ADVANCE SHEET HEADNOTE
June 26, 2023

2023 CO 43

No. 23SA69, *People v. White*—Search and Seizure—Investigatory Stops—Scope and Character of the Intrusion Related to the Investigative Purpose—Consent to Provide a Blood Sample.

In this interlocutory appeal brought by the People, the supreme court reverses the district court's suppression order. Under the circumstances present, the officers did not exceed the scope and character of the investigatory stop so as to transform it into an arrest. And because the officers did not unreasonably detain the defendant, his consent to provide a blood sample was not rendered invalid. Accordingly, the matter is remanded to the district court for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2023 CO 43

Supreme Court Case No. 23SA69
Interlocutory Appeal from the District Court
Boulder County District Court Case No. 22CR684
Honorable Patrick D. Butler, Judge

Plaintiff-Appellant:

The People of the State of Colorado,

v.

Defendant-Appellee:

Eli Allan White.

Order Reversed
en banc
June 26, 2023

Attorneys for Plaintiff-Appellant:
Michael T. Dougherty, District Attorney, Twentieth Judicial District
Adam Kendall, Chief Trial Deputy District Attorney
Ryan P. Day, Senior Deputy District Attorney
Boulder, Colorado

Attorneys for Defendant-Appellee:
The Noble Law Firm, LLC
Antony Noble
Lakewood, Colorado

Mark T. Langston, P.C.
Mark Langston
Boulder, Colorado

JUSTICE SAMOUR delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT**, **JUSTICE MÁRQUEZ**, **JUSTICE GABRIEL**, and **JUSTICE HART** joined.
JUSTICE HOOD concurred in the judgment.
JUSTICE BERKENKOTTER did not participate.

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 Thomas Mitchell was driving when a flat tire forced him to stop in the right-hand lane of traffic. While standing behind his car and removing items from his trunk, another driver, Eli Allan White, struck him, pinning him between the two cars and severing his legs. A blood sample consensually provided by White at the scene of the crash later revealed the presence of tetrahydrocannabinol ("THC"), the main psychoactive ingredient in marijuana, in an amount seven times that which, under Colorado law, gives rise to a permissible inference that a person was driving under the influence ("DUI") of one or more drugs. The People thereafter charged White with vehicular assault—DUI, a class 4 felony, and careless driving resulting in bodily injury, a class 1 misdemeanor traffic offense.

¶2 In a pretrial motion, White sought to suppress the results of the blood test, arguing, as relevant here, that by the time the officers requested a blood sample from him, his investigatory stop had turned into an arrest that was unsupported by probable cause. Following an evidentiary hearing, the district court granted the motion. It ruled that when the officers collected the blood sample from White, they lacked any indicia of drug intoxication and had already determined that they had no more questions for him and that the cause of the collision was his distraction from the road as he attempted to adjust the car's climate control features. Therefore, determined the district court, the officers' continued

detention of White for the purpose of obtaining his consent to provide a blood sample ran afoul of the Fourth Amendment. And because the court believed that White's consent was not sufficiently attenuated from what it viewed as his illegal arrest, it found that his consent was invalid. The People then brought this interlocutory appeal.

¶3 We now reverse the suppression order. We conclude that the complex investigation into this serious collision was fluid and remained in progress when the officers asked White if he would consent to providing a blood sample. We acknowledge that White was detained for an extended period (seventy-five to ninety minutes) before the officers collected the blood sample. But the officers asked White if he would consent to a blood draw much earlier than that—about thirty minutes into their investigation. Further, there were substantial delays caused by White's requests to consult with his mother about the possibility of providing a blood sample. The officers accommodated White's requests and allowed him to speak with his mother by phone and, once she arrived on the scene, in person.

¶4 Under the circumstances present, we hold that the officers did not exceed the scope and character of the investigatory stop so as to transform it into an arrest. And because the officers did not unreasonably detain White, his consent to

provide a blood sample was not rendered invalid. Accordingly, the district court erred in suppressing the results of the blood test.

I. Facts and Procedural History

¶5 As White was traveling forty to forty-five miles per hour in his father's Tesla on South Broadway Avenue in Boulder, Colorado, he struck Mitchell, who had exited his car and was standing directly behind it in the right-hand lane of traffic. Mitchell was getting ready to change a flat tire on his car and was looking through the trunk when the Tesla hit him from behind and pinned him between the two cars. Both of Mitchell's legs were subsequently amputated around the knees. Mitchell also suffered a broken arm and fractured ribs.

¶6 The stretch of South Broadway Avenue where the collision occurred is straight and flat. Further, the weather at the time was clear and sunny. Although it had snowed recently, the roads in the area had pretty much dried out. And nothing obstructed White from seeing Mitchell and his vehicle before the crash.

¶7 Officer Clemen was the first officer on the scene.[1] He contacted White, who was in his mid-twenties, in the driver's seat of the Tesla. White was crying as he told the officer that he was headed home when the accident happened. According

[1] For reasons that are irrelevant to this case, Officer Clemen is no longer a police officer. However, because he was a police officer at the time of the accident, and to avoid confusion, we refer to him as "Officer Clemen" throughout this opinion.

to White, he was not familiar with his father's Tesla and was looking down at the large touchscreen in the center console as he attempted to adjust the temperature. White said that when he looked back up, he was already about one to two car lengths behind Mitchell's vehicle and couldn't stop. He added that he thought Mitchell had been "to the side of the vehicle" and that it wasn't until after the collision that he realized that Mitchell was actually between the two cars.

¶8 Officer Clemen noticed that White had "very red" eyes and "very small" pupils. But Officer Clemen, who was relatively inexperienced in law enforcement, assumed that White's eyes were red because he was crying and that White's pupils were small because he might be "going into shock." The officer did not consider whether White's red eyes and constricted pupils might also be consistent with drug intoxication.

¶9 Because Officer Clemen was concerned for White's safety, he asked him if he would exit the Tesla and sit about ten to fifteen feet behind it. After exiting the Tesla and sitting down a short distance behind it, White asked if he could call his mother, and Officer Clemen allowed him to do so. Officer Clemen then also requested a victim advocate for White, and a victim advocate responded to the scene and met with White at some point.

¶10 When Officers Richard Smith and Alex Kicera arrived, they took control of the scene and began performing an accident reconstruction. Officer Clemen

remained with White, who was still upset as he continued to stare at the scene of the accident. In an effort to get White to calm down, Officer Clemen invited him to sit by a tree that was fifty to one hundred feet away from the crash. White seemed to like the suggestion and changed locations accordingly. Throughout his interactions with White, Officer Clemen used a conversational tone and exhibited a friendly and accommodating demeanor.

¶11 As White was sitting by the tree, Officer Clemen asked him some standard questions. Although these questions are part of a form, Officer Clemen didn't have a copy of the form, so he recited them from memory. One of those "checkbox" questions was whether White was under the influence of drugs or alcohol. White denied consuming alcohol but acknowledged taking a non-impairing prescription medication for depression and anxiety. He denied using any other drugs.

¶12 When Officer Clemen had finished asking White the standard questions, White called his mother, who was in Longmont. She informed him that she was headed to the accident scene to join him. Before she arrived, however, one of White's neighbors stopped by and joined him under the tree. Officer Clemen allowed the two to visit and speak freely with one another in relative privacy. Meanwhile, the investigation continued, which required that the southbound lanes of South Broadway Avenue, a major Boulder thoroughfare, remain closed.

¶13 As he headed back to the area of the crash to speak with Officers Smith and Kicera, Officer Clemen asked White to sit tight. Officer Clemen shared with Officers Smith and Kicera what White had told him. He then advised Officers Smith and Kicera that he had not observed any indicia of alcohol or drugs. Officers Clemen and Smith theorized that White's distraction from the road as he fiddled with the touchscreen had caused the accident. In light of White's apparent carelessness, Officer Smith indicated that there would be charges, though their filing might take thirty days. At that point, Officer Clemen asked whether there were any additional questions for White. Officer Smith responded that Officer Clemen should inquire about White's sleep schedule and whether White was willing to consent to a blood draw.

¶14 When Officer Clemen returned to White's location under the tree, the victim advocate who had responded at Officer Clemen's request asked if White could leave. Because Officer Clemen wanted to ask White the two additional questions suggested by Officer Smith, he told the victim advocate that White could not leave yet. Officer Clemen then met with White again. In response to Officer Clemen's first question, White said that his sleep schedule the previous night had been normal. At that point, Officer Clemen asked White if he was willing to voluntarily provide a blood sample. Officer Clemen explained that the reason for the request was not to find any incriminating evidence, but rather to corroborate White's

statement that he wasn't under the influence of alcohol or drugs. Officer Clemen genuinely believed that White had told him the truth about not having consumed any alcohol or drugs that day. This conversation between Officer Clemen and White occurred approximately thirty minutes into the investigation.

¶15 Notably, when he inquired about a blood draw, Officer Clemen advised White that there would be no consequences for saying no. White initially responded that he'd be willing to do anything to assist the investigation, but he quickly added that he needed to talk to his mother first. Officer Clemen told White that calling his mother was not a problem; the officer reiterated that the blood draw was completely voluntary. At that point, Officer Clemen told White that the officers had no other questions for him and that he should go ahead and call his mother to discuss the possibility of consenting to a blood draw. The officer then stepped away to give White some privacy. Officer Clemen nevertheless continued to keep an eye on White from about fifteen feet away. He did so both because this was his assigned task in the investigation and because he remained concerned that White could go into shock.

¶16 After consulting with his mother, White consented to a blood draw. At that point, Officer Clemen walked back to the accident scene and shared with Officer Smith that White had consented to a blood draw. This conversation appears to have occurred approximately forty-five minutes into the investigation. But the

blood draw didn't occur immediately because, at White's request, the officers waited until his mother arrived on the scene so he could consult with her further.

¶17 White's mother arrived on the scene shortly thereafter and spoke with White. Following that conversation, she indicated that she had several questions for Officer Clemen about the blood draw. In response to those questions, Officer Clemen advised her that (1) the blood draw was entirely voluntary, (2) there would be no consequences if White refused to consent, and (3) in the event White declined to consent, the officers would consider seeking a search warrant authorizing a blood draw. White's mother then shared with Officer Clemen that her son used marijuana to help with his anxiety, and she was worried that his past use of marijuana might show up in a drug analysis of his blood. Officer Clemen replied that it was his understanding that, although marijuana would be detected in White's blood, it would "show up differently than if it [were] actively in his system." After that explanation, the officer left White and his mother alone so they could continue discussing whether he wished to consent to a blood draw.

¶18 While Officer Clemen was talking to Officer Smith about White's possible consent to provide a blood sample, White and his mother walked from the tree to the crash scene and informed them that he had chosen to consent to a blood draw. White then walked to an ambulance and reviewed and signed the consent form to voluntarily provide a blood sample. His blood was drawn by a paramedic almost

thirty minutes after his mother arrived on the scene and approximately seventy-five to ninety minutes into the investigation.

¶19 Subsequent testing of White's blood revealed large quantities of active THC—approximately seven times the level at which Colorado law gives rise to a permissible inference that a driver was under the influence of drugs. *See* § 42-4-1301(6)(a)(IV), C.R.S. (2022). Accordingly, in addition to charging White with careless driving resulting in bodily injury, the People charged him with vehicular assault—DUI.

¶20 White filed a motion to suppress the results of the blood test. He conceded that the officers had a reasonable and articulable suspicion to conduct an investigatory stop, but he argued, as pertinent here, that before the officers collected a blood sample from him, his investigatory stop had turned into an arrest that was unsupported by probable cause. More specifically, White contended that the officers had improperly continued to detain him after (1) concluding they had no indicia of intoxication, (2) deciding they had no more questions for him, (3) completing their investigation, and (4) determining that his distraction from the road was the cause of the accident. According to White, the officers had impermissibly exceeded the scope and character of the investigatory stop by continuing to detain him solely to obtain his consent to participate in a blood draw. The People filed a response opposing White's motion.

¶21 Following an evidentiary hearing during which Officer Clemen testified, the district court took the matter under advisement. Shortly thereafter, it issued a thorough written ruling granting White's motion to suppress. The court set forth its rationale as follows:

> [A]fter asking a question about Defendant's sleep [schedule] . . . , law enforcement determined they had no more questions for Defendant regarding Defendant's contribution to the accident. [Officer] Clemen testified that . . . the determination was made that the cause of the collision was Defendant's distraction from the road as he attempted to adjust the car's climate control features. . . .
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> [A]t the time law enforcement determined they had no more questions for Defendant, continued detention of him would become unreasonable absent reasonable suspicion for continued detention. As evidenced by [Officer] Clemen's testimony that he possessed no indicia of intoxication, law enforcement did not have reasonable suspicion that Defendant was under the influence, yet he was detained for the sole purpose of collecting a sample of his blood. . . .
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> Law enforcement thereby put Defendant in a situation where Defendant was detained so law enforcement could attempt to gain his consent for a blood draw when they lacked reasonable suspicion that his blood would reveal evidence of intoxication. Therefore, Defendant's consent to have his blood drawn was a direct result of the exploitation of his illegal detention.

¶22 The People then brought this interlocutory appeal pursuant to section 16-12-102(2), C.R.S. (2022), and C.A.R. 4.1(a).

¶23 Before taking off on our analytical journey, we must cross two items off our departure checklist. First, we must determine the basis of our jurisdiction over this appeal. Second, we must identify the standard guiding our review.

II. Jurisdiction

¶24 Under section 16-12-102(2), the People may bring an interlocutory appeal "from a ruling of the trial court" granting a pretrial motion "to suppress evidence" if they certify "that the appeal is not taken for the purposes of delay and the evidence is a substantial part of the proof of the charge pending against the defendant." Similarly, C.A.R. 4.1(a) allows the People to file an interlocutory appeal from a district court's order "granting a defendant's pretrial motion . . . to suppress evidence," so long as they certify "that the appeal is not taken for purposes of delay and that the evidence is a substantial part of the proof of the charge pending against the defendant." C.A.R. 4.1(a). It is undisputed here that the People have made the required certification and that we have jurisdiction over this appeal under section 16-12-102(2) and C.A.R. 4.1(a).

III. Standard of Review

¶25 "The proper scope of an investigatory stop is a mixed question of fact and law." *People v. Pacheco*, 182 P.3d 1180, 1183 (Colo. 2008). When reviewing a suppression order, we defer to the trial court's factual findings if they are supported by competent evidence in the record. *People v. Chavez-Barragan*, 2016 CO 66, ¶ 18, 379 P.3d 330, 335. But we review the legal effect of those factual findings de novo. *Id.*

IV. Analysis

¶26 We begin by reviewing familiar search and seizure jurisprudence, focusing on investigatory stops. We then apply that authority in addressing the merits of the People's interlocutory appeal.

A. Search and Seizure: Legal Principles Governing Investigatory Stops

¶27 The Fourth Amendment to the United States Constitution requires that all searches and seizures be reasonable.[2] *Kentucky v. King*, 563 U.S. 452, 459 (2011). A warrantless search is presumed to be unreasonable and thus in violation of the Fourth Amendment. *People v. Smith*, 2022 CO 38, ¶ 27, 511 P.3d 647, 653.

¶28 In assessing whether the police violated a defendant's Fourth Amendment rights, it is helpful to frame the discussion by considering that there are three general types of police contacts: consensual encounters; intermediate forms of intrusion, such as investigatory stops or limited searches; and arrests or full-scale searches. *People v. Archuleta*, 980 P.2d 509, 512 (Colo. 1999).

¶29 Consensual encounters occur when a police officer approaches a person to ask questions or request identification. *Id.* For an encounter to be truly consensual,

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[2] Our state constitution also prohibits unreasonable searches and seizures. Colo. Const. art. II, § 7. Because White doesn't argue, and the district court didn't rule, that our state constitution provides more expansive protection than the federal constitution, we cabin our analysis to the Fourth Amendment.

the person contacted must reasonably feel free "to disregard the police and go about his business." *California v. Hodari D.*, 499 U.S. 621, 628 (1991). Consensual encounters do not trigger Fourth Amendment scrutiny. *Florida v. Bostick*, 501 U.S. 429, 434 (1991).

¶30 At the other end of the spectrum are arrests and full-scale searches. *Archuleta*, 980 P.2d at 512. These types of contacts are subject to the Fourth Amendment's reasonableness requirement. *Id.* Therefore, to be constitutionally sound, an arrest or a search must be based on a warrant supported by probable cause or an established exception to the warrant requirement. *Id.*

¶31 In this case, we deal with neither extreme. Instead, we concern ourselves with police contacts that fall somewhere in the middle of the gamut: "intermediate forms of police response" that may be properly used under narrowly confined circumstances. *People v. Tate*, 657 P.2d 955, 958 (Colo. 1983).

¶32 It is now axiomatic that "a limited seizure of a person, designated an investigatory stop, is permitted by the Fourth Amendment upon reasonable articulable suspicion, not rising to the level of probable cause, that the person is committing, has committed, or is about to commit a crime." *People v. Ball*, 2017 CO 108, ¶ 9, 407 P.3d 580, 583. The police may employ investigatory stops without contravening the Fourth Amendment as long as three conditions are satisfied:

> (1) there is a specific and articulable basis in fact for suspecting that criminal activity has taken place, is in progress, or is about to occur

> (that is, "reasonable suspicion"); (2) the purpose of the intrusion is reasonable; and (3) the scope and character of the intrusion are reasonably related to its purpose.

Archuleta, 980 P.2d at 512. As its moniker suggests, an "investigatory stop" of a person "can be justified only for the purpose of confirming or dispelling" an officer's reasonable and articulable suspicion that the person has committed, is committing, or is about to commit a crime, "and may be no more intrusive than required to diligently do so." *Ball*, ¶ 9, 407 P.3d at 583; *see also People v. Garcia*, 11 P.3d 449, 454 (Colo. 2000) ("The salient question is whether the officers had an objectively reasonable basis for the stop 'and whether the scope and duration of the detention is reasonable.'" (quoting *People v. Ramos*, 13 P.3d 295, 299 (Colo. 2000))).

¶33 We concentrate on the third condition—the scope and character of the intrusion must have been reasonably related to the investigative purpose of the stop—because it's the only one implicated in this interlocutory appeal. In evaluating this condition, we must be mindful that "common sense and ordinary human experience must govern over rigid criteria." *Ball*, ¶ 9, 407 P.3d at 584 (quoting *United States v. Sharpe*, 470 U.S. 675, 685 (1985)).

¶34 Our court has set out four non-exclusive factors that are helpful in analyzing the third condition: (1) the length of the detention; (2) the extent of and reasons for any movement of the suspect from one location to another; (3) the diligence

exercised by the officers in pursuing the investigative purpose that justified the detention; and (4) the availability of less intrusive means of answering the questions raised by the officers' reasonable and articulable suspicion. *See id.* As these factors reflect, the scope and character of an investigatory stop are governed by "objective criteria and not merely the subjective intent or focus of the officer executing the stop." *Id.* at ¶ 10, 407 P.3d at 584.

B. Application

¶35 As mentioned, the first two conditions necessary for an investigatory stop are not before us. The district court found, and the People agree, that both were met here. We turn, then, to the scope and character of the investigatory stop. Before applying the four factors listed above, we pause to address the order under challenge because it reflects the district court's misapprehension of the investigatory detention of White.

¶36 The district court held that the officers exceeded the scope and character of the investigatory stop after asking about White's sleep schedule because they continued to detain him for purposes of obtaining a blood sample, even though they had (1) concluded there were no indicia of intoxication, (2) decided they had no more questions for him, (3) completed their investigation, and (4) determined that his distraction from the road was the cause of the accident. According to the district court, following the question about sleep schedule, the officers needed

additional reasonable and articulable suspicion—namely, some indicia of intoxication—to continue to detain White while attempting to obtain a blood sample from him. In our view, however, the record doesn't support the factual findings underlying the district court's ruling. And we do not defer to factual findings that are unsupported by the record. *See People v. Platt*, 81 P.3d 1060, 1065 (Colo. 2004) (noting that "we set aside findings of fact that are clearly erroneous or unsupported by the record").

¶37 First, the record shows that approximately thirty minutes into their investigation, the officers decided that they had two final questions for White. They wanted to know about his sleep schedule and whether he was willing to provide a blood sample. Officer Clemen made these inquiries of White contemporaneously. Thus, the record doesn't support the district court's finding that the officers had already decided they had no more questions for White when they sought to obtain a blood sample from him. Asking White about his willingness to provide a blood sample was the last question Officer Clemen had planned to ask him.

¶38 Second, inasmuch as the district court found (correctly) that the question about sleep schedule did not impermissibly extend the duration of the encounter, we can perceive no reason why the contemporaneous question about a blood sample did. Both questions were related to the cause of the collision, White's role

in the collision, and the crime or crimes he may have committed. One question sought information related to the possibility that White may have been falling asleep at the wheel, while the other sought information related to the possibility that White may have been driving impaired. Unlike the district court, we see no basis for treating these two questions differently in analyzing the scope and character of the investigatory stop.

¶39 Third, the district court was mistaken in believing that, by the time Officer Clemen asked for a blood sample, the investigation had been completed and the officers had determined that the cause of the collision was White's distraction from the road while he adjusted the temperature in the Tesla. To be sure, Officer Clemen didn't think there were any indicia of intoxication, and he and Officer Smith posited that White's distraction from the road while adjusting the Tesla's climate controls had caused the accident. We stress, however, that the scope and character of an investigatory stop are governed by "objective criteria and not merely the subjective intent or focus of the officer executing the stop."[3] *Ball*, ¶ 10,

[3] The People imply that White's red eyes and constricted pupils were indicia of drug intoxication that Officer Clemen simply failed to pick up on. Be that as it may, there is nothing in the record that allows us to draw such an inference. Nobody testified at the hearing that red eyes and constricted pupils constitute indicia of drug intoxication.

407 P.3d at 584. Besides, this was a fluid and complex investigation of a serious collision, and the officers never ruled out drug intoxication as a possible cause. Indeed, the fact that they requested a blood sample from White evinces that they were understandably concerned about intoxication as a possible cause of the collision.

¶40 Finally, the district court was also wrong in determining that the officers needed additional reasonable and articulable suspicion—i.e., indicia that White was intoxicated—to request a blood sample. White had driven his father's car head-on into the back of Mitchell's stalled car in the right-hand lane of traffic. In the process, he had pinned Mitchell between the two cars. Considering the clear and sunny weather, the flat and straight surface, the generally dry road conditions, and the lack of any obstruction, simple carelessness was certainly a possible cause of the collision. But so was drug intoxication. And so was a combination of the two. To rule out drug intoxication, the officers needed to test a sample of White's blood. Under an objective assessment of the circumstances, even without any indicia that White appeared intoxicated, the officers would have been derelict if they had failed to seek a blood sample from him.

¶41 The district court seemed to regard White's detention as consisting of two investigations: an initial investigation related to the accident, which it viewed as permissible, and a second investigation into White's possible intoxication, which

it viewed as impermissible. We, however, believe that the more accurate characterization of the record is that this was a single investigation that encompassed evolving theories related to the cause of the collision, White's role in the collision, and the crime or crimes White may have committed.

¶42 For multiple reasons, the officers understandably focused on White's distraction from the road at the beginning of their investigation: White said that he was unfamiliar with his father's Tesla and that he was looking down at the touchscreen right before the collision; Officer Clemen didn't think there were any indicia of intoxication; and Officer Clemen thought White was telling the truth when he denied consuming any illegal drugs. However, when Officer Smith later sought to rule out both the possibility that White had been asleep at the wheel and the possibility that White had been driving impaired, he directed Officer Clemen to inquire about White's sleep schedule and White's willingness to provide a blood sample. Rather than the beginning of an unrelated investigation, Officer Clemen's question about a blood sample was part of the one and only investigation into the cause of the collision, White's role in the collision, and the crime or crimes he may have committed.

¶43 Having corrected the district court's misperception of the investigatory detention of White, we now apply the four non-exhaustive factors referenced earlier. We take each in turn.

¶44 *First, the length of the detention.* The detention of White was lengthy; it lasted approximately seventy-five to ninety-minutes. But there were substantial delays caused by White's requests to consult with his mother about the officers' inquiry regarding a blood sample. Given White's young age and emotional state, the officers went above and beyond to accommodate him. While White didn't *complete the blood draw* until seventy-five to ninety minutes into the investigation, the officers *asked him for a blood sample* about thirty minutes into the investigation. In our view, the duration of this stop was reasonable given the complexity of the investigation, the catastrophic injuries to Mitchell, and the accommodations the officers made for White as he decided whether to provide a blood sample. "The length of a valid investigatory stop is properly measured," in part, by "the time required for the officers to diligently complete the investigation given the complexity of the situation." *Garcia*, 11 P.3d at 455. Hence, although White's detention lasted seventy-five to ninety minutes, we conclude that this circumstance did not exceed the scope and character of the investigatory stop so as to transform it into an arrest.

¶45 *Second, any movement of White from one location to another.* Officer Clemen asked White to move twice. The first time, Officer Clemen asked White to exit the Tesla and move to an area that was about ten to fifteen feet behind it. But the officer did so for White's safety. The second time, Officer Clemen suggested to

White that he might want to sit by a tree that was fifty to a hundred feet away from the crash. The officer did so, though, to help White calm down because White was very upset as he stared at the scene of the collision. These movements stand in stark contrast to the types of movements that have been deemed impermissible in other cases. For example, in *People v. Rodriguez*, 945 P.2d 1351, 1363 (Colo. 1997), our court held that forcing the defendant to move from the point of contact to the police station ten miles away was unreasonable under the circumstances.

¶46 Moreover, White remained in public view for the entirety of the investigation. "Keeping a person publicly visible during an investigation allows other persons to observe whether police conduct is coercive." *Garcia*, 11 P.3d at 455. And there was never any show of force by the officers as they interacted with White. *Id.* Quite the opposite, they were friendly and accommodating in their dealings with White.

¶47 Because each of White's movements involved a short distance in the general vicinity of the crash and was prompted by concerns about his safety or well-being, and because he was in public view during the entirety of the force-free investigation, we conclude that the officers acted reasonably in interacting with him. It follows that the officers' movement of White did not exceed the scope and character of the investigatory stop so as to transform it into an arrest.

¶48 *Third, the officers' diligence in pursuing their investigation.* There is no basis in the record to conclude that the officers were less than diligent in pursuing the investigative purpose that justified White's stop. Rather, the record shows that the officers conducted their investigation expeditiously.

¶49 When the officers arrived on the scene, they quickly realized that the Tesla had hit Mitchell's stalled car from behind and that Mitchell had suffered catastrophic injuries. But they didn't know why the Tesla had hit Mitchell's car, what role White had played in the collision, or whether White had committed any crimes. These were the questions the officers set out to investigate during White's detention. As part of that investigation, Officer Clemen interviewed White. Meanwhile, Officers Smith and Kicera conducted an accident reconstruction. As the investigation unfolded, Officer Smith instructed Officer Clemen to ask White about his sleep schedule and whether he was willing to provide a blood sample.

¶50 It is not surprising that Officer Smith wasn't willing to take White at his word when he denied illegal drug use. Officer Smith was interested in obtaining a blood sample from White to independently rule out intoxication as a possible cause of the crash. The officers then diligently went about obtaining a blood sample from White, though they accommodated his request to speak to his mother on separate occasions.

¶51 Again, we recognize that there were significant delays caused by White's requests to discuss with his mother whether he should agree to participate in a blood draw. But those delays do not negate the officers' diligence in pursuing their investigation. Accordingly, we conclude that the officers diligently pursued the investigation and did not exceed the scope and character of the stop so as to transform it into an arrest. *Cf. id.* (noting that the officers "proceeded with the investigation promptly, sought Garcia's consent to search his residence quickly upon interviewing the two women who emerged from the residence, and soon completed the search upon receiving Garcia's consent to search").

¶52 *Fourth, the availability of less intrusive means.* The district court did not identify, and White does not advance, any alternative methods of resolving the questions raised by the officers' reasonable and articulable suspicion. And we have unearthed none.

¶53 "Our precedent does not require the police to choose the least intrusive means of detention." *Id.* Instead, the question is whether the police acted unreasonably in a given case. *Id.* The officers here had a few options available. For example, they could have placed White in the back of a patrol car pending the investigation. They also could have prevented White from talking to anyone while the investigation was ongoing. Instead, they chose the least restrictive option available. They allowed White to remain outside a patrol car, to have contact with

a neighbor, to receive support from a victim advocate, and to speak with his mother (both on the phone and in person). We therefore conclude that the officers' detention of White was not unreasonably intrusive and did not exceed the scope and character of the investigatory stop so as to transform it into an arrest.

¶54 In sum, under the circumstances present, and using common sense and ordinary human experience, we hold that the officers acted reasonably and did not exceed the scope and character of the investigatory stop so as to transform it into an arrest. Correspondingly, we hold that White's consent to provide a blood sample was not rendered invalid by the investigatory stop.[4] Because the district court suppressed the results of the test conducted on White's blood sample, it erred.

V. Conclusion

¶55 For the foregoing reasons, we reverse the district court's suppression order. We remand for further proceedings consistent with this opinion.

JUSTICE HOOD concurred in the judgment.

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[4] Given today's disposition, we do not address the People's alternative argument that, even if the investigatory stop had turned into an arrest, the officers had probable cause to believe that White had committed the crime of careless driving resulting in injury.

JUSTICE HOOD concurring in the judgment.

¶56 I agree with the majority's judgment reversing the district court's suppression order. Maj. op. ¶ 55. However, I believe the majority unnecessarily wades into an intensely fact-driven, and thus more questionable, analysis of the scope and character of an investigatory stop, *see id.* at ¶¶ 44–53, when the seizure at issue here was clearly supported by probable cause for careless driving resulting in bodily injury, *see* § 42-4-1402(2)(b), C.R.S. (2022). Because there is a more direct path to the same result, I respectfully concur in the judgment only.

¶57 As the majority correctly outlines, there are three types of police contact: (1) consensual encounters, (2) intermediate forms of intrusion (including investigatory stops), and (3) arrests or full-scale searches, Maj. op. ¶ 28 (citing *People v. Archuleta*, 980 P.2d 509, 512 (Colo. 1999)), the latter two of which implicate the Fourth Amendment, *People v. Fields*, 2018 CO 2, ¶ 12, 411 P.3d 661, 665. Investigatory stops require only a showing of reasonable articulable suspicion. *People v. Ball*, 2017 CO 108, ¶ 9, 407 P.3d 580, 583. On the other hand, arrests require a showing of probable cause, *Fields*, ¶ 12, 411 P.3d at 665, which exists when "the objective facts and circumstances available to a reasonably cautious officer at the time of arrest justify the belief that (1) an offense has been or is being committed (2) by the person arrested," *People v. Castaneda*, 249 P.3d 1119, 1122 (Colo. 2011) (quoting *People v. Robinson*, 226 P.3d 1145, 1149 (Colo. App. 2009)).

¶58 The majority decides this case as an investigatory stop. Maj. op. ¶ 54. While the Supreme Court has resisted imposing "rigid time limitation[s]" on investigatory stops, *United States v. Sharpe*, 470 U.S. 675, 685 (1985), our jurisprudence suggests that the length of the detention here—at least seventy-five minutes—is longer than a typical investigatory stop. *Compare People v. Garcia*, 11 P.3d 449, 455 (Colo. 2000) (fifteen-minute detention didn't exceed the legitimate scope of an investigatory stop), *with People v. Rodriguez*, 945 P.2d 1351, 1362 (Colo. 1997) (ninety-minute detention exceeded the scope of a stop), *and People v. Hazelhurst*, 662 P.2d 1081, 1086 (Colo. 1983) (twenty- to thirty-minute detention exceeded the scope of a stop); *see also United States v. Place*, 462 U.S. 696, 709–710 (1983) ("[A]lthough we decline to adopt any outside time limitation for a permissible *Terry* stop, we have never approved a seizure of the person for the prolonged 90-minute period involved here and cannot do so on the facts presented by this case."). In rare cases, we have concluded an extended detention remained a legitimate investigatory stop, *see, e.g.*, *People v. Davis*, 2019 CO 84, ¶¶ 35–36, 449 P.3d 732, 741–42, but it's unnecessary to make such a determination here.

¶59 Instead, we have long held that "if probable cause for an arrest has been acquired, the detention no longer need be justified as an investigatory stop but is rather justified as an arrest." *Fields*, ¶ 12, 411 P.3d at 665 (citing *Sibron v. New York*, 392 U.S. 40, 67 (1968); *People v. Casias*, 563 P.2d 926, 935 (Colo. 1977)). That is, once

probable cause arises, "[a suspect's] continued detention is no longer attributable to an investigatory stop at all." *Ball*, ¶ 11, 407 P.3d at 584. Probable cause instead allows a suspect's detention to be justified as a lawful arrest, without requiring consideration of the scope of an investigatory stop or whether reasonable articulable suspicion existed. *See id.*

¶60 While the district attorney ultimately charged White with vehicular assault, probable cause for the lesser offense of careless driving resulting in bodily injury justified White's immediate arrest. Section 42-4-1402(1) defines careless driving as: "A person who drives a motor vehicle . . . in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances . . . ." If careless driving is "the proximate cause of bodily injury to another, such person commits a class 1 misdemeanor traffic offense." § 42-4-1402(2)(b).

¶61 White admitted that he was careless. He told Officer Clemen that he was focusing on the Tesla's touchscreen console, rather than the road, when the accident occurred. Maj. op. ¶ 7. This statement, coupled with other undisputed facts regarding driving conditions, would have justified a reasonably cautious officer's belief that White had committed the offense of careless driving resulting in bodily injury under section 42-4-1402(2)(b) by driving without due regard for the traffic and other attendant circumstances. Furthermore, there is substantial

evidence that White's careless driving caused an accident that resulted in serious bodily injury to the alleged victim. Therefore, White's seizure was supported by probable cause, which renders superfluous any evaluation of the scope of an investigatory stop.[1] *See Fields*, ¶ 12, 411 P.3d at 665.

[1] White asserts that "[b]ecause the issue of probable cause was not decided by the trial court, it is therefore not before this court in this interlocutory appeal." However, unlike the cases White cites to support his position, the record here is complete and undisputed as to the dispositive facts necessary for a probable cause determination. And, as we've previously held, "[w]hen . . . the controlling facts are undisputed, the legal effect of those facts constitutes a question of law." *People v. D.F.*, 933 P.2d 9, 15 (Colo. 1997) (quoting *Lakeview Assocs., Ltd. v. Maes*, 907 P.2d 580, 583–84 (Colo. 1995)); *see also People v. Johnson*, 865 P.2d 836, 840 (Colo. 1994). Thus, because the trial court's record is both undisputed and complete enough for us to engage in meaningful appellate review, it is well within our power to decide whether probable cause existed here.