizure occurred and that the Fourth Amendment was not

implicated in a very similar situation to the instant case involving Adams. In *Barry*, Sergeant Sam Brothers was on routine patrol at 11:18 p.m., when he noticed a car parked in an alley behind a shopping mall. *Id.* at 1072. Sergeant Brothers found this suspicious and decided to investigate because it was late at night when "most of the businesses were closed" and the general area had experienced some crime in the past, including burglaries. *Id.* Sergeant Brothers drove into the mall's parking lot and he parked his marked cruiser at some distance in front of the car in the alley. *Id.* As Sergeant Brothers exited his cruiser, he noticed two individuals who were standing outside the parked vehicle get into the vehicle and, as Sergeant Brothers proceed to approach the vehicle, he shined his flashlight on his uniform and kept a hand on his holstered gun. *Id.* Sergeant Brothers knocked on the passenger side window twice without receiving a response from the occupants, but on the third knock, the passenger rolled down the passenger-side window. *Id.* Sergeant Brothers smelled marijuana inside the car, which he determined was adequate grounds to detain the car's occupants and he then asked the occupants to exit the vehicle. *Id.* Under those circumstances, the Eighth Circuit concluded that the occupants of the vehicle had not been seized until they were asked to exit their vehicle and, at that point in the encounter where they were asked to

exit the vehicle, Sergeant Brothers had reasonable suspicion to detain Barry. *Barry*, 394 F.3d at 1075-1078. *See also U.S. v. Cook*, 842 F.3d 597, 599-601 (8th Cir. 2016) (relying on *Barry* and finding that no seizure occurred during an initial encounter where officers on routine patrol parked their patrol car behind an idling car in a high crime area of Minneapolis and activated their "wig-wag" lights because "a reasonable person seeing the wig wag lights under these circumstances would have thought that he was still 'at liberty to ignore the police presence and go about his business'"); *quoting Bostick*, 501 U.S. at 437.

In *United States v. Baker*, the Eleventh Circuit reached the same conclusion that no seizure occurred during an initial encounter where two plain-clothed police officers approached a running vehicle that was stopped at an intersection due to traffic, the officers displayed their badges, the officers asked the vehicle's occupants to roll down the window and the officers then proceeded to question the occupants of the vehicle about items inside of the cabin. *U.S. v. Baker*, 290 F.3d 1276, 1277-1279 (11th Cir. 2002). *See also Baker*, 290 F.3d at 1278 ("The societal pressure to stop and speak with law enforcement is not a sufficient restraint of liberty to raise the interaction to a level that requires constitutional protection").

Similar results have been reached by state appellate courts, as well. In *State v. Wilkins*, an officer was on patrol at 1:30 a.m. and noticed Wilkins' running vehicle with its lights on parked halfway down a dark, remote side street occupied mostly by industrial businesses, which were closed at that time. *State v. Wilkins*, 205 P.3d 795, 796 (Mont. 2009). The officer, who had 12 years of experience as a law enforcement officer, believed that Wilkins' vehicle was suspicious because it was unusual for a vehicle to be parked there with its lights on at that time of night and in an area where burglaries had recently been committed. *Id.* The Supreme Court of Montana referred to the *Mendenhall* factors and found that no seizure occurred in this case where the lone officer approached the car to investigate during the initial contact; he did not activate his emergency light, display a weapon or employ any threatening tones but simply approached Wilkins to find out why she was parked on a dark remote street late at night in cold weather. *Id.* at 798. *See also Ex parte Betterton*, 527 So. 2d 747 (Ala. 1988).

Notably, the Supreme Court of Montana also consulted the writings of Professor LaFave on the Fourth Amendment when analyzing the *Wilkins* case, stating:

> In his search and seizure treatise, Professor LaFave notes that, "if an

> officer merely walks up to a person standing or sitting in a public place (or, indeed, who is seated in a vehicle located in a public place) and puts a question to him, this alone does not constitute a seizure." Wayne LaFave, *Search and Seizure* vol. 4 § 9.4(a) 419–21 (4th ed. West 2004). Professor LaFave explains that, in order to make a basic inquiry, an officer may tap on the window of a car to get the person's attention or request that the person open the door or roll down the window without transforming the encounter into a seizure.

Wilkins, 205 P.3d at 797.

The Second Circuit and the Sixth Circuit have gone somewhat further and found that no seizure occurred even where an officer provoked a moving vehicle to stop. In *U.S. v. Adegbite*¸ the Second Circuit found that no seizure occurred where plain clothes DEA agents waived their arms to flag down a moving ice cream truck that was pulling out of an apartment parking lot, the ice cream truck stopped, and 4 agents (2 on each side of the truck) identified themselves and asked the occupants for identification. *U.S. v. Adegbite*, 846 F.2d 834, 835-838 (2nd Cir. 1988). *See U.S. v. Caicedo*, 85 F.3d 1184 (6th Cir. 1996) (accord). *See also State v. Simpson*, --- P.3d ---, 2019 WL 311489 (N.M. App. January 22, 2019) (Deciding the case on state

constitutional grounds but applying the *Mendenhall* "free-to-leave" test and finding that no seizure occurred during an initial encounter where an officer in uniform parked his marked patrol vehicle in the same empty parking lot as the defendant's vehicle around 11:00 p.m., approached the defendant's vehicle on foot, and then reached out and tapped on the window of Defendant's moving vehicle, at which point, the Defendant stopped her vehicle and rolled down her window).

Based upon the cases discussed above, the Commonwealth maintains that Officer Falconio's action of shutting Adams' car door was not a seizure. Particularly, Officer Falconio approached Adams vehicle alone, he did not activate the emergency lights or sirens on his vehicle, he did not brandish a weapon, he knocked on Adams' car window, and he did not actually touch Adams when he shut Adams' car door. (*See* App., p. 4A-5A). In light of the totality of the *Mendenhall* factors, the Commonwealth submits that Officer Falconio's action of shutting Adams' door was not a seizure and that the Pennsylvania Supreme Court erred in stating that it was compelled to find the opposite. (*See* App., p. 12A-13A ("We agree with Adams that he was 'seized' for Fourth Amendment purposes when Officer Falconio would not allow Adams to exit his vehicle, closing the door as Adams opened it. **This action**, constituting both an act of physical

force and a show of authority, is precisely the type of escalatory factor that **compels a finding that a seizure occurred**") (footnote omitted, bold font added).

Moreover, while the Pennsylvania Supreme Court stated that it considered whether a seizure occurred in this case by using this Court's "free to leave test," (*see* App., p. 11A), the Pennsylvania Supreme Court then conducted an analysis of whether Adams was seized by contravening the crux of this Court's Fourth Amendment jurisprudence in almost all other respects – reasonableness. First, the Court failed to meaningfully balance the *Mendenhall* factors discussed above and, second, it failed to consider whether the brief intrusion on Adams' liberty was unreasonable under the circumstances of the case. Those considerations are not empty makeweights because, in the end, the Fourth Amendment's "'central requirement' is one of reasonableness." *Illinois v. McArthur*, 531 U.S. 326, 330 (2001); *quoting Texas v. Brown*, 460 U.S. 730, 739 (1983). *See also Terry*, 392 U.S. at 9 ("Of course, the specific content and incidents of this right must be shaped by the context in which it is asserted. For what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures") (internal quotation omitted). Certainly, one can only determine the constitutional import of the word "unreasonable" in the Fourth Amendment by

engaging in a comprehensive analysis of all of the facts of the case and with due regard to the relevant factors identified by this Court in *Mendenhall*.

Third and perhaps most importantly to this Court, however, is the fact that the Pennsylvania Supreme Court announced what this Court has long eschewed in Fourth Amendment cases; a holding that amounts to a *per se* rule. (*See* App., p. 21A ("Although an officer's subjective concern for his safety is, of course, a legitimate interest, **it does not enter into a Fourth Amendment analysis unless** the investigative detention was initially supported by reasonable suspicion of criminal activity") (bold font added)). *Compare with Florida v. Bostick*, *supra*, (holding that the Florida Supreme Court erred in adopting a *per se* rule that every drug interdiction encounter on a bus between police and passengers is a seizure because, in order to determine whether a particular encounter constitutes a seizure under the Fourth Amendment, a Court must consider all the circumstances surrounding the encounter); *U.S. v. Drayton*, 536 U.S. 194 (2002) (finding that the Eleventh Circuit wrongly adopted what was, in effect, a *per se* rule that evidence obtained during suspicionless drug interdiction efforts aboard buses must be suppressed unless the officers had advised passengers of their right not to cooperate and to refuse consent to a search). *See also Drayton*, 536 U.S. at 201 ("*Bostick*

first made it clear that for the most part *per se* rules are inappropriate in the Fourth Amendment context. The proper inquiry necessitates a consideration of 'all the circumstances surrounding the encounter'"); *quoting Bostick*, 501 U.S. at 439. *See also Michigan v. Chesternut*, 486 U.S. 567, 572 (1988) ("Both petitioner and respondent, it seems to us, in their attempts to fashion a bright-line rule applicable to all investigatory pursuits, have failed to heed this Court's clear direction that any assessment as to whether police conduct amounts to a seizure implicating the Fourth Amendment must take into account all of the circumstances surrounding the incident in each individual case") (internal quotations omitted).

In concluding that officer safety *cannot* enter into a Fourth Amendment analysis unless there is reasonable suspicion first, the Pennsylvania Supreme Court fashioned a rule that ignores the complexities and competing interests of a critically important question under the Fourth Amendment: Can an officer who may lack reasonable suspicion take *any* protective action in a consensual encounter without the encounter *necessarily* transforming into an *unreasonable* seizure that violates the Fourth Amendment?

Importantly, this question is bound to reoccur countless times throughout our nation as our law enforcement officers investigate late night activity or

clandestine situations where danger may be lurking (but not yet manifest), where some minimal investigation is encouraged by our society to protect property, but where reasonable suspicion may not yet exist. In those situations – particularly where an officer is alone – does the Fourth Amendment require officers to bear all of the danger[4] of the situation in favor of the suspect's unqualified liberty? Or does the Fourth Amendment allow for a *reasonable* balance to be struck based upon the circumstances of the case and that may allow for an officer to take a strictly curtailed protective action to maintain the status quo of the situation or prevent an obvious danger during the encounter? And to be clear, the Commonwealth is only referring to situations where a reasonable jurist could find that the situation presented an objective possibility of danger to the officer (*e.g.* a dark alley; a lone officer attempting to speak to a large group of persons; a dark parking lot behind a closed business late at night).

One must remember that if the Fourth Amendment requires an officer to bear all of the danger of the situation in favor of the citizen's unqualified liberty, including the citizen's liberty to immediately confront the officer while

[4] For statistics on law enforcement officers that were killed and assaulted in 2018, *see* FBI, *Uniform Crime Report*, https://ucr.fbi.gov/leoka/2018 (accessed June 12, 2019).

simultaneously declining to speak (*e.g.* Adams), then one can easily imagine that such a situation would also put the citizen in serious jeopardy of having their intentions misunderstood by the officer, which could create more danger for both parties.

While at first blush, it may seem somewhat fantastic to suggest that a suspiciousness seizure, however brief, could be permissible in certain circumstances under the Fourth Amendment, the Commonwealth would again remind that "reasonableness" is the touchstone of the Fourth Amendment and not simply deciding whether a technical "seizure" has occurred. Perhaps more to the point, this Court has previously recognized:

> The defendants note correctly that to accommodate public and private interests some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure. *See Terry v. Ohio*, 392 U.S., at 21, and n. 18, 88 S.Ct., at 1880. But the Fourth Amendment imposes no irreducible requirement of such suspicion.

U.S. v. Martinez-Fuerte, 428 U.S. 543, 560–61 (1976) (footnote 14 omitted).

Accordingly, the Commonwealth asks this Court to grant this petition and make clear that a momentary protective action taken by a lone officer

to maintain the status quo of a consensual encounter does not *necessarily* constitute an *unreasonable* seizure under the Fourth Amendment, but instead, must be considered in light of the degree of intrusion on the citizen's liberty and the countervailing interests of officer safety that may be present under the specific circumstances of the individual case.

B. The Pennsylvania Supreme Court wrongly concluded that reasonable suspicion was not present by engaging in a flawed analysis. The Pennsylvania Supreme Court's erroneous conclusion on this issue is in conflict with other jurisdictions and with relevant decisions of this Court.

If this Court concludes that a seizure did occur in this case and that the seizure would be unreasonable without some level of suspicion, then there is another reason that the Pennsylvania Supreme Court erred under the Fourth Amendment, which is, that the Pennsylvania Supreme Court failed to recognize that reasonable suspicion *preceded* the interaction between Officer Falconio and Adams. Equally as important, the Pennsylvania Supreme Court reached its mistaken conclusion by committing a methodological error that this Court has found to be worthy of reversal in the past. *See Arvizu, infra*.

Although the concept of reasonable suspicion can be somewhat abstract, this Court has explained the

level of suspicion that is necessary to qualify as "reasonable suspicion" by comparing it to the standards of preponderance of the evidence and probable cause, stating:

> The officer, of course, must be able to articulate something more than an inchoate and unparticularized suspicion or hunch. The Fourth Amendment requires some minimal level of objective justification for making the stop. That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence. We have held that probable cause means a fair probability that contraband or evidence of a crime will be found . . . and the level of suspicion required for a *Terry* stop is obviously less demanding than that for probable cause.

U.S. v. Sokolow, 490 U.S. 1, 7 (1989) (internal citations and quotations omitted). *See also D.C. v. Wesby*, 138 S.Ct. 577, 586 (U.S. 2018) ("Probable cause 'is not a high bar'"); *quoting Kaley v. U.S.*, 571 U.S. 320, 338 (2014).

In the present case, after discussing its prior decision in *Commonwealth v. DeWitt*, 608 A.2d 1030 (Pa. 1992), the Pennsylvania Supreme Court explained its rationale for finding that there was no reasonable suspicion under the Fourth Amendment in this case:

We agree with Adams that the factual record in this matter bears a striking resemblance to that of *DeWitt*, with the facts of *DeWitt* providing an even greater indicia of criminal activity than was present here. Prior to the investigative detention, the only facts that Officer Falconio articulated were that a car was parked behind a closed business on public property at night. Officer Falconio did not observe Adams making any furtive or suspicious movements, nor had he received notice of criminal behavior occurring in that location, as the troopers had in *DeWitt*. Officer Falconio's testimony evinced only generalized concerns about the possibility of criminal activity occurring, based solely upon time and place, i.e., behind closed businesses at night. He provided no specific or articulable facts to support a belief that Adams was engaged or going to be engaging in criminal activity. Rather, in his testimony, he expressed more of a curiosity about what the driver was doing behind the closed businesses. *See* N.T., 8/25/2016, at 6, 9 (Officer Falconio testifying that he followed the vehicle behind the businesses because he wanted "to see what the occupant or occupants of the vehicle were doing," "to see why a car drove behind two dark, closed businesses at [three] o'clock in

> the morning," and to ensure that "there wasn't drug activity or an attempted burglary"). As in *DeWitt*, here Officer Falconio offered no testimony that he observed Adams commit any criminal offense or that Adams took any actions that might suggest that he was about to commit any criminal offense. Officer Falconio merely observed a man sitting in his car at night.
>
> Both the Commonwealth and the courts below justify Officer Falconio's action based on the time of night and that Adams' vehicle was parked in an atypical location. As *DeWitt* makes clear, however, these factors alone do not give rise to a finding of reasonable suspicion of criminal activity where the officer provided no specific or articulable facts to suggest that criminal activity is occurring or has occurred. *See DeWitt*, 608 A.2d at 1031-32.

(App., p. 25A-26A).

Troublingly here, the Pennsylvania Supreme Court reached its mistaken conclusion because it quarantined the facts from the officer's prior experience and, in doing so, the Court failed to appropriately apply this Court's totality of the circumstances framework to determine whether reasonable suspicion was present *in light of the*

officer's prior experience. *See Arvizu*, *infra*. Particularly, the Pennsylvania Supreme Court determined that "Officer Falconio merely observed a man sitting in his car at night" and the Court erroneously failed to give any weight to Officer Falconio's conclusion that the situation warranted further investigation *because of* his prior experience patrolling that particular location at that time of night and Officer Falconio's recognition that, based upon his prior experience, Adams' behavior was unusual. Accordingly, Officer Falconio's suspicion was not a "generalized concern" without any foundation as the Pennsylvania Supreme Court concluded but, instead, Officer Falconio's suspicion was specifically based upon his prior patrolling experience in that area at that time of night.

In the past, this Court has found it necessary to reverse the decisions of courts that fail to faithfully apply the straightforward, yet indispensable, totality of the circumstances framework used by this Court when determining whether reasonable suspicion exists to support an investigatory detention under the Fourth Amendment.

For instance, in *U.S. v. Arvizu*, 534 U.S. 266 (2002), this Court found that a similar methodical error committed by the Ninth Circuit precipitated the wrong result in that case and warranted reversal: "In the course of [the Ninth Circuit's] opinion, it categorized certain factors relied upon by

the District Court as simply out of bounds in deciding whether there was "reasonable suspicion" for the stop. We hold that the Court of Appeals' methodology was contrary to our prior decisions and that it reached the wrong result in this case." *Arvizu*, 534 U.S. at 268. In explaining how reviewing courts should make reasonable suspicion determinations, moreover, this Court has "repeatedly" said that courts must look at the "totality of the circumstances" of each case. *Arvizu*, 534 U.S. at 273. "This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." *Arvizu*, 534 U.S. at 273 (internal quotation omitted).

More specifically in *Arvizu*, the Ninth Circuit failed to give any weight to an officer's belief that a vehicle's pattern of travel and the occupants' behavior was suspicious based upon his knowledge of the area and prior experience and warranted further investigation because, according to the Ninth Circuit's logic, if one viewed that conduct outside of the officer's prior experience, then it was possible that the conduct supporting the officer's suspicion had an entirely innocent explanation. *Arvizu*, 534 U.S. at 275-277. Thus, the Ninth Circuit's error was that it believed that any observations by the officer that were susceptible to an innocent explanation

were entitled to "no weight" when determining whether reasonable suspicion existed for the stop of the defendant. *Arvizu*, 534 U.S. at 274. In condemning that analytical approach, this Court stated that "*Terry,* however, precludes this sort of divide-and-conquer analysis" and this Court then recalled the seemingly innocent conduct in *Terry* that prompted the officer's stop (*i.e.* Terry and his companions repeatedly walking back and forth, looking into a store window and conferring with one another). *Arvizu*, 534 U.S. at 274; *citing Terry*, 392 U.S. at 22. *See also Wesby*, 138 S.Ct. at 588-589 (relying on *Arvizu* and finding the same "divide-and-conquer" error in a probable cause analysis).

Here, by failing to consider Officer Falconio's prior experience and knowledge of the area from his routine patrol as a factor bearing on whether he had reasonable suspicion to warrant further investigation, (*compare* App., p. 4A-5A, n.5 ("No. I haven't seen cars parked there at 3 a.m. too often"); *with* App., p., 26A ("Officer Falconio merely observed a man sitting in his car at night.")), the Pennsylvania Supreme Court committed its own variety of the erroneous "divide-and-conquer analysis" that caused a reversal in *Arvizu*. Specifically, while the Pennsylvania Supreme Court was certainly correct in concluding that Adams' conduct could be innocently explained when *sequestered* from Officer Falconio's prior experience

and knowledge, it is also true that, when Adams' conduct is viewed *in light of the officer's prior experience*, it was reasonable for Officer Falconio to be suspicious of Adams' conduct since the businesses in that area were closed, it was 3:00 a.m., and Officer Falconio's prior patrolling experience in that area caused him to recognize that this behavior was unusual for that area at that time of night. As this Court stated in *Arvizu* before reversing the Ninth Circuit, "A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct." *Arvizu*, 534 U.S. at 277. *See also Sokolow*, 490 U.S. at 10 ("innocent behavior will frequently provide the basis for a showing of probable cause, and . . . in making a determination of probable cause the relevant inquiry is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of noncriminal acts. That principle applies equally well to the reasonable suspicion inquiry") (internal quotations omitted). *See generally, Ornelas v. U.S.*, 517 U.S. 690 (1996) (stating that reasonable suspicion and probable cause are "commonsense, nontechnical conceptions that deal with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act") (internal quotation omitted).

The Commonwealth's allegation of error is further bolstered by the fact that other circuits have

found that reasonable suspicion existed in similar circumstances to those present in this case where a vehicle was loitering near a closed business late at night and with no obvious purpose. For instance, in *U.S. v. Watson*, 953 F.2d 895 (5th Cir. 1992), officers were patrolling a high crime area in their marked police car at 3:30 a.m. when the defendant pulled his car into the parking lot of an abandoned gas station, turned off the headlights, brought the car to a stop and then turned off the engine. *Watson*, 953 F.2d at 896. The two officers were suspicious of this activity, made a U-turn in their patrol car and stopped near the car driven by Watson. *Id*. As the officers exited their car, one officer made eye contact with Watson and observed Watson move his body in his seat as if to conceal or retrieve something on the car floor, at which point, the officers ordered Watson and his passenger out of the car and detained them. *Id*. Focusing on the time of night, the fact that Watson had pulled into the parking lot of an abandoned gas station and turned off the headlights, and that Watson's made a movement upon seeing the officer, the Fifth Circuit found that reasonable suspicion supported the detention. *Id*. at 897. *See also U.S. v. Briggman*, 931 F.2d 705, 707-709 (11th Cir. 1991) (experienced officer's "suspicion reasonably was aroused" when on routine patrol at approximately 4:00 a.m., the officer noticed Briggman's occupied vehicle parked in a commercial lot in a high crime

area, the commercial establishments served by the lot were closed for the night, the officer had not seen occupied vehicles at that time in that lot, and Briggman's vehicle exited the parking lot when the officer approached). *See also U.S. v. Hendricks*, 319 F.3d 993 (7th Cir. 2003).

These decisions are in harmony with Professor LaFave's understanding of the issue, as expressed in the Fifth Edition of his treatise *Search and Seizure*:

> Especially during the hours of darkness, the police will have a sufficient basis to stop in order to investigate whether a burglary of a closed commercial establishment is pending or had occurred when the suspect is seen in such close proximity to that establishment that he appears to be something other than a mere passerby. Sometimes the time of day and nature of the area will be very significant in establishing the requisite proximity, and thus where a car pulled away from a tavern located in an industrial area at about 5 o'clock in the morning, it was proper to stop the vehicle, as the tavern had been closed for several hours and there would be no valid reason for persons to be stopping in this industrial area during this time.

Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, Vol. 4, § 9.5(e), p. 688-689

(5th ed. Thompson Reuters/West 2012) (footnotes omitted).

The Pennsylvania Supreme Court's divergence from this authority is not without consequence in the Fourth Amendment mosaic, moreover. As this Court recognized in *Ornelas v. U.S.*, 517 U.S. 690 (1996), the legal rules for probable cause and reasonable suspicion acquire content only through application and, consequently, this Court's standard of review on the ultimate questions of reasonable suspicion and probable cause to make a warrantless search must be *de novo* so as to prevent varied results that are inconsistent with the idea of a unitary system of law. *Ornelas*, 517 U.S. at 697. More importantly, in explaining the practical importance of unified precedent in this area of the law, this Court explained:

> . . . *de novo* review tends to unify precedent and will come closer to providing law enforcement officers with a defined set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement.

Ornelas, 517 U.S. at 697-698 (internal quotation omitted). "And even where one case may not squarely control another one, the two decisions when

viewed together may usefully add to the body of law on the subject." *Ornelas*, 517 U.S. at 698. Here, allowing the Pennsylvania Supreme Court's decision to stand in this case does just the opposite and creates the mischief of which this Court warned because the Pennsylvania Supreme Court has created a divergence under the Fourth Amendment between Pennsylvania and the authority discussed above about when reasonable suspicion exists in circumstances where a vehicle is loitering near a closed business late at night and with no obvious purpose. In light of this uncertainty, one cannot say which decision will be followed in the future by other jurisdictions, nor can one say which body of law represents the correct interpretation for officers on the street attempting to determine if they have reasonable suspicion to question the occupants of a vehicle under those circumstances, especially where, the officer's prior experience informs the officer that it is unusual activity for that location.

If the Pennsylvania Supreme Court applied the correct totality of the circumstances analysis and gave due weight to the officer's conclusions based upon his prior experience, then it would not have reached an erroneous conclusion that diverged from other Fourth Amendment authority. Because the Pennsylvania Supreme Court failed in these regards and carved a false path in Fourth Amendment jurisprudence, this petition should be granted and

the Pennsylvania Supreme Court's decision should be corrected by this Court.

CONCLUSION

The Commonwealth respectfully requests that this Court grant the instant petition for writ of certiorari.

Respectfully submitted,

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COUNSEL FOR PETITIONER

DATE:

June 20, 2019

APPENDIX

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APPENDIX A

(Pennsylvania Supreme Court Opinion)

In the Supreme Court of Pennsylvania
Western District

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

COMMONWEALTH of Pennsylvania, Appellee

v.

Edward Thomas ADAMS, Appellant

No. 7 WAP 2018

Appeal from the Order of the Superior Court entered June 5, 2017 at No. 1445 WDA 2016, affirming the Judgment of Sentence of the Court of Common Pleas of Allegheny County entered August 31, 2016 at No. CP- 02-CR-0002870-2016

Argued: October 24, 2018

Decided: March 26, 2019

OPINION

JUSTICE DONOHUE

This discretionary appeal requires the Court to consider once again when an interaction between an ordinary citizen and a law enforcement official ripens from a mere encounter, requiring no level of suspicion, to an investigative detention, which must be supported by reasonable suspicion that criminal activity is afoot. We conclude, based on longstanding

precedent of this Court and the United States Supreme Court, that the line is crossed when a reasonable person would not feel free to leave, and that a detention effectuated by police in the interest of officer safety is impermissible in the absence of reasonable suspicion of criminal activity. We therefore reverse the decision of the Superior Court and remand the matter to the trial court for proceedings consistent with this Opinion.

The pertinent facts are largely undisputed. At approximately 2:56 a.m. on January 10, 2016, during a routine patrol, Officer James Falconio of the Pleasant Hills Police Department observed a white Dodge Dart enter a parking lot that served two closed businesses – a hobby store and a pizza shop – and drive behind the buildings. Believing that the vehicle may have made a wrong turn, Officer Falconio waited and watched for the vehicle to exit the parking lot. When it did not, the officer drove into the parking lot and behind the buildings to "simply check[ ] to see why a car drove behind two dark, closed businesses at [three] o'clock in the morning," as he recognized the potential for "drug activity or an attempted burglary." N.T., 8/25/2016, at 9.

When he arrived behind the buildings, Officer Falconio observed a white Dodge Dart parked behind the pizza shop. The engine was not running and the vehicle's lights were off. Although there were no "no parking" signs,[5] there were also no marked parking

[5] The Commonwealth states in its brief that there were posted "no parking" signs behind the buildings. Commonwealth's Brief at 6. The record, however, does not support this contention. Instead, the record reflects the following exchange between defense counsel and Officer Falconio on this point during cross-examination:

spots. Officer Falconio did not believe that this was an area where the public would generally park, but that the area might be used for deliveries and employee parking.

Officer Falconio pulled behind the vehicle in his marked police cruiser but did not activate his overhead lights or siren. He radioed for backup, but prior to backup arriving, he exited his police cruiser and walked over to the parked vehicle. It was late at night in a poorly lit area, and Officer Falconio utilized his flashlight, shining it into the vehicle as he approached. He reached the driver's side door and knocked on the window, at which time the occupant, Appellant Edward Thomas Adams ("Adams"), opened the car door. Officer Falconio pushed the door closed and instructed Adams to roll down his window. According to Officer Falconio, he did not feel safe allowing Adams, who was "not a short guy," to exit his vehicle without another officer present. *Id*. at 21. Adams explained to the officer that he could not open the window because he did not have the keys to the vehicle. Officer Falconio observed a set of keys (which he believed to be the keys to the vehicle) on the floor of the back of the car.[6] Adams remained in his vehicle

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> Q And there is parking available back there.
> A It's not marked parking. **But you can park back there.**
> Q You've seen vehicles parked back there.
> A Yes.
> Q And **there's no no-parking signs up there.**
> A **No.** I haven't seen cars parked there at 3 a.m. too often.

N.T., 8/25/2016, at 22 (emphasis added).

[6] The Commonwealth contends that Officer Falconio observed the keys in the backseat of the vehicle as he approached Adams,

until backup arrived, which occurred approximately one minute later.

With another officer present, Officer Falconio opened Adams' door and began to speak with him. Adams conveyed that he was the owner of the pizza shop and stated that he had just been inside his business. The officer knew the latter statement was not true, as he had just observed Adams drive into the parking lot. As they spoke, Officer Falconio detected a strong odor of alcohol on Adams' breath and observed that he had glassy eyes and slurred speech. He requested that Adams perform several field sobriety tests, and although "argumentative," Adams complied and failed the tests. *Id.* at 9-10. Officer Falconio then placed him under arrest for suspicion of driving under the influence of alcohol. He transported Adams to Jefferson Regional Hospital, where Adams consented to a blood draw. Adams declined to provide the name of a person who could pick him up, and so he remained in jail until police

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prior to closing the car door. Commonwealth's Brief at 6, 33. The record does not support this assertion. Officer Falconio testified that he shined his flashlight into the rear of the vehicle as he approached to ensure no one was laying down in the backseat. N.T., 8/25/2016, at 24. Although he arguably could have seen the keys at that time, counsel for Adams specifically asked the officer on cross-examination when he observed the keys on the floor of the backseat, and he testified that this occurred simultaneously with when he closed Adams' vehicle door. *Id.* (defense counsel asked the officer whether he observed the keys "before or after you pushed his door closed," and Officer Falconio responded, "As"). The trial court made a factual finding that the officer observed the keys at the time the officer closed the door to the vehicle. *See* Trial Court Opinion, 12/5/2016, at 3. As the record supports that finding of fact, we are bound by it. *Commonwealth v. Valdivia*, ––– Pa. ––––, 195 A.3d 855, 861 (2018).

believed he was sober enough to leave on his own, which occurred around 10:00 that morning.

Adams filed an omnibus pretrial motion asserting, inter alia, that the officer subjected him to an illegal detention in violation of the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. Of relevance to the case at bar, he contended that his detention by Officer Falconio was not supported by probable cause and/or reasonable suspicion of criminal activity and that all information and evidence obtained following his detention must be suppressed as fruits of the poisonous tree.

The trial court held a hearing on the motion on August 25, 2016, at which Officer Falconio provided the above-recited testimony. The trial court denied suppression, finding that the interaction between Adams and Officer Falconio was a mere encounter that did not convert to an investigative detention until Officer Falconio detected several indicia of intoxication, providing him with reasonable suspicion of criminal activity to support the temporary detention. Regarding Officer Falconio's refusal to allow Adams to open his car door, the trial court found that it was done in the interest of officer safety and "was not unreasonable under these specific circumstances," as "[t]his was a dark area behind ... closed businesses" and "backup arrived one minute later." Trial Court Opinion, 12/5/2016, at 6.

A stipulated bench trial followed immediately thereafter. The trial court convicted Adams of driving

under the influence of alcohol[7] and sentenced him to six months of probation and a $ 300 fine.

Adams appealed to the Superior Court, and a majority of that court affirmed based on the trial court's opinion, finding:

> When Officer Falconio approached the vehicle, a mere encounter ensued, not an investigatory detention. Officer Falconio merely approached a parked vehicle in an empty parking lot at approximately 3:00 a.m. He did not need reasonable suspicion or probable cause to do so. Officer Falconio's subsequent observations, as well as [Adams'] actions, permitted Officer Falconio to transform this mere encounter into an investigatory detention based upon articulable facts that suggested criminal activity might be afoot.

Commonwealth v. Adams, 1445 WDA 2016, 2017 WL 2424726, at *2 (Pa. Super. June 5, 2017) (non-precedential decision). Senior Judge Strassburger filed a concurring opinion, which the majority author joined. The concurrence differed from the majority, finding instead that the original mere encounter ripened into an investigative detention when Officer Falconio refused to allow Adams to open his car door because at this point, "only an unreasonable person would feel free to exit the car or drive away."[8] *Id*. at

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[7] 75 Pa.C.S. § 3802(a)(1).

[8] It is difficult to reconcile the Superior Court majority author's joinder in Judge Strassburger's concurrence with the majority's conclusion that the trial court correctly found that no investigative detention occurred until Officer Falconio detected

*2 (Strassburger, J., concurring). Judge Strassburger further concluded that Officer Falconio had reasonable suspicion of criminal activity to support the investigative detention, and thus, like the majority, would have affirmed the trial court's denial of suppression. "Officer Falconio had reasonable suspicion that criminal activity was afoot based upon the car's lingering presence in a parking lot behind closed businesses around 3 a.m.," and that reasonable suspicion of criminal activity "certainly" arose upon Adams' assertion that "he could not open his car door [sic] because he did not have his car keys, yet his car keys were in plain sight." *Id.*

We granted allowance of appeal to determine whether the courts below erred in concluding that the interaction between Adams and Officer Falconio did not ripen into an investigative detention prior to the officer detecting indicia of intoxication. We review this case mindful that the trial court's findings of fact are binding upon us to the extent they have record support, but we conduct a de novo review of its legal conclusions. *Commonwealth v. Valdivia*, ⸺ Pa. ⸺, 195 A.3d 855, 861 (2018).

The Fourth Amendment to the United States Constitution protects private citizens from unreasonable searches and seizures by government officials.[9] *See Byrd v. United States*, ⸺ U.S. ⸺,

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that Adams was intoxicated. Because this dichotomy does not affect our decision in this matter, we need not discuss it further.

[9] Although Adams mentions Article 1, Section 8 of the Pennsylvania Constitution, he makes no argument specific to the Pennsylvania Constitution. Adams relies almost exclusively on case law decided under the Fourth Amendment. We therefore review this case solely under the Fourth Amendment. *See*

138 S.Ct. 1518, 1526, 200 L.Ed.2d 805 (2018). Not every encounter between a law enforcement officer and a citizen constitutes a seizure warranting constitutional protections. "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Florida v. Bostick*, 501 U.S. 429, 434, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)); *see also Commonwealth v. Lyles*, 626 Pa. 343, 97 A.3d 298, 302 (2014) (recognizing that the central focus of the determination of whether a seizure occurred is whether an individual is somehow "restrained by physical force or show of authority").

We have long recognized three types of interactions that occur between law enforcement and private citizens. The first is a mere encounter, sometimes referred to as a consensual encounter, which does not require the officer to have any suspicion that the citizen is or has been engaged in criminal activity. This interaction also does not compel the citizen to stop or respond to the officer. *Commonwealth v. Strickler*, 563 Pa. 47, 757 A.2d 884, 889 (2000). A mere encounter does not constitute a seizure, as the citizen is free to choose whether to engage with the officer and comply with any requests made or, conversely, to ignore the officer and continue on his or her way. *See id.* The second type of interaction, an investigative detention, is a temporary detention of a citizen. *I.N.S. v. Delgado*, 466 U.S. 210, 215, 104 S.Ct. 1758, 80 L.Ed.2d 247 (1984); *In the Interest of A.A.*, —— Pa. ——, 195 A.3d

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Commonwealth v. Strader, 593 Pa. 421, 931 A.2d 630, 633 (2007).

896, 904 (2018). This interaction constitutes a seizure of a person, and to be constitutionally valid police must have a reasonable suspicion that criminal activity is afoot. *Brown v. Texas*, 443 U.S. 47, 51, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979); *Strickler*, 757 A.2d at 889. The third, a custodial detention, is the functional equivalent of an arrest and must be supported by probable cause. *A.A.*, 195 A.3d at 904. A custodial detention also constitutes a seizure. *Strickler*, 757 A.2d at 889.

No bright lines separate these types of encounters, *Commonwealth v. Mendenhall*, 552 Pa. 484, 715 A.2d 1117, 1120 (1998), but the United States Supreme Court has established an objective test by which courts may ascertain whether a seizure has occurred to elevate the interaction beyond a mere encounter. *Lyles*, 97 A.3d at 302-03. The test, often referred to as the "free to leave test," requires the court to determine "whether, taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.' " *Bostick*, 501 U.S. at 437, 111 S.Ct. 2382 (quoting *Michigan v. Chesternut*, 486 U.S. 567, 569, 108 S.Ct. 1975, 100 L.Ed.2d 565 (1988)). "[W]henever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." *Terry*, 392 U.S. at 16, 88 S.Ct. 1868.

Adams argues that the interaction with Officer Falconio was an investigative detention from the moment the officer exited the police vehicle and approached his car. Adams' Brief at 11. Alternatively, he asserts that it unquestionably ripened into an investigative detention when the officer "closed the

door of [Adams'] vehicle, signaling to him and anyone in his position[ ] that they were not free to leave." *Id.* at 11.

In its responsive brief, the Commonwealth asserts that the interaction between Adams and Officer Falconio was a mere encounter and did not become an investigative detention until Officer Falconio opened the door to the vehicle and had reasonable suspicion to believe that Adams was driving under the influence of alcohol. Commonwealth's Brief at 13, 27. The Commonwealth argues that the officer's approach was permissible and that his act of closing Adams' door did not escalate the interaction to an investigative detention. *Id.* at 15-17, 23. Without supporting authority, the Commonwealth states that closing Adams' door did not constitute a show of force or intimidation, but instead was for the officer's protection until backup arrived (which occurred shortly thereafter), rendering it permissible. *Id.* at 23-24. Likening the officer's actions here to an officer requesting that a person remove his hands from his pockets or requiring the occupants of a vehicle to exit the car during a lawful traffic stop, the Commonwealth asserts, "Shutting the vehicle door for approximately one minute until backup officers arrived was within the ambit of acceptable, non-escalatory factors." *Id.* at 26 (citing, inter alia, *Pennsylvania v. Mimms*, 434 U.S. 106, 111, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977) (per curiam) (vehicle stop); *Lyles*, 97 A.3d at 306 (hands in pockets)).

We agree with Adams that he was "seized" for Fourth Amendment purposes when Officer Falconio would not allow Adams to exit his vehicle, closing the

door as Adams opened it.[10] This action, constituting both an act of physical force and a show of authority, is precisely the type of escalatory factor that compels a finding that a seizure occurred. Officer Falconio confined Adams to his vehicle, and no reasonable person in Adams' shoes would have felt free to leave. In fact, under these circumstances, not only would a reasonable person not feel free to leave, Adams actually could not leave his vehicle and "go about his business." *See Bostick*, 501 U.S. at 437, 111 S.Ct. 2382. Moreover, Officer Falconio did not simply request that Adams stay in the car. His action of physically closing the door as Adams was opening it communicated what any reasonable person would understand to be a demand that he remain in the vehicle at that location. *See*, *cf.*, *Commonwealth v. Au*, 615 Pa. 330, 42 A.3d 1002, 1007 n.3 (2012) (recognizing that in evaluating whether a person has been seized for Fourth Amendment purposes, "a request obviously differs from a demand"). At that moment, Officer Falconio restrained Adams' freedom to walk away, and thus Adams was "seized" for Fourth Amendment purposes. *See Terry*, 392 U.S. at 16, 88 S.Ct. 1868.

The Commonwealth and the courts below improperly focus, in part, on the duration of the detention that occurred. That the detention was only temporary is irrelevant to our analysis of whether a seizure occurred. An investigative detention, by definition, encompasses only a "brief detention." *See United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989) ("In *Terry*[ ], we held that

[10] In light of this conclusion, we need not address Adams' contention that the encounter between Adams and Officer Falconio was an investigative detention from its inception.

the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause."); *Strickler*, 757 A.2d at 888 ("The Fourth Amendment protects against unreasonable searches and seizures, including those entailing only a brief detention."). The Fourth Amendment does not have a time limit; it protects individuals from unreasonable seizures, no matter how brief. *See, e.g., United States v. Brignoni-Ponce*, 422 U.S. 873, 880-82, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975) (finding an interaction between border patrol officers and individuals in their vehicles during roving-patrol stops and lasting "no more than a minute" to be an investigative detention requiring reasonable suspicion of criminal activity).

The analogies presented for our consideration by the Commonwealth are inapt. An officer's act of closing the door of a person's vehicle as the person begins to open it is not similar to a request that a person remove his hands from his pockets, as the latter request in no way constrains a person's ability to leave the area.[11] Further, although the Commonwealth is correct that the Fourth Amendment allows an officer to order the occupants

[11] We further note that in *Lyles*, the case relied upon by the Commonwealth for this proposition, the appellant did not contend on appeal that the officer's request for him to remove his hands from his pockets turned the mere encounter into an investigative detention. Instead, the question before the Court was whether "an officer's request for identification elevated an encounter to an investigative detention unsupported by reasonable suspicion." *Lyles*, 97 A.3d at 300. Thus, for this reason as well, *Lyles* does not provide support for the Commonwealth's contention.

of a vehicle to exit during a lawful traffic stop, it ignores that a traffic stop is an investigative detention that itself requires reasonable suspicion or probable cause. *See Commonwealth v. Chase*, 599 Pa. 80, 960 A.2d 108 (2008). In *Mimms*, police initiated a vehicle stop after observing the defendant driving with an expired license plate. The high Court explained that where police have already lawfully and permissibly intruded upon the personal liberty of the vehicle's occupants by conducting the stop of the vehicle and the driver is lawfully detained, the "additional intrusion" of having the individuals exit the vehicle at the officer's direction does not constitute a separate seizure and "can only be described as de minimis." *Mimms*, 434 U.S. at 111, 98 S.Ct. 330.

The key differentiation of the circumstances in the case at bar is that there was no preexisting permissible intrusion or restraint on Adams' liberty. The Commonwealth does not contend, and the record does not support a finding, that Adams was already subjected to a lawful investigative detention at the time Officer Falconio closed the vehicle's door. *See* Commonwealth's Brief at 17-21 (asserting that the interaction began as a mere encounter). Thus, unlike in *Mimms*, Officer Falconio's action was not an additional de minimus intrusion upon a person who police had already lawfully seized.

The Commonwealth further points to this Court's recent decision in *Commonwealth v. Mathis*, 643 Pa. 351, 173 A.3d 699 (2017), as compelling a finding that Officer Falconio's action did not escalate the interaction to an investigative detention. Commonwealth's Brief at 26-27. In *Mathis*, a majority of this Court concluded that a parole agent's

statement to a visitor in a parolee's home that he would get the visitor (Mathis) out of the house "as soon as I possibly can," and his request that Mathis move into the front room of the house did not elevate the interaction to an investigative detention. *Mathis*, 173 A.3d at 712-13. At the time of the request, a different parole agent was conversing in another room with the parolee, as there was a smell of burnt marijuana in the house and the agents observed marijuana roaches in an ashtray. The *Mathis* majority found the "relaxed and conversational" tone of the interaction between the parole agent and Mathis to that point, which the Majority deemed "non-confrontational," did not warrant a finding that Mathis had been seized, particularly in light of Mathis' recollection that he believed the parole agent communicated to him an urgency for Mathis to leave the house. *Id*. at 702-03, 713.

In contrast, in the pending matter, there was no interaction, let alone conversation, between Officer Falconio and Adams before the officer prohibited Adams from exiting his vehicle. As stated above, prior thereto, Officer Falconio parked behind Adams' vehicle and approached it, shining a flashlight inside of the vehicle. He then tapped on the window, following which Adam (sic) attempted to open the door to engage with the officer, but Officer Falconio closed the door on him so that he could not exit the vehicle. There was no "request" made, and we cannot classify the officer's action here as non-confrontational. While we accept that Officer Falconio may have been concerned for his safety, given Adams' apparent stature and that the officer was alone, a police officer's action of closing the car door on someone as he attempts to exit his vehicle

can only be viewed as a show of force and authority. Thus, based on the factual differences between *Mathis* and the matter at hand, we reject the Commonwealth's claim that *Mathis* is controlling.

There is no question that a reasonable person in Adams' position would not have felt free to leave once Officer Falconio closed his vehicle door on him, and he was thus seized. The courts below erred when they concluded that the interaction was a mere encounter despite this action by the officer. The basis for the courts' conclusion that this did not escalate the interaction to an investigative detention was that they viewed the closing of Adams' vehicle door to be in the interest of officer safety – he was the only officer at the scene and it was dark outside. Trial Court Opinion, 12/5/2016, at 6; *see also Adams*, 2017 WL 2424726, at *2 (affirming based on the trial court's opinion). This is contrary to the law. Pursuant to *Terry* and its progeny, a detention effectuated by police in the name of "officer safety" is not sufficient to permit the detention, as "officer safety" does not overcome or replace the requirement of reasonable suspicion that criminal activity is afoot to support the seizure.

Terry marked the first case in which the United States Supreme Court determined that law enforcement officials may briefly detain an individual for questioning and pat down or "frisk" the person based on facts that amount to less than probable cause to arrest. In *Terry*, a police officer observed three men engaging in behavior that caused him to suspect, based on his training and experience, that they were casing a store in preparation to commit a robbery. The officer approached the men and began asking them questions. He then grabbed Terry, one of

the three men, and patted down the outer layer of his clothing, which revealed a gun in Terry's coat pocket.

Terry challenged the constitutionality of the interaction under the Fourth Amendment. The high Court recognized the competing interests at play. On the one side, the Fourth Amendment requires a "specific justification for any intrusion upon protected personal security." *Terry*, 392 U.S. at 10-11, 88 S.Ct. 1868. On the other, there is a need for flexibility for police to investigate criminal activity and, while in the process of doing so, protect themselves from harm. *Id*. To give proper effect to both of these interests, the Court established a two-part test. First, a brief investigatory detention is permissible only if the police officer "observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot." *Id*. at 30, 88 S.Ct. 1868. In such circumstances, he or she may briefly stop the suspicious person and make "reasonable inquiries" aimed at confirming or dispelling his suspicions. *Id*. at 30, 88 S.Ct. 1868. Second, **during** this brief detention, "[w]hen an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others," the officer may conduct a pat down search "to determine whether the person is in fact carrying a weapon." *Id.* at 24, 88 S.Ct. 1868.

In applying this two-part test, the constitutionality of the seizure requires a determination of whether "specific and articulable facts" and the "rational inferences from those facts, reasonably warrant that intrusion." *Id.* at 21, 88 S.Ct. 1868.

> The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?

Id. at 21-22, 88 S.Ct. 1868.

In the cases that have followed *Terry* over the last fifty years, the high Court has emphasized that considerations of officer safety must be **preceded** by a finding that the individual was lawfully subjected to an investigative detention, i.e., that the officer had reasonable suspicion that criminal activity was afoot. In *Arizona v. Johnson*, 555 U.S. 323, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009), for example, the Court reaffirmed its decision in *Terry* as follows:

> Th[is] Court upheld "stop and frisk" as constitutionally permissible if two conditions are met. **First**, the investigatory stop must be lawful. That requirement is met in an on-the-street encounter, *Terry* determined, when the police officer reasonably suspects that the person apprehended is committing

> or has committed a criminal offense. **Second**, to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous.

Id. at 326-27, 129 S.Ct. 781 (emphasis added). *See also Minnesota v. Dickerson*, 508 U.S. 366, 373, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993) (prior to pat down search, the officer must have reasonable suspicion of criminal activity); *Michigan v. Long*, 463 U.S. 1032, 1051-52, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983) (*Terry* search for weapons of area of vehicle in reach of the individual permissible during lawful vehicle stop where the officer has reasonable suspicion to believe that the individual may be armed and dangerous).

Accordingly, during an investigative detention, police officers may take action, when appropriate, for their own safety or that of the public. Both this Court and the high Court have repeatedly stated that officer safety is a legitimate governmental interest that is worthy of protection. *See*, *e.g.*, *Terry*, 392 U.S. at 24, 88 S.Ct. 1868; *Mimms*, 434 U.S. at 110, 98 S.Ct. 330; *Long*, 463 U.S. at 1052, 103 S.Ct. 3469; *Commonwealth v. Zhahir*, 561 Pa. 545, 751 A.2d 1153, 1158 (2000). Importantly, however, an investigatory detention may not be premised on officer safety. Instead, safety considerations are relevant only within the confines of a lawful investigative detention based upon the police officer's reasonable suspicion that the person being stopped is committing or has committed a criminal offense. In the absence of such reasonable suspicion (or probable cause), police may not initiate an investigatory detention.

The courts below ignored the first step of the *Terry* test as they never assessed whether Officer Falconio had reasonable suspicion of criminal activity to justify the seizure of Adams. Instead, the courts substituted a finding that the action was permissible in the interest of officer safety in lieu of considering whether the officer had reasonable suspicion of criminal activity. Although an officer's subjective concern for his safety is, of course, a legitimate interest, it does not enter into a Fourth Amendment analysis unless the investigative detention was initially supported by reasonable suspicion of criminal activity. A contrary conclusion would eviscerate the Fourth Amendment since a concern for officer safety is present in nearly all interactions police have with members of the public. *See Roberts v. Louisiana*, 431 U.S. 633, 636 & n.3, 97 S.Ct. 1993, 52 L.Ed.2d 637 (1977) (per curiam) (stating that police "regularly must risk their lives in order to guard the safety of other persons and property," and that police work is inherently dangerous); *Mimms*, 434 U.S. at 110, 98 S.Ct. 330 (recognizing the risk to police that is present when they approach a person seated in a car). Simply put, in the absence of reasonable suspicion of criminal activity justifying an investigative detention, officer safety is not a permissible basis for police to seize an individual during a mere encounter.[12]

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[12] Moreover, as it relates to the case at bar, the record does not reflect any immediacy or urgency for Officer Falconio to approach Adams' vehicle and question him. The officer testified that he was concerned for his safety because he was the only officer present at that time, but that he had called for backup, which he knew to be en route to his location when he approached Adams' vehicle. *See* N.T., 8/25/2016, at 21 (Officer Falconio testifying that backup had called to let him know "they

The interaction between Adams and Officer Falconio was an investigative detention when Officer Falconio physically closed Adams' vehicle door as Adams began to open it. Whatever Officer Falconio's reason for not allowing Adams to open his car door, the resulting message was clear – Adams was not free to leave.

Having determined that a seizure occurred, we now consider whether Officer Falconio had reasonable suspicion of criminal activity to support the investigative detention. As stated hereinabove, an investigative detention is constitutionally permissible if an officer identifies "specific and articulable facts" that led the officer to believe that criminal activity was afoot, considered in light of the officer's training and experience. *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002); *Commonwealth v. Cook*, 558 Pa. 50, 735 A.2d 673, 676 (1999)). "[I]n determining whether the officer acted reasonably ..., due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Terry*, 392 U.S. at 27, 88 S.Ct. 1868.

The Commonwealth contends that if an investigative detention occurred, Officer Falconio had the requisite reasonable suspicion of criminal activity to allow for the seizure, and that the facts of record support this conclusion. In particular, the Commonwealth points out that the officer knew from

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were on their way," but had not yet arrived when Adams opened his car door). In the absence of reasonable suspicion that criminal activity was afoot, there was no need for Officer Falconio to approach Adams' vehicle prior to backup arriving.

his patrolling experience that cars were not usually parked behind the rear of the businesses, particularly at 3:00 a.m.[13] Commonwealth's Brief at 33-34. Adams, on the other hand, argues that Officer Falconio did not have the requisite reasonable suspicion of criminal activity to seize him, as the officer had nothing more than an "unparticularized hunch[ ]" about the possibility of criminal activity based on the time and the location. Adams' Brief at 23. He cites to various cases from this Court and the Superior Court to support his position, but relies primarily on *Commonwealth v. DeWitt*, 530 Pa. 299, 608 A.2d 1030, 1032, 1033-34 (1992), as controlling. Adams' Brief at 18-19.

In *DeWitt*, Pennsylvania State Troopers on a routine patrol observed a vehicle with its interior lights illuminated and exterior lights extinguished parked partially on the berm of the road and partially in a church parking lot just before midnight. Concerned that the car could be disabled, and further based on a request from the church to look for suspicious vehicles on its property, the troopers pulled alongside the vehicle to investigate. At the approach of the police vehicle, the interior lights of the vehicle extinguished, the persons inside made "furtive ... and suspicious movements" and the vehicle began to pull away from the scene. *DeWitt*, 608 A.2d at 1032. The troopers became suspicious of

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[13] In its reasonable suspicion analysis, the Commonwealth further contends that Officer Falconio observed keys laying on the rear passenger's side floor behind the seat as he walked up to the vehicle. As stated above, however, this contention is not supported by the record, as the trial court made a factual finding that the officer observed the keys at the time that he closed the door. *See supra*, note 2.

criminal activity at that point and stopped the vehicle, then seeing in plain view what they believed to be illegal drugs. After having the occupants exit the vehicle, the troopers searched the car and found drugs and drug paraphernalia.

The Commonwealth charged DeWitt with several violations of the Controlled Substance, Drug, Device and Cosmetic Act.[14] The trial court granted DeWitt's pretrial motion to suppress the evidence obtained during the search of the vehicle, finding that the police lacked reasonable suspicion of criminal activity to conduct the stop. The trial court found "that the only information available to the troopers was their observation of a vehicle parked in a church parking lot with its dome illuminated and its outside lights extinguished, and as the troopers approached, the vehicle attempted to leave the parking lot." *Id*.

The Superior Court reversed, finding, "The combination of furtive movements, time of night, previous notice from the property owner, potential parking violation, and attempted movement from the scene when the police arrived sufficiently justified the legality of the stop." *Id*. at 1034. This Court granted allowance of appeal and reinstated the trial court's suppression order. Of relevance to the case at bar, we concluded that the evidence of record was insufficient to justify an investigative detention and found the Superior Court's conclusion to be "unsupported by the record." *Id*. We stated, "Although the police had previous notice from the property owner of criminal behavior in the church

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[14] Act of April 14, 1972, P.L. 233, as amended, 35 P.S. 780-101 – 780-144.

parking lot [including underage drinking, "doing donuts" and "laying rubber"], there was absolutely no evidence that the vehicle in question engaged in the type of activities complained of," and that flight alone was insufficient to establish reasonable suspicion of criminal conduct. *Id*. at 1034 & n.2.

We agree with Adams that the factual record in this matter bears a striking resemblance to that of *DeWitt*, with the facts of *DeWitt* providing an even greater indicia of criminal activity than was present here. Prior to the investigative detention, the only facts that Officer Falconio articulated were that a car was parked behind a closed business on public property at night. Officer Falconio did not observe Adams making any furtive or suspicious movements, nor had he received notice of criminal behavior occurring in that location, as the troopers had in *DeWitt*. Officer Falconio's testimony evinced only generalized concerns about the possibility of criminal activity occurring, based solely upon time and place, i.e., behind closed businesses at night. He provided no specific or articulable facts to support a belief that Adams was engaged or going to be engaging in criminal activity. Rather, in his testimony, he expressed more of a curiosity about what the driver was doing behind the closed businesses. *See* N.T., 8/25/2016, at 6, 9 (Officer Falconio testifying that he followed the vehicle behind the businesses because he wanted "to see what the occupant or occupants of the vehicle were doing," "to see why a car drove behind two dark, closed businesses at [three] o'clock in the morning," and to ensure that "there wasn't drug activity or an attempted burglary"). As in *DeWitt*, here Officer Falconio offered no testimony that he observed Adams commit any criminal offense or that

Adams took any actions that might suggest that he was about to commit any criminal offense. Officer Falconio merely observed a man sitting in his car at night.

Both the Commonwealth and the courts below justify Officer Falconio's action based on the time of night and that Adams' vehicle was parked in an atypical location. As *DeWitt* makes clear, however, these factors alone do not give rise to a finding of reasonable suspicion of criminal activity where the officer provided no specific or articulable facts to suggest that criminal activity is occurring or has occurred. *See DeWitt*, 608 A.2d at 1031-32.

We therefore conclude that Officer Falconio subjected Adams to an investigative detention unsupported by reasonable suspicion of criminal activity. The trial court erred by denying Adams' suppression motion on that basis and the Superior Court erred in its affirmance of that decision. As such, we reverse the decision of the Superior Court and remand the matter to the trial court for further proceedings consistent with this Opinion.

Justices Baer, Todd, Dougherty and Wecht join the opinion.

Justice Mundy files a concurring and dissenting opinion in which Chief Justice Saylor joins.

In the Supreme Court of Pennsylvania
Western District

COMMONWEALTH of Pennsylvania, Appellee

v.

Edward Thomas ADAMS, Appellant

No. 7 WAP 2018

Appeal from the Order of the Superior Court entered June 5, 2017 at No. 1445 WDA 2016, affirming the Judgment of Sentence of the Court of Common Pleas of Allegheny County entered August 31, 2016 at No. CP- 02-CR-0002870-2016

Argued: October 24, 2018

Decided: March 26, 2019

CONCURRING AND DISSENTING OPINION

JUSTICE MUNDY

I agree with the Majority that Appellant was seized for Fourth Amendment purposes when Officer Falconio would not permit him to exit his vehicle. Majority Op. at 9. I further agree that Officer Falconio needed to articulate reasonable suspicion for the seizure to be constitutionally reasonable under the Fourth Amendment. However, because I conclude that Officer Falconio articulated the required reasonable suspicion, I respectfully dissent.

At the suppression hearing, Officer Falconio testified that he was a patrolman for the Borough of Pleasant Hills, and his duties included responding to 911 calls, proactive policing, DUI enforcement, and business checks in the district. N.T., 8/25/16, at 3-4. On January 10, 2016, Officer Falconio was working the night shift when he witnessed a white Dodge Dart turn into a parking lot for Toby Tyler, a train hobby store, and Showcase Pizza. He testified his attention was drawn to the vehicle because it was 2:56 a.m. and both businesses were closed. *Id*. at 5. Officer Falconio testified he drove in the direction of the parking lot keeping an eye on the building for the vehicle to see if it would reemerge from behind the building. When the vehicle did not exit he pulled behind the building "to see what the occupant or occupants of the vehicle was [sic] doing." *Id*. at 6.

Officer Falconio articulated, "I wasn't conducting a traffic stop. I didn't put my emergency lights on. I was simply checking to see why a car drove behind two dark, closed businesses at 3 o'clock in the morning, making sure there wasn't drug activity or an attempted burglary of the pizza shop ... or the hobby shop[.]" *Id*. at 9. Based on these suspicions Officer Falconio approached the vehicle, noted the lights and engine of the car he had just observed driving into the lot were now off, and knocked on the driver's window. When Appellant attempted to exit the vehicle, Officer Falconio, fearing for his safety, pushed the door shut and requested Appellant roll down the window. *Id*. at 7, 24.

At this juncture, it is undisputed Appellant was seized, and in my view, legally seized. This Court granted review "to determine whether the courts

below erred in concluding the interaction between [Appellant] and Officer Falconio did not ripen into an investigative detention prior to the officer detecting indicia of intoxication." Majority Op. at 6. Like the Majority, I am in agreement that the interaction ripened into an investigative detention prior to Officer Falconio detecting indicia of intoxication, but I would conclude it was supported by reasonable suspicion. Thus, as the Majority notes, we review this issue "mindful that the trial court's findings of facts are binding upon us to the extent they have record support, but we conduct a de novo review of its legal conclusions." *Id.* (citing *Commonwealth v. Valdivia*, – — Pa. ——, 195 A.3d 855, 861 (2018).

In *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the United States Supreme Court reviewed the level of suspicion an officer needed to have in order to stop and frisk an individual. In *Terry*, Officer McFadden observed two individuals walk from a corner down to a store, peer in the window, and return to the corner at least a dozen times. *Id.* at 5, 88 S.Ct. 1868. Officer McFadden became suspicious and continued to watch the individuals. He eventually observed a third individual approach the pair, and all three head in the same direction, stopping in front of a store window. *Id.* At that point in time, Officer McFadden feared the individuals might intend to hold up the store, and determined "the situation was ripe for direct action[.]" *Id.* Officer McFadden approached the individuals and out of fear they were armed, frisked Terry for a weapon. In its opinion, the United States Supreme Court reviewed Officer McFadden's stop and frisk of Terry and noted "in determining whether the seizure and search were 'unreasonable' our

inquiry is a dual one—whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* at 19-20, 88 S.Ct. 1868. The Court continued, "we deal here with an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat—which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures." *Id.* at 20, 88 S.Ct. 1868. From there the Court held, "in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* at 21, 88 S.Ct. 1868. This Court has since repeatedly held "an investigative detention, derives from *Terry v. Ohio* and its progeny: such a detention is lawful if supported by reasonable suspicion because, although it subjects a suspect to a stop and a period of detention, it does not involve such coercive conditions as to constitute the functional equivalent of an arrest." *Commonwealth v. Smith*, 575 Pa. 203, 836 A.2d 5, 10 (2003).

Instantly, Officer Falconio articulated that while on patrol he observed a vehicle pull into a parking lot of two closed businesses at 3 a.m., and disappear behind the building. Officer Falconio waited for the vehicle to reemerge as it was possible the vehicle had inadvertently entered the parking lot. When the vehicle did not reemerge, Officer Falconio drove behind the businesses and observed the car and

its lights were off. Officer Falconio continued the investigation of the suspicious vehicle to determine if an attempted burglary or drug deal was taking place. When Officer Falconio approached the car, the occupant attempted to exit the vehicle. Fearing for his safety, Officer Falconio pushed the door shut and asked the occupant in the vehicle to remain in the car until backup arrived, which occurred one minute later.

Officer Falconio's testimony articulated specific facts, which taken together with the rational inferences from those facts, supported Officer Falconio's action of temporarily seizing Appellant. Specifically, the record evidence supports the conclusion that Officer Falconio had reasonable suspicion that criminal activity was afoot. Upon approaching the vehicle for closer observation, the sole occupant attempted to exit the vehicle to confront Officer Falconio. Due to safety concerns, Officer Falconio seized Appellant by pushing the door of the vehicle closed until backup arrived giving rise to the investigative detention of Appellant. At the time of the seizure, Officer Falconio had not yet spoken with Appellant, and did not know Appellant was the owner of the business, nor did he know Appellant could not open the window because the keys were in the backseat of the vehicle. Officer Falconio's subsequent observations of Appellant's conduct and demeanor led to the observation that he was driving under the influence, but bore no impact on his initial seizure of Appellant.

The situation in this case unfolded fluidly and at a rapid pace. This Court and the courts below have the benefit of hindsight and the advantage of dissecting the interaction step by step as it unraveled

via the testimony of Officer Falconio. It is important, in my view, to recognize the split second decisions of police officers in these scenarios and the need to deescalate unnecessary confrontations while not infringing on an individual's Fourth Amendment right to be free from unnecessary searches and seizures. Accordingly, because I would affirm the Superior Court's holding, affirming the trial court's denial of Appellant's motion to suppress, I respectfully dissent.

Chief Justice Saylor joins this concurring and dissenting opinion.

APPENDIX B

(Pennsylvania Superior Court Opinion)

NON–PRECEDENTIAL DECISION—SEE SUPERIOR COURT I.O.P. 65.37

In the Superior Court of Pennsylvania

COMMONWEALTH of Pennsylvania, Appellee

v.

Edward Thomas ADAMS, Appellant

No. 1445 WDA 2016

FILED JUNE 5, 2017

Appeal from the Judgment of Sentence August 31, 2016, In the Court of Common Pleas of Allegheny County, Criminal Division at No: CP–02–CR–0002870–2016

BEFORE: OLSON, STABILE, and STRASSBURGER,* JJ.

MEMORANDUM BY STABILE, J.:

Appellant, Edward Thomas Adams, appeals from the August 31, 2016 judgment of sentence entered in the Court of Common Pleas of Allegheny County ("trial court") sentencing him to a period of six months' probation following a non-jury trial for driving under the influence (DUI).[15] Upon review, we affirm.

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[15] 75 Pa.C.S.A. § 3802(a)(1).

The factual and procedural history of the matter is undisputed.[16] Briefly, on January 10, 2016, at approximately 2:56 a.m., Officer Falconio observed a white Dodge Dart pulling into the parking area of a shopping plaza, which included a shop owned by Appellant. All shops in the plaza were closed. After the vehicle did not leave the parking lot, Officer Falconio pulled behind the car in the lot. Officer Falconio did not activate his lights or sirens, proceeded to call for backup, approached the vehicle, and knocked on the driver's window. Appellant was behind the wheel of the vehicle; however, the engine and lights were off.

Appellant attempted to exit the vehicle rather than lower the window; however, Officer Falconio closed the door and requested he open the window until backup arrives. Appellant stated he could not do so because he did not have the keys; however, the keys were visible in the rear of the vehicle. After backup arrived, Officer Falconio opened the door and spoke to Appellant. At this time Officer Falconio noticed Appellant exhibited a strong odor of alcohol, bloodshot and glassy eyes, and was slurring his speech. After directing Appellant through field sobriety tests, Officer Falconio arrested Appellant for DUI.

On June 9, 2016, Appellant filed an omnibus pre-trial motion including a motion to suppress. The trial court held a hearing on Appellant's motion on August 25, 2016. After denying Appellant's motion, the trial court conducted a non-jury trial, at the conclusion of which it found Appellant guilty of DUI.

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[16] All facts come from the trial court's December 5, 2016 opinion unless otherwise noted.

On August 31, 2016, Appellant was sentenced to a period of six months' probation. Appellant filed a timely notice of appeal on September 29, 2016, and a concise statement of matters complained of on appeal on October 12, 2016. The trial court issued a Pa.R.A.P. 1925(a) opinion on December 5, 2016.

Appellant raises one issue for review, which we quote verbatim.

> Whether the trial court erred in denying Appellant's motion to suppress when he was detained for pulling into his own business, when such was closed, and thus the stop and subsequent detention was not supported by probable cause or reasonable suspicion of criminal activity.

Appellant's Brief at 4.

Our standard of review for a denial of a motion to suppress is well established.

> [a]n appellate court may consider only the Commonwealth's evidence and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, the appellate court is bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error. However, it is also well settled that the appellate court is not bound by the suppression court's conclusions of law.

Commonwealth v. Nguyen, 116 A.3d 657, 663–64 (Pa. Super. 2015) (citations omitted). "To determine

whether a mere encounter rises to the level of an investigatory detention, we must discern whether, as a matter of law, the police conducted a seizure of the person involved." *Commonwealth v. Collins*, 950 A.2d 1041, 1046 (Pa. Super. 2008) (quoting *Commonwealth v. Reppert*, 814 A.2d 1196, 1201 (Pa. Super. 2002) (citations omitted)). After review of the record, the briefs, and the law, the trial court's December 5, 2016 opinion adequately addresses Appellant's claim. When Officer Falconio approached the vehicle, a mere encounter ensued, not an investigatory detention. Officer Falconio merely approached a parked vehicle in an empty parking lot at approximately 3:00 a.m. He did not need reasonable suspicion or probable cause to do so. Officer Falconio's subsequent observations, as well as Appellant's actions, permitted Officer Falconio to transform this mere encounter into an investigatory detention based upon articulable facts that suggested criminal activity might be afoot.

In conclusion, we find Appellant's claim is meritless. Thus, we affirm the judgment of sentence. We direct that a copy of the trial court's December 5, 2016 opinion be attached to any future filings in this case.

Judgment of sentence affirmed.

Judge Olson joins the memorandum.

Judge Strassburger files a concurring memorandum in which Judge Stabile joins.

Judgment Entered.

/s/ Joseph D. Seletyn

Joseph D. Seletyn, Esq.

Prothonotary

Date: 6/5/2017

NON–PRECEDENTIAL DECISION—SEE SUPERIOR COURT I.O.P. 65.37

In The Superior Court of Pennsylvania

COMMONWEALTH of Pennsylvania, Appellee

v.

Edward Thomas ADAMS, Appellant

No. 1445 WDA 2016

FILED JUNE 5, 2017

Appeal from the Judgment of Sentence August 31, 2016, In the Court of Common Pleas of Allegheny County, Criminal Division at No: CP–02–CR–0002870–2016

BEFORE: OLSON, STABILE, and STRASSBURGER,* JJ.

CONCURRING MEMORANDUM BY STRASSBURGER, J.:

I respectfully concur. The trial court determined, and the Majority agrees, that Officer Falconio's interactions with Appellant remained a mere encounter until Appellant opened the car door after backup arrived and Officer Falconio suspected that Appellant was under the influence of alcohol, stating that the officer's "[r]equest[ ] that Appellant remain in his vehicle for officer safety until backup arrived one minute later was not unreasonable under

these specific circumstances." Trial Court Opinion, 12/5/2016, at 6. However, the reasonableness of the officer's request is not the sole focus of our inquiry. In objectively evaluating the totality of the circumstances, we must determine "whether a reasonable person would have felt free to leave or otherwise terminate the encounter," including all circumstances evidencing "restrain[t] by physical force or show of coercive authority" by police. *Commonwealth v. Lyles*, 97 A.3d 298, 302–03 (Pa. 2014). When a police officer pushes a person's car door closed, instructs the person to remain in the car, and remains outside the car waiting for backup, only an unreasonable person would feel free to exit the car or drive away.

However, Officer Falconio had reasonable suspicion that criminal activity was afoot based upon the car's lingering presence in a parking lot behind closed businesses around 3 a.m. Although Appellant owned one of the businesses, Officer Falconio did not know this when he was determining why Appellant was parked behind the businesses at such an early hour. Additionally, certainly Officer Falconio had reasonable suspicion once Appellant claimed he could not open his car door because he did not have his car keys, yet his car keys were in plain sight. Therefore, I would affirm, albeit on a different basis than the Majority.

Judge Stabile joins.

APPENDIX C

(Trial Court Opinion)

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

EDWARD THOMAS ADAMS

CRIMINAL DIVISION

CC 2016-2870

1445 WDA 2016

OPINION

BIGLEY. J. December 5th, 2016

This is an appeal from an order of sentence entered on August 31, 2016, which followed a Suppression Hearing and non-jury trial before this court[17]. The Defendant was found guilty of Driving Under the Influence (DUI), 75 § 3802 §§ A1, the defendant was sentenced to six (6) months probation, ordered to follow the recommendations from his drug and alcohol evaluation, complete the alcohol highway safety school and pay a fine of $300.00. No Post Sentence Motions were filed and this timely appeal followed. The defendant's Rule 1925(b) Concise Statement of Errors Complained of on Appeal raises one issue on appeal.

[17] The Suppression Hearing and NonJury Trial was held on August 25, 2016.

> 1. This Honorable Court erred in denying Defendant's Motion to Suppress. Officer Falconio saw a vehicle in the parking lot of a building consisting of at least two businesses, one of which was Defendant's pizza shop, at 3:00 a.m. That alone presented no more than a hunch by Officer Falconio of suspected but unarticulated criminal activity being carried out by Defendant. Police are not permitted to stop or detain based on a hunch, or on suspicion not rising to the level of reasonable suspicion of probable cause. Defendant was detained without reasonable suspicion or probable cause. Although the police in Commonwealth v. Dewitt, 608 A.2d 1030 (Pa. 1992) conducted a vehicle stop, the observations confronting the officers in Dewitt was similar to that information known by Officer Falconio.

For the reasons set forth below, denial of the Motion to Suppress was not in error and should be affirmed.

The testimony for the Suppression hearing is summarized as follows. On January 10, 2016 Officer James Falconio was on patrol in the Borough of Pleasant Hills in Allegheny County. At approximately 3:00 a.m., Officer Falconio was driving near Curry Hollow Road when he noticed a white Dodge Dart driving north on Green Drive toward Curry Hollow Road. The vehicle made a left into a parking lot for Toby Tyler Hobby Shop and Showcase

Pizza and drove behind those businesses which were closed. [T.T.5-7][18]. The Officer proceeded in that direction and kept an eye out to see if the vehicle would emerge from the area. When the vehicle remained behind the building the officer drove behind the building to check the area. He pulled in behind the vehicle but did not activate his emergency lights. [T.T. 9]. The defendant was in the driver's seat of the vehicle and the engine and lights were off. Falconio called in his location and exited his vehicle to speak with the defendant.

Officer Falconio approached the defendant's driver side door and knocked on the window. When the defendant immediately attempted to open the driver door the officer pushed the door closed and requested that he open the window so they could speak because backup had not arrived on scene. The defendant stated that he couldn't open the window because he did not have the car keys. Officer Falconio could see the keys on the rear passenger floor area. Within a minute backup arrived on scene and the defendant was still unable to open the window. [T.T. 20]. Officer Falconio then opened the door to speak with the defendant. He immediately noticed a strong odor of alcoholic beverage on his breath, that his eyes were bloodshot and glassy, and his speech was slurred. Based on those observations, he asked the defendant to exit his vehicle to perform field sobriety tests. Initially the defendant would not comply with the request and kept asking the officer what the probable cause was for the vehicle stop. After explaining that this was not a motor vehicle stop and that he was simply checking to see why a vehicle is

[18] T.T. refers to the Trial Transcript dated August 25, 2016, followed by the page number(s).

behind closed businesses at three in the morning, the defendant did exit his vehicle exhibiting poor balance. He exhibited 6 of 6 possible clues on the HGN test. The defendant continued to argue with the officer about probable cause and informing him that the area was private property. Despite that, Officer Falconio attempted to instruct the defendant on how to perform the walk and turn test. After four attempts to instruct him without interruption the defendant was unable to maintain his balance. The officer then placed him into custody for suspicion of Driving Under the Influence [T.T. 8-11]. Officer Falconio opined that, based on his observations, the defendant was under the influence of alcohol to a degree that he was incapable of safely operating a motor vehicle. The defendant was then transported for chemical testing.

The standard of review in determining whether the trial court erred in denying a suppression motion is whether the record supports the factual findings and whether the legal conclusions drawn from these facts are correct. *Commonwealth v. Stevenson*, 894 A.2d 759, 769 (Pa. Super. 2006).

Defendant argues that this Court erred in denying his suppression motion, and that Officer Falconi's actions were not supported by probable cause or reasonable suspicion. This court disagreed. The Fourth Amendment to the United States Constitution protects the people from unreasonable searches and seizures. *Com. v. Chase*, 960 A.2d 80, 89 (Pa. 2008) citing *In the Interest of D.M.*, 781 A.2d 1161, 1163 (Pa. 2001). In the context of automobiles, vehicle stops constitute seizures under the Fourth Amendment. *Id.* citing *Whren v. United States*, 517

U.S. 806, 809-10 (1996). In determining if a seizure is constitutional, the key question is the reasonableness of the seizure. *Id*. citing *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 450 (1990). Although a warrantless seizure is presumptively unreasonable under the Fourth Amendment, there are a few well-established and well-delineated exceptions. *Horton v. California*, 496 U.S. 128, 133 n.4 (1990). One such exception permits the police to briefly detain individuals for an investigation and to maintain the status quo. *Id*. citing *Terry v. Ohio*, 392 U.S. 1 (1968).

> The Supreme Court of Pennsylvania has defined three types of police citizen interaction: a mere encounter, an investigative detention, and a custodial detention. *Commonwealth v.*[ ]*Boswell*, 554 Pa. 275, 721 A.2d 336, 340 (19981. A mere encounter between police and a citizen "need not be supported by any level of suspicion, and carr[ies] no official compulsion on the part of the citizen to stop or to respond." *Commonwealth v. Riley*, 715 A.2d 1131, 1134 (Pa.Super.1998). An investigatory stop, which subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute an arrest, requires a reasonable suspicion that criminal activity is afoot. *See Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). A custodial search is an arrest and must be supported by probable cause. Id.

Commonwealth v. Kendall, 976 A.2d 506 (Pa.Super. 2009)

The courts have acknowledged that not every instance when an officer pulls near a stopped vehicle and activates his overhead lights rises to the level of an investigatory stop. *Commonwealth v. Johnson*, 844 A.2d 556 (Pa.Super.) 2004. In this case, Officer Falconi did not effectuate a traffic stop, nor did he activate his emergency lights when he pulled behind the defendant's vehicle. Falconi approached the area to insure that the occupant(s) were not attempting to burglarize the businesses or engage in drug activity. [T.T. 9-10]. He did not activate his emergency lights and merely approached to look into the situation. After knocking on the window to speak with the defendant, the defendant attempted to open his door. He asked the defendant to remain in is vehicle until backup arrived one minute later. When the driver door was opened the officer immediately suspected that he was under the influence of alcohol. At that point the focus of the encounter turned to a DUI investigation. The defendant testified that he is the owner of Showcase Pizza and that he informed Falconi of that fact during their interaction. But Officer Falconi was clear and credible when he testified that at the time that the defendant told him he was the owner of one of the businesses his focus was on investigation of a possible DUI.

After considering all of the circumstances this court determined that Officer Falcioni's approach was a mere encounter. Requesting that the defendant remain in his vehicle for officer safety until backup arrived one minute later was not unreasonable under these specific circumstances. This was a dark area behind building housing closed businesses. Once

backup arrived and Falconi observed the signs of impairment he conducted a DUI investigation.

FOR ALL OF THE ABOVE REASONS, the denial of the Motion to Suppress was proper and should be affirmed.

BY THE COURT:

Kelly Bigley, J.

APPENDIX D

(Constitutional Provision)

United States Constitution
Amendment IV-Search and Seizure; Warrants

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

PROOF OF SERVICE

I hereby certify that I am this day serving three (3) copies of the within Petition For Writ Of Certiorari To The Supreme Court of Pennsylvania in the manner indicated below which service satisfies the requirements of Supreme Court of United States Rule 29:

Service by First Class Mail addressed as follows:

Robert E. Mielnicki, Esquire
428 Forbes Avenue, Suite 400
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Dated: June 20, 2019

_____

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