

surveillance camera, mounted above Kerr's garage, did not show whether Appellant knocked on the door or otherwise attempted to enter Kerr's home. **Id.** at 39. In any event, Appellant caused no damage to Kerr's property. **Id.** Kerr watched as Appellant eventually left his property and made it back to his ATV. **Id.** at 37.

Trooper Knight responded to the Kerr's home and found Kerr standing at the end of his driveway. According to Trooper Knight, Kerr said, "The guy's up there. He's on his four-wheeler and extremely intoxicated." **Id.** at 43. Trooper Knight found Appellant on the far side of a 90 degree bend in the road a short distance from Kerr's property. **Id.** at 43. Appellant was seated on an ATV which was parked between the edge of the narrow rural road and a hayfield. **Id.** at 46-47. The tall grass on the side of the ATV opposite the road was several feet tall; it did not appear disturbed and there was no evidence that the ATV arrived at its location from the field rather than from the road. **Id.** at 47; Commonwealth's Exhibit 1.¹ The driver of a black pickup truck, which was stopped in the traffic lane on the opposite of the road from the ATV, told Trooper Knight that he provided Appellant with gas for his ATV, indicating that Appellant may have run out of gas at that location. **Id.** at 43-44.

¹ The encounter between Trooper Knight and Appellant is depicted on the dashcam footage from Trooper Knight's police cruiser. A DVD of the dashcam footage was admitted into evidence at trial as Commonwealth's Exhibit 1.

Appellant appeared to turn the ignition key, remove it from the ATV, and put it in his pocket as Trooper Knight approached. ***Id.*** at 45, 70; Commonwealth Exhibit 1. Appellant was not cooperative when Trooper Knight began asking questions; he declined Trooper Knight's request to provide identification. ***Id.*** at 48. Trooper Knight also asked Appellant whether he was under the influence of anything and whether he had driven the ATV on the road. ***Id.*** at 69. Appellant's slurred speech, bloodshot eyes, difficulty walking, and the strong odor of alcohol coming from his breath led Trooper Knight to conclude that Appellant was intoxicated. ***Id.*** at 45. Rather than answer Trooper Knight's questions, Appellant attempted to walk away. ***Id.*** at 48. Trooper Knight told Appellant he was not free to leave and tried to prevent Appellant from walking away by grabbing Appellant's backpack. ***Id.*** at 49, 74. A scuffle ensued as Appellant tried to get away and Trooper Knight tried to restrain him. ***Id.*** at 49; Commonwealth's Exhibit 1. The scuffle took place partly on the road and partly in the tall grass alongside the road. ***Id.*** at Commonwealth's Exhibit 1. Trooper Knight eventually wrestled Appellant to the ground and handcuffed him, emerging from the encounter with a cut on his wrist. ***Id.*** at 49-50, 78; Commonwealth's Exhibit 1. No punches were thrown by either party. ***Id.*** at 74, 78. Appellant defecated during the scuffle. ***Id.*** at 55.

During the scuffle, a small medical marijuana container fell from Appellant's person. ***Id.*** at 50. A search of Appellant's person revealed a grass

marijuana smoking pipe. ***Id.*** Investigation revealed that the ATV was registered to Appellant's father and that the smoking pipe, according to Trooper Knights' observations, had burnt marijuana residue in it. ***Id.*** at 59, 61, 66. The medical marijuana container was in the name of Appellant's mother. ***Id.*** at 62-63. Trooper Knight's observations and photographic evidence depicted marijuana inside the container. ***Id.*** at 63, 65; Commonwealth's Exhibit 4. The substance in the container and the substance on the smoking pipe were not lab tested to confirm that they were marijuana or marijuana residue. ***Id.*** at 64, 66. Appellant was transported to a local hospital but refused a blood draw. ***Id.*** at 60-61.

Based on these facts, a jury found Appellant guilty of DUI, resisting arrest, possession of a small amount of marijuana (35 P.S. § 780-113(a)(31)), possession of drug paraphernalia (35 P.S. § 780-113(a)(32)), and related offenses at the conclusion of a trial held on July 22, 2025. On September 24, 2025, the trial court imposed sentence as set forth above.² This timely appeal followed.

Appellant presents four questions:

1. Whether the trial court erred by denying [Appellant's] request for a continuance of his jury trial when he was arrested and committed to the Clarion County jail, the evening before his trial?

² The trial court imposed six months of probation for DUI, a concurrent 12 months of probation for resisting arrest, and no further penalty on the remaining offenses.

2. Whether insufficient evidence was presented at trial from which the jury would have been able to convict [Appellant] of possession of a small amount of marijuana or possession of drug paraphernalia?
3. Whether insufficient evidence was presented at trial from which the jury would have been able to convict [Appellant] of resisting arrest?
4. Whether insufficient evidence was presented at trial from which the jury would have been able to convict [Appellant] of driving under the influence?

Appellant's Brief at 6.

We address these issues in turn. With his first argument, Appellant claims the trial court erred in failing to grant a requested continuance where Appellant was jailed for an unrelated offense the night before trial. Appellant claims the trial court erred in denying the continuance "without any probing into how his recent arrest impacted his presentation and mental state on the eve of trial." Appellant's Brief at 10.

"The court or issuing authority may, in the interests of justice, grant a continuance, on its own motion, or on the motion of either party." Pa.R.Crim.P. 106(a). The decision rests within the discretion of the trial court. ***Commonwealth v. Sandusky***, 77 A.3d 663, 671 (Pa. Super. 2013). Appellant relies on the potential constitutional ramifications of denying a requested continuance, as described in ***Sandusky***. There, this Court explained that a "myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality." ***Id.*** (quoting ***Ungar v. Sarafite***, 376 U.S. 575, 589 (1964)).

On the other hand, “[t]rial judges necessarily require a great deal of latitude in scheduling trials. Not the least of their problems is that of assembling the witnesses, lawyers, and jurors at the same place at the same time, and this burden counsels against continuances except for compelling reasons.” **Id.** (quoting **Morris v. Slappy**, 461 U.S. 1, 11 (1983). “Accordingly, a trial court exceeds its constitutional authority only when it exercises its discretion to deny a continuance on the basis of an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay[.]” **Id.** at 671-72.

The trial court addressed this issue as follows:

The morning of trial and before trial commenced, it was brought to the court’s attention by the district attorney and defense counsel that [Appellant] was incarcerated the night before due to an alleged altercation with his parents. Defense counsel represented to the court that he spoke to [Appellant] the morning of trial and based on that conversation, made an oral motion for a continuance of the proceedings. According to defense counsel, [Appellant’s] mental health and mental state were a concern. Specifically, [Appellant] had changed his mind from not wanting to testify to wanting to testify during trial. Defense counsel said that he feared that [Appellant’s] change of mind would be detrimental to [Appellant] and the outcome of this case. The district attorney objected to the continuance and reasoned that [Appellant] would appear in front of the jury in plain clothes instead of the orange uniform with shackles and that both parties were prepared for trial given that it was the morning of trial. This court agreed with the Commonwealth and denied the motion as [Appellant] was able to maintain his composure during jury selection, which was held the previous day. The trial proceeded as scheduled, and [Appellant] maintained his composure throughout the proceedings[.]

Trial Court Opinion, 12/22/25, at 3-4 (record citations omitted).

The trial court's rationale does not evidence unreasoning and arbitrary insistence upon expeditiousness, and the reason for the requested continuance was Appellant's incarceration after a fight with his parents on the eve of trial. Appellant does not argue that defense counsel was deprived of adequate time to prepare for trial, nor does he dispute the trial court's finding that Appellant's demeanor appeared normal during trial. We discern no abuse of discretion in the trial court's denial of the requested continuance.

Turning now to Appellant's second, third, and fourth arguments, each of which challenges the sufficiency of evidence in support of his convictions, we begin with a review Appellant's Pa.R.A.P. 1925(b) statement. Appellant's 1925(b) statement baldly asserted his sufficiency of the evidence challenges without specifying the element or elements of each conviction that he was challenging:

4. That insufficient evidence was presented at trial that would have allowed the jury to convict [Appellant] of the offenses of driving under the influence, possession of a small amount of marijuana, and possession of drug paraphernalia.

Appellant's Pa.R.A.P. 1925(b) Statement, 11/18/25, at ¶ 4.

These boilerplate assertions do not preserve a challenge to the sufficiency of the evidence in support of any of his convictions:

[W]hen challenging the sufficiency of the evidence on appeal, the [a]ppellant's 1925 statement must specify the element or elements upon which the evidence was insufficient in order to preserve the issue for appeal. Such specificity is of particular importance in cases where, as here, the Appellant was convicted of multiple crimes each of which contains numerous

elements that the Commonwealth must prove beyond a reasonable doubt.

Commonwealth v. Gibbs, 981 A.2d 274, 281 (Pa. Super. 2009) (citations and quotation marks omitted), *appeal denied*, 3 A.3d 670 (Pa. 2010). Lack of specificity in the 1925(b) statement results in waiver. ***Id.*** Because of Appellant's lack of specificity in this case, the trial court was unable to anticipate the specifics of any of Appellant's arguments and therefore did not analyze them in its opinion. Each of Appellant's sufficiency of the evidence arguments is waived.

Moreover, each of Appellant's sufficiency of the evidence arguments would fail even if we were to reach the merits. Appellant's second argument addresses the sufficiency of the evidence in support of his convictions for possession of a small amount of marijuana and possession of paraphernalia. Appellant argues that the marijuana possession conviction must fall because the Commonwealth did not produce laboratory results confirming that the substance was marijuana. The paraphernalia conviction falls in turn, Appellant argues, absent any evidence that he was in possession of marijuana.

Appellant's argument lacks legal support. The law does not require laboratory confirmation that Appellant was in possession of marijuana. "It is [] well-established in this Commonwealth that the identity of illegal narcotic substances may be established by circumstantial evidence alone, without any chemical analysis of the seized contraband." ***Commonwealth v. Minnot***, 577 A.2d 928, 932 (Pa. Super. 1990). Instantly, the record reflects Trooper

Knight's observations of the substance in light of his experience, and the fact that the substance was in a medical marijuana container with Appellant's mother's name on it. The record contains sufficient circumstantial evidence that the substance was marijuana. And since, according to Appellant's own argument, his challenge to the paraphernalia conviction is dependent on the success of the challenge to the marijuana conviction, that argument would fail on the merits as well.

With his third argument, Appellant challenges the sufficiency of the evidence in support of his conviction for resisting arrest. Section 5104 provides:

A person commits a misdemeanor of the second degree if, with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

18 Pa.C.S.A. § 5104. Appellant claims there is no evidence that his actions created a substantial risk of bodily injury to Trooper Knight, but his argument does not take full account of the facts or the applicable law. Bodily injury is "impairment of physical condition or substantial pain." 18 Pa.C.S.A. § 2301. Actual injury is not required; the defendant need only expose the officer to the risk of injury. ***Commonwealth v. Moffit***, 305 A.3d 1095, 1102 (Pa. Super. 2023). Leading a police officer on a high speed chase is sufficient to expose an officer to a risk of bodily injury. ***Id.*** at 1103. A struggle between the defendant and a police officer also has been held to be sufficient to create

a risk of bodily injury. **See Commonwealth v. Lyons**, 555 A.2d 920, 925 (Pa. Super. 1989) (holding that a struggle between the fleeing defendant and the pursuing officer in a frigid, rocky creek bed created a substantial risk of bodily injury to the officer).

As explained above, the scuffle between Appellant and Trooper Knight took place partially on a road, within the path of oncoming traffic, and partially in the tall grass next to the road. Here, as in **Lyons**, the location of the scuffle—a road open to passing traffic—supports a conclusion that Trooper Knight was placed at risk of bodily injury. Further, Trooper Knight emerged from the altercation with a cut on his wrist. This evidence, viewed in a light most favorable to the Commonwealth as verdict winner, was sufficient to support Appellant’s conviction under § 5104.

With his fourth and final argument, Appellant challenges the sufficiency of the evidence in support of his conviction for DUI. Appellant argues there is no evidence that he was ever in control of the stationary ATV he was sitting on when Trooper Knight approached him. Section 3802(a)(1) requires that the defendant be in “actual physical control” of a vehicle while he is impaired by alcohol. 75 Pa.C.S.A. § 3802(a)(1). A defendant’s actual physical control of a vehicle can be established through circumstantial evidence. **Commonwealth v. Williams**, 941 A.2d 14, 27 (Pa. Super. 2008). In **Commonwealth v. Trial**, 652 A.2d 338, 340 (Pa. Super 1994), for example, the evidence was sufficient where the defendant’s vehicle, though not running,

was obstructing a roadway, and the key was in the ignition. Likewise, in ***Commonwealth v. Brotherson***, 888 A.2d 901 (Pa. Super. 2005), *appeal denied*, 899 A.2d 1121 (Pa. 2006), this Court concluded the evidence of defendant's control of the vehicle where the vehicle, though not turned on, was parked in a gated children's basketball court. In other words, the suspect location of a parked vehicle is important in establishing a defendant's actual control. ***Id.*** at 905.

Here, as in ***Trial*** and ***Brotherson***, the vehicle was not stopped in a parking lot, but stopped in a location—between a road and a hayfield—evidencing that it had been driven there recently. And Appellant was removing the keys from the ignition as Trooper Knight approached. It is possible to infer from the evidence that Appellant ran his ATV out of gas and was stumbling around the neighborhood looking for help afterward. But this inference would not salvage Appellant's argument, as the evidence of Appellant's serious impairment as he traversed the neighborhood also supports an inference that he drove the ATV on the road and ran it out of gas while he was impaired.

Having concluded that all four of Appellant's arguments are lacking in merit and that three of them were not properly preserved, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

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