

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
ANDY JOSEPH OXENRIDER	:	
	:	
Appellant	:	No. 293 MDA 2023

Appeal from the Judgment of Sentence Entered July 20, 2022  
In the Court of Common Pleas of Lebanon County  
Criminal Division at No(s): CP-38-CR-0001601-2021

BEFORE: BENDER, P.J.E., BOWES, J., and SULLIVAN, J.

MEMORANDUM BY SULLIVAN, J.:

**FILED: JANUARY 18, 2024**

Andy Joseph Oxenrider (“Oxenrider”) appeals from the judgment of sentence following his convictions of theft by unlawful taking, driving while operating privilege is suspended or revoked, operation of vehicle without official certification of inspection, and emission inspection.<sup>1</sup> We affirm in part and reverse in part.

The evidence at trial was as follows. Daniel Yeagley (“Yeagley”) testified that Oxenrider was his nephew’s friend. Yeagley testified that in December 2021, he saw Oxenrider driving, in the area of Yeagley’s home, a distinctive camouflage-colored Ford F-150 truck (“the truck”) that belonged to Steven Donmoyer (“Donmoyer”). Oxenrider “stopped in” a couple of times and told Yeagley he had used the truck to go rock climbing. Yeagley called Donmoyer

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<sup>1</sup> **See** 18 Pa.C.S.A. § 3921(a), 75 Pa.C.S.A. §§ 1543(b)(1)(iii), 4703(a), 4702(f).

and reported that Oxenrider was driving the truck. Donmoyer did not initially believe Yeagley. **See** N.T, 6/24/22, at 5-8, 10-11, 14-16, 18-19.

Donmoyer testified that he kept the truck, which he used for farming, on his brother's property in Lebanon County, which he visited approximately once per week. **See id.** at 14-16, 32. Because the truck's key is broken, it can be started by pushing and holding down the ignition button. **See id.** at 17-18. The truck did not have current, valid emission or inspection stickers. **See id.** at 27, 32. Donmoyer testified that on December 11, 2021, he went to his brother's property in part because Yeagley had told him that a couple of days earlier that he saw Oxenrider driving the truck near Yeagley's home. **See id.** at 19. Donmoyer discovered his truck was missing. Donmoyer testified he had not given anyone permission to enter his brother's property or use his truck. He and Oxenrider had previously argued about the ownership of a travel-trailer on the property that did not belong to Donmoyer. **See id.** at 19-20, 27-28, 30, 49.

Donmoyer called state troopers to report the truck stolen, and learned the troopers were changing shifts and he would have to wait for assistance. **See id.** at 20, 30-33. Donmoyer waited on the property for one or one-and-one-half hours. At that point, Oxenrider drove the truck onto the property. **See id.** at 21, 28-30. Oxenrider told Donmoyer he was using the truck to "clean[] up" scrap metal from the property and take it to a salvage yard in Schuylkill County. Donmoyer had not authorized him to do so. **See id.** at 21-22, 24, 26-27, 30.

Pennsylvania State Trooper Dayton Dell ("Trooper Dell") testified he received a report of a stolen truck and a second report that the truck was now on the owner's property and responded to the scene. **See id.** at 35-37. Oxenrider said that he had driven Donmoyer's truck from a truck stop and that it had a flat tire he was trying to fix. **See id.** at 37-38, 53, 56. Oxenrider was unable to produce a valid driver's license. He had two prior violations of 75 Pa.C.S.A. § 1543, and his license had been suspended for eighteen months on June 28, 2020 for a violation of 75 Pa.C.S.A. § 1547(b)(ii), for refusing chemical testing. **See id.** at 39-45.<sup>2</sup> Trooper Dell testified Oxenrider said he had been in possession of the truck for more than twenty-four hours. **See id.** at 46-47.

At the close of testimony, counsel presented closing arguments and the trial court instructed the jury.<sup>3</sup> The jury convicted Oxenrider of the above-listed offenses. In July 2022, the trial court imposed a one-to-seven-year term of imprisonment for theft by unlawful taking, a concurrent term of six months to one year of imprisonment for driving while operating privileges are

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<sup>2</sup> Oxenrider surrendered his physical license to the Pennsylvania Department of Transportation ("PennDOT") on October 17, 2021. **See** N.T., 6/24/22, at 44.

<sup>3</sup> After closing arguments, jury instructions, and some period of deliberation, the jury asked for a re-definition of the intent to deprive. The trial court recited the four elements of the charged theft offense and added that "the word deprived does not have any time limit on it. Doesn't say permanently." **See id.** at 62, 66-67. After the jury had withdrawn, Oxenrider's counsel asserted that Black's Law Dictionary "says it's to deprive permanently." The trial court stated the statute "does not say permanently[,] it says deprive." **See id.** at 67.

suspended or revoked, and costs of prosecution fines of \$25 each and \$20 assessments each for operation of vehicle without official certification of inspection, and emission inspection. Oxenrider appealed<sup>4</sup> and he and the trial court complied with Pa.R.A.P. 1925.

Oxenrider raises the following issues on appeal:

- A. Did the trial court err in denying [Oxenrider's] motion for judgment of acquittal/motion for new trial on . . . theft by unlawful taking?
- B. Did the trial court err in denying [Oxenrider's] motion for judgment of acquittal/motion for new trial on . . . driving while operating privilege is suspended or revoked?
- C. Did the trial court err in denying [Oxenrider's] motion for judgment of acquittal/motion for a new trial on the summary offense of permitting violation of title and emission inspection?

Oxenrider's Brief at 5 (unnecessary capitalization removed).

Oxenrider's three issues address the trial court's denial of his motion for a judgment of acquittal or a new trial on the charges against him. "A motion

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<sup>4</sup> Oxenrider filed timely post-sentence motions which should have been denied by operation of law on the 120<sup>th</sup> day, November 21, 2022. **See** Pa.R.Crim.P. 720(B)(3)(a). However, the clerk of courts failed to enter an order deeming the motion denied and did not do so until February 3, 2023. Oxenrider appealed within thirty days of that date. Although Oxenrider's appeal would normally be untimely, we have held that a breakdown in court operations occurs when the trial court clerk fails to enter an order deeming post-sentence motions denied by operation of law pursuant to Pa.R.Crim.P. 720(B)(3)(c). **See Commonwealth v. Marmillion**, --- A.3d ---, ---, 2023 PA. Super. 267 (Pa. Super., filed December 13, 2022, at \*11-12); **Commonwealth v. Patterson**, 940 A.2d 493, 498-99 (Pa. Super. 2007). Finding that a breakdown in court operations occurred, we will entertain the merits of the instant appeal.

for judgment of acquittal challenges the sufficiency of the evidence to sustain a conviction on a particular charge, and is granted only in cases in which the Commonwealth has failed to carry its burden regarding that charge.”

***Commonwealth v. Stahl***, 175 A.3d 301, 303 (Pa. Super. 2017) (citation omitted). Accordingly, this Court applies the following standard of review to sufficiency claims arising in the context of a motion for judgment of acquittal:

A claim challenging the sufficiency of the evidence is a question of law. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. . . . When reviewing a sufficiency claim[,], the court is required to view the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence.

***Id.*** at 303-04, quoting ***Commonwealth v. Widmer***, 175 A.3d 301, 303-04 (Pa. 2000) (emphasis omitted). If the evidence viewed in the light most favorable to the Commonwealth and all reasonable inferences therefrom “is only, at most, equally consistent with a defendant’s innocence as it is with his guilt, the Commonwealth has not sustained its burden of proving the defendant’s guilt beyond a reasonable doubt.” ***In Interest of J.B.***, 189 A.3d 390, 415 (Pa. 2018).<sup>5</sup>

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<sup>5</sup> Oxenrider abandons his alternate claim that the trial court erred by failing to grant a new trial because he fails to provide any citation of authorities or discussion to support that claim. **See** Pa.R.A.P. 2119(a) (providing that an appellant’s argument shall be followed by the discussion and citation of pertinent authorities); **see also** ***Commonwealth v. Fletcher***, 986 A.2d 759, (Footnote Continued Next Page)

“A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof.”

18 Pa.C.S.A. § 3921(a). “As stated in the definition section governing theft offense, “deprive” means:

(1) To withhold property of another **permanently** or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or

(2) to dispose of the property so as to make it unlikely that the owner will recover it.

18 Pa.C.S.A. § 3901 (emphasis added).

Oxenrider claims the evidence failed to show he acted with the intent to permanently deprive Donmoyer of the truck.

The trial court confesses error in its opinion, stating that it should have granted judgment of acquittal because the evidence was insufficient to prove Oxenrider’s intent to permanently deprive Donmoyer of the truck despite Oxenrider’s multiple uses of the truck in December 2021. **See** Trial Court Opinion, 4/24/23, at 9.

After careful review of the evidence and the law, we concur with the trial court’s self-proclaimed assertion of error. The evidence clearly shows that Oxenrider drove Donmoyer’s truck on multiple occasions without permission.

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785 (Pa. 2009) (indicating that a claim is waived where an appellant fails to discuss or cite pertinent authority or relevant detail in his brief).

**See**, N.T., 6/24/22, at 19, 21, 28-30. However, those occasions occurred during a short span and, further, Oxenrider was driving the truck back onto Donmoyer's brother's property where Donmoyer kept it when Donmoyer reported the theft. **See** 18 Pa.C.S.A. § 3901(1)-(2). The evidence was insufficient as a matter of law to show Oxenrider's intent to deprive Donmoyer of his property for any extended period of time, and the conviction for theft by unlawful taking must be reversed. **See J.B.**, 189 A.3d at 415.<sup>6</sup>

Oxenrider's next issue asserts the trial court erred in denying his motion for judgment of acquittal on the charge of driving while operating privilege is suspended or revoked.

The statute defining driving while operating privilege is suspended or revoked provides:

A person who drives a motor vehicle on a highway or trafficway of this Commonwealth at a time when the person's operating privilege is suspended or revoked for a violation of [75 Pa.C.S.A.] section 3802 (relating to driving under the influence of alcohol or controlled substance [or] . . . because of a violation of section 1547(b) (relating to suspension for refusal . . . [is guilty of an offense] and . . . . [a] third or subsequent violation of this paragraph shall constitute a misdemeanor of the third degree and, upon conviction of this paragraph, a person shall be sentenced to . . . undergo imprisonment for not less than six months.

18 Pa.C.S.A. § 1543(b)(1)(i), (iii).

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<sup>6</sup> Although it is not necessary to our conclusion and Oxenrider failed to preserve a challenge to the trial court's instruction, we note that the trial court misstated the law when it told the jury that permanent deprivation was not an element of theft by unlawful taking. **See** N.T., 6/24/22, at 67; 18 Pa.C.S.A. § 3901(1).

Oxenrider claims he did not have actual knowledge of the suspension of his driving privilege, and there was no evidence he operated a motor vehicle on a trafficway or highway within the Commonwealth.

The trial court found sufficient evidence that Oxenrider knew of the suspension of his driving privilege, based on PennDOT's mailing of notice to him, his inability to provide a driver's license to Trooper Dell, and his surrender of his physical driver's license to PennDOT less than two months before his arrest. **See** N.T., 6/24/22, at 42. The trial court also found that Yeagley's testimony that Oxenrider had driven on a public road and Oxenrider's admissions to having driven the truck on public roads was sufficient proof of his violation of the statute. **See id.** at 5-11, 37-38.

We perceive no error in the trial court's findings. The evidence, including Yeagley's testimony and Oxenrider's own admissions, showed that Oxenrider drove a motor vehicle on a highway or trafficway of the Commonwealth when his operating privilege was suspended. The totality of the circumstances, including the mailing of notice of his license suspension, and his physical surrender of his license in October 2021, showed that Oxenrider knew his license was suspended. **See** 75 Pa.C.S.A. § 1543(b)(1)(i). Thus, his sufficiency claim has no merit.

Oxenrider's final issue addresses the denial of a judgment of acquittal on his operation of vehicle without official certification of inspection, and emissions inspection convictions.



The statute governing operation of a vehicle without official certification or inspection provides that “no motor vehicle required to bear current registration plates issued by this Commonwealth . . . shall be driven . . . on a highway . . . unless the vehicle displays a currently valid certificate of inspection . . .” 75 Pa.C.S.A. § 4703 (a). The portion of the periodic inspection statute addressing emissions stickers provides that “[s]ubject vehicles operated in this Commonwealth must be emission inspected as provided in section 4706 (relating to prohibition on expenditures for emission inspection program).” 75 Pa.C.S.A. § 4702(f).

Oxenrider’s sole challenge to these convictions is his assertion that there was no evidence he operated a vehicle on a trafficway or highway in the Commonwealth. The trial court found Oxenrider admitted he drove Donmoyer’s truck on public roads and Trooper Dell confirmed the inspection and emissions stickers on the truck were expired, and the evidence was therefore sufficient. **See** Trial Court Opinion, 4/24/23, at 12.

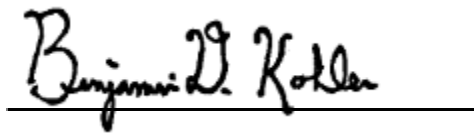
The trial court did not err. Oxenrider’s challenge to these convictions is defeated by Yeagley’s testimony that he saw Oxenrider driving on a public trafficway and Oxenrider’s own admission to doing so. **See** N.T., 6/24/22, at 5-11, 37-38. Thus, no relief is due.

We accordingly vacate Oxenrider’s conviction and sentence for theft by unlawful taking and affirm his other convictions and sentences. Because Oxenrider received the statutory maximum sentence for driving while his

license was suspended or revoked<sup>7</sup> and fines for his summary offenses, we have not disturbed the trial court's overall sentencing scheme, so there is no need for a remand for resentencing. ***See Commonwealth v. Thur***, 906 A.2d 552, 569 (Pa. Super. 2006).

Judgment of sentence affirmed in part and reversed in part; theft conviction vacated.

Judgment Entered.

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

Benjamin D. Kohler, Esq.  
Prothonotary

Date: 1/18/2024

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<sup>7</sup> We note that although subsections 75 Pa.C.S.A. § 1543(b)(1.1)(i) has been declared unconstitutional because it specified an unconstitutionally vague flat sentence, ***see Commonwealth v. Eid***, 249 A.3d 1030, 1044 (Pa. 2021), the Pennsylvania Supreme Court has held that 75 Pa.C.S.A. § 1543(b)(1)(iii), the subsection of the statute of which Oxenrider was convicted, is constitutional because a one-year maximum sentence is inferred for the statutory minimum sentence of not less than six months. ***See Commonwealth v. Rollins***, 292 A.3d 873, 880 (Pa. 2023).

