

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
JOHN KIRKPATRICK III	:	
	:	
Appellant	:	No. 1926 EDA 2025

Appeal from the Judgment of Sentence Entered February 19, 2025
In the Court of Common Pleas of Montgomery County Criminal Division
at No(s): CP-46-CR-0000355-2024

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

MEMORANDUM BY BECK, J.:

FILED OCTOBER 13, 2026

John Kirkpatrick III (“Kirkpatrick”) appeals from the judgment of sentence entered by the Montgomery County Court of Common Pleas (“trial court”) following his convictions of four counts of driving under the influence (“DUI”) of controlled substances (misdemeanor offenses) and one count of careless driving (a summary offense).¹ On appeal, Kirkpatrick challenges the trial court’s decision to proceed with his bench trial in absentia and its failure to suppress the fruits of the search warrant for his hospital blood draw and medical records that occurred following a motor vehicle accident. Upon review, we affirm.

¹ 75 Pa.C.S. §§ 3802(d)(1)(i)-(iii), (2), 3714(a). The Commonwealth nol prossed a charge of DUI-alcohol and controlled substance, 75 Pa.C.S. § 3802(d)(3).

The trial court set forth the following facts, which were established at the suppression hearing:

On July 9, 2023, Officer Cassandra McCormack of the Lower Merion Police Department was on uniform patrol in the area of City Line Avenue in Lower Merion Township, Montgomery County when a passerby notified her of a motor vehicle accident in the area of City Avenue and Cardinal Avenue, a few blocks from where she was on patrol. [N.T., 11/15/2024, at 4, 6-7.] Officer McCormack responded to the area of the vehicle crash and observed a one vehicle crash, where the vehicle was in the southbound lanes of City Avenue facing northbound. [*Id.* at 9.] The vehicle had crashed into a telephone pole and was partially on the sidewalk in between a sign and a telephone pole. [*Id.*] Officer McCormack was equipped with a body camera, which was activated. [*Id.* at 7.] She identified [Kirkpatrick] as the driver and sole occupant of the vehicle seated in the driver's seat. [*Id.* at 9.]

Officer McCormack had training to identify individuals under the influence of controlled substances and has had interactions with individuals under the influence of controlled substances in her capacity of a police officer. [*Id.* at 5-6.]

When Officer McCormack arrived at the scene of the crash she asked [Kirkpatrick] what happened prior to her arrival. [*Id.* at 10.] The officer observed that [Kirkpatrick] was confused, disoriented and unaware of where he was or that the vehicle he was driving had crashed. [*Id.* at 10, Ex. D-1 (Application for Search Warrant and Authorization and Affidavit of Probable Cause, 7/17/2023).] [Kirkpatrick] was unsure of what happened and stated that he was just reading a book. [*Id.*] [Kirkpatrick] was not aware that he was in a vehicle crash. [*Id.* at 10.] The officer observed that [Kirkpatrick's] mental status and speech was altered. [*Id.* at 10-11.]

Based on her observations of [Kirkpatrick], and her training and experience, Officer McCormack asked [Kirkpatrick] whether he took any substance or drank any alcohol, and whether he had a medical condition. [*Id.* at 10.] [Kirkpatrick] responded he was diabetic. [*Id.* at 10.] The officer was concerned about his well-being and called for an ambulance. [*Id.* at 10.] The officer did not detect any odor of alcohol on [Kirkpatrick's] person and did not observe any drug paraphernalia nearby. [*Id.* at 18.] Officer

McCormack was not sure whether [Kirkpatrick] was under the influence or experiencing a medical emergency or injury. [**Id.** at 10-12, 18-19.]

When the ambulance arrived at the scene of the crash, the officer explained her observations of [Kirkpatrick] to the [emergency response technician ("EMT") personnel] so they could evaluate [Kirkpatrick's] medical status, which in turn would facilitate Officer McCormack's investigation of the vehicle crash. [**Id.** at 11-12.] The EMT personnel tested [Kirkpatrick's] blood sugar and determined he was not having a diabetic emergency. [**Id.** at 12.] At this point, Officer McCormack was still unsure about what was going on with [Kirkpatrick]. [**Id.** at 11-12.] It was determined that [Kirkpatrick] would be transported to Lankenau Hospital by ambulance. [**Id.** at 12.]

Prior to being placed in the ambulance, Officer McCormack conducted a search of [Kirkpatrick's] pockets for officer safety to ensure he did not have any weapons or anything that could injure the ambulance staff. [**Id.** at 13.] [Kirkpatrick] began to walk into the roadway and yell loudly. [**Id.** at 13.] As a result, Officer McCormack handcuffed [Kirkpatrick] for his own safety. [**Id.** at 13.] [Kirkpatrick] was not under arrest for any crime. [**Id.** at 13.] When Officer McCormack completed the weapons search, she removed [Kirkpatrick's] handcuffs, and he was placed in the ambulance for transport to the hospital. [**Id.** at 13.] Medics did not request any services from the police at that time. [**Id.** at 13.]

Shortly after leaving the scene of the vehicle crash, and before arriving at the hospital, police were dispatched that the medics needed police assistance because [Kirkpatrick's] behavior became erratic. [**Id.** at 14-15.] Officer McCormack and other officers from Lower Merion [P]olice [D]epartment responded to where the ambulance was stopped. [**Id.** at 14.] They found [Kirkpatrick] to be agitated and behaving erratically. [**Id.** at 15, Ex. D-1.] [Kirkpatrick] was exiting the ambulance, running into the street and running into traffic. [**Id.** at 15.] Police struggled to control him and ultimately handcuffed him and returned him to the ambulance. [**Id.** at 15.] [Kirkpatrick] was handcuffed to ensure both his own safety and the safety of the ambulance crew for transport to the hospital. [**Id.** at 15.] This time, a police officer accompanied [Kirkpatrick] in the ambulance to ensure [his] and the ambulance crew's safety. [**Id.** at 15.] At this point, [Kirkpatrick] was not under arrest for driving under the influence

or any crime. [***Id.*** at 15, 27.] Officers were unsure what was causing his behavior and whether he was intoxicated and/or having a medical episode. [***Id.*** at 15, 18-22.]

Once [Kirkpatrick] arrived at the hospital, medical staff drew his blood pursuant to hospital protocol to determine what, if anything, was wrong with [him]. [***Id.*** at 16.] The blood draw was not at the request of law enforcement. [***Id.*** at 16, 26.] [Kirkpatrick's] blood was drawn for independent medical diagnosis and treatment. [***Id.*** at 16, 30-31.]

Trial Court Opinion, 9/18/2025, at 1-4.

Eight days after the incident, Officer McCormack and Detective Michael Pleasants, a seventeen-year veteran of the Lower Merion Police Department, requested a search warrant seeking Kirkpatrick's "[f]ull and complete medical records" from his admission on July 9, 2023 through his discharge. N.T., 11/15/2024, at 24-26, 29, Ex. D-1. The search warrant indicated that this included "physical blood samples, all laboratory testing results, staff notes, diagnosis[,], and conclusion statements documented by medical staff." ***Id.***, Ex. D-1. Attached to the warrant was the affidavit of probable cause, signed by both officers, which provided the following:

Initial Investigation

On Sunday, July 9th, 2023, Officer Cassandra McCormack was on patrol in the area of City Avenue and Conshohocken State Road when a passerby advised her of a motor vehicle crash in the area of City Avenue and Cardinal Avenue. Officer McCormack was in full police uniform and operating a marked police vehicle.

Upon arrival to the above location, Officer McCormack observed a black Ford F-150 truck bearing [a] Pennsylvania [r]egistration [] facing north in the right southbound lanes of City Avenue. The location of the motor vehicle crash is within Lower

Merion Township. The vehicle was partially on the sidewalk and had struck a tree just south of Cardinal Avenue, as well as a standalone Saint Joseph's University banner post. Officer McCormack approached the driver side of the vehicle and contacted the operator and sole occupant of the vehicle, identified as [] Kirkpatrick. Officer McCormack asked Kirkpatrick if he was okay, and what had happened prior to police arrival. Kirkpatrick initially stared at officers with a dazed look then stated that nothing had happened and that he was just reading a book. Officer McCormack observed Kirkpatrick's eyes as glassy and blood shot and his movement and speech was lethargic. [Officer McCormack] continued to ask him about the crash and how he got to where he was. Kirkpatrick continued to deny any crash and was wholly confused. It was determined that Kirkpatrick was the owner of the vehicle. As Officer McCormack was speaking to Kirkpatrick, he attempted to put the keys into the ignition. At that time, Officer McCormack asked Kirkpatrick to exit the vehicle, to which he complied.

As he exited the vehicle, Kirkpatrick was very slow with his movements and slightly unsteady on his feet. Kirkpatrick continued to look at Officer McCormack with a confused and disoriented look on his face. Kirkpatrick provided Officer McCormack with his Pennsylvania [d]river's [l]icense and repeated his name and address multiple times. Officer McCormack asked Kirkpatrick if he was under the influence of any alcoholic beverages or controlled substances and he stated that he does not drink and did not ingest anything. Officer McCormack told Kirkpatrick that based on his actions, he appeared to be under the influence of a controlled substance or having a medical episode. Kirkpatrick then informed Officer McCormack that he was a Type 2 [d]iabetic and ha[d] not eaten since 5 a.m. of the morning prior. During Officer McCormack's interaction with Kirkpatrick, he appeared to be disoriented in terms of time and location. Kirkpatrick had short term memory issues, as he had difficulty following conversations or events that occurred prior to and during this investigation. At that time, Officer McCormack requested Narberth Ambulance to respond to the scene. Officer McCormack did not observe any visible injuries to Kirkpatrick.

Narberth Medical personnel arrived and evaluated Kirkpatrick to see if he was suffering from a diabetic emergency. Blood glucose testing did not substantiate a diabetic emergency was occurring. Kirkpatrick was transported to Lankenau Hospital.

Shortly after leaving the scene, Narberth Ambulance requested assistance in the area of City Avenue and Blancoyd Road. Sergeant Eckert^[2] and Officer McCormack arrived and observed both Narberth Paramedics standing outside the ambulance, with Kirkpatrick inside the ambulance removing his IV and gathering his belongings. Both paramedics stated that Kirkpatrick quickly became uncooperative and then threatened them by asking if they wanted to die. Kirkpatrick exited the ambulance and was extremely agitated. Officer McCormack attempted to de-escalate the situation and ask Kirkpatrick what was wrong, but Kirkpatrick ran into the travel lanes of City Avenue. At this time[,] Officer McCormack and Sgt. Eckert took Kirkpatrick into police custody. From all observations it was Officer McCormack's opinion that Kirkpatrick was intoxicated on alcohol and/or controlled substance, to a degree it rendered him incapable of safe motor vehicle operation. Kirkpatrick was transported to Lankenau Hospital for medical treatment due to his condition.

Conclusion

During this investigation Officer McCormack discovered [] Kirkpatrick operating, or in actual physical control, of a motor vehicle while under the influence of alcohol and/or controlled substance. Kirkpatrick crossed multiple opposing lanes of City Avenue traffic, striking multiple objects. During the investigation Kirkpatrick was disoriented, had memory difficulty, mood fluctuations, difficulty walking, and ran into City Avenue. Kirkpatrick was transported to Lankenau [H]ospital for medical treatment due to his intoxicated state and altered mental status. Kirkpatrick was admitted to the hospital for further observation. It is known to these affiants that upon being admitted for observation it is commonplace for the hospital to obtain samples of blood, urine, or other fluids for medical testing. These test results along with doctors' findings, judg[]ments, opinions, etc. regarding the condition of Kirkpatrick will be documented in hospital medical records. Doctors typically render a medical opinion or diagnoses as to the nature for which the patient, in this case Kirkpatrick, is being medical treated for.

² We are unable to discern Sergeant Eckert's first name from the record.

Based on the facts contained in this affidavit it is this affiant's opinion that probable cause exists to approve this search warrant for Lankenau Hospital (Main Line Health) so Kirkpatrick['s] medical records and blood samples can be obtained and tested as part of this investigation. Kirkpatrick['s] medical records potentially contain information of an evidentiary nature regarding this investigation of PAVC 3802(A1): Driving While Under the influence.

Id., Ex. D-1 (Application for Search Warrant and Authorization and Affidavit of Probable Cause, 7/17/2023 at 2-5).

A magisterial district judge granted the search warrant the same day. ***Id.*** at 16, Ex. D-1. After executing the warrant, Detective Pleasants submitted Kirkpatrick's blood for testing. ***Id.*** at 27, 29-30. The test results indicated the presence of chemical compounds of marijuana or tetrahydrocannabinol ("THC"), phencyclidine ("PCP"), and midazolam. ***Id.*** at 17, 27. Based on the foregoing, the Commonwealth charged Kirkpatrick with the aforementioned crimes on July 15, 2024. On November 8, 2024,³ Kirkpatrick filed a motion to suppress evidence of his blood testing results. At the conclusion of a November 15, 2024 suppression hearing, the trial court expressly stated that it found Officer McCormack and Detective Pleasants credible, issued its findings of fact and conclusions of law from the bench, and denied the suppression motion. N.T., 11/15/2024, at 37-41. The trial court

³ When Kirkpatrick failed to appear for his formal arraignment on February 21, 2024, the trial court issued a bench warrant. The trial court revoked the bench warrant on September 12, 2024, the same date Kirkpatrick signed a waiver of appearance at arraignment.

found that “the totality of the circumstances, including the results of the blood test, the vehicle crash, [Kirkpatrick’s] behavior, Officer McCormack’s interactions with [him] and her training and experience,” supported Officer McCormack’s belief that Kirkpatrick could not safely operate his vehicle. Trial Court Opinion, 9/18/2025, at 4.

The trial court scheduled a bench trial for December 16, 2024, which it rescheduled, at Kirkpatrick’s request, to the January call of the trial list. On January 7, 2025, the trial court notified Kirkpatrick that his case was scheduled for a call of the trial list hearing on January 29, 2025. Kirkpatrick and his counsel appeared at the January 29, 2025 hearing, at which the trial court scheduled a bench trial for February 5, 2025.

Kirkpatrick failed to appear for his bench trial. After the trial court engaged in an exchange with defense counsel, the Commonwealth requested to proceed with trial in absentia. Over the objection of Kirkpatrick’s counsel, the trial court proceeded to trial in absentia and found Kirkpatrick guilty as stated above. It issued a bench warrant for Kirkpatrick and deferred sentencing to obtain a presentence investigation report and drug and alcohol evaluation.

Kirkpatrick was taken into custody on February 11, 2025; the trial court revoked his bench warrant and scheduled a sentencing hearing for February 19, 2025. The trial court sentenced him to time served to six months of incarceration.

On February 27, 2025, Kirkpatrick filed a timely post-sentence motion, which was denied on July 9, 2025 by operation of law.⁴ Kirkpatrick filed the instant appeal on July 14, 2025.⁵

Kirkpatrick presents the following two issues for our review:

- I. Did the [trial] court err in permitting [Kirkpatrick] to be tried in absentia in violation of his rights under the Sixth Amendment [to] the United States Constitution and Article I, § 9 of the Pennsylvania Constitution when the

⁴ In its opinion, the trial court indicated that it denied Kirkpatrick's post-sentence motion on June 16, 2025, but we are unable to locate any such order or docket entry in the certified record. **See** Trial Court Opinion, 9/18/2025, at 8. The certified record contains a July 9, 2025 order issued by the clerk of courts, which denied Kirkpatrick's post-sentence motion by operation of law.

⁵ In general, a notice of appeal must be filed within thirty days after the entry of the order being appealed. Pa.R.A.P. 903(a). If a defendant files a timely post-sentence motion, the notice of appeal must be filed within thirty days of the entry of the order deciding the motion. Pa.R.Crim.P. 720(A)(2)(a).

A trial court has 120 days to decide a post-sentence motion and if it fails to decide the motion within that period or grant an extension, the motion is deemed denied by operation of law. Pa.R.Crim.P. 720(B)(3)(a). When the motion is denied by operation of law, the clerk of courts is required to enter an order deeming the motion denied on behalf of the trial court and serve copies on the parties. Pa.R.Crim.P. 720(B)(3)(c). The notice of appeal must be filed within thirty days of the entry of the order denying the motion by operation of law. Pa.R.Crim.P. 720(A)(2)(b).

Here, the 120-day period for decision on Kirkpatrick's post-sentence motion expired on June 27, 2025. A breakdown occurred because the clerk of courts failed to enter an order deeming the motion denied on that date and instead entered it on July 9, 2025, which was outside the 120-day period. **See Commonwealth v. Patterson**, 940 A.2d 493, 499 (Pa. Super. 2007) (this Court has found a court breakdown occurred where the clerk of courts failed to enter an order notifying the appellant that his post-sentence motion was denied by operation of law). Nonetheless, Kirkpatrick appealed within thirty days of both dates. Accordingly, his appeal was unquestionably timely filed. **See** Pa.R.Crim.P. 720(A)(2)(b).

Commonwealth failed to present any evidence to meet its burden of establishing that [Kirkpatrick] was absent without cause and knowingly and intelligently waived his right be present?

- II. Did the [trial] court err in failing to suppress the fruits of the search warrant for [Kirkpatrick's] blood specimen and medical records on the ground that, when the portions of the affidavit of probable cause at odds with the sworn testimony of Officer McCorm[a]ck at the November 15, 2024 suppression hearing that she was not sure [Kirkpatrick] was under the influence are excised from the affidavit, it fails to establish probable cause for the search?

Kirkpatrick's Brief at 3 (reordered for ease of disposition; answers omitted).

We review a trial court's decision to conduct a trial in absentia for an abuse of discretion. ***Commonwealth v. DeCosta***, 197 A.3d 813, 816 (Pa. Super. 2018). A criminal defendant has a constitutional right under both the Federal and Pennsylvania Constitutions to be present at all critical stages of his or her trial, but may waive that right expressly or implicitly by his or her actions in noncapital cases. ***Commonwealth v. Tejada***, 188 A.3d 1288, 1293 (Pa. Super. 2018); ***Commonwealth v. Hill***, 737 A.2d 255, 258 (Pa. Super. 1999). In addition, Rule 602(A) of our Pennsylvania Rules of Criminal Procedure provides:

The defendant shall be present at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule. The defendant's absence without cause at the time scheduled for the start of trial or during trial shall not preclude proceeding with the trial, including the return of the verdict and the imposition of sentence.

Pa.R.Crim.P. 602(A). The Comment accompanying Rule 602 states:

This rule was amended in 2013 to clarify that, upon a finding that the absence was without cause, the trial judge may conduct the trial in the defendant's absence when the defendant fails to appear without cause at the time set for trial or during trial.

* * *

A defendant's presence may be deemed waived by the defendant intentionally failing to appear at any stage of the trial after proper notice. **See Commonwealth v. Wilson**, 712 A.2d 735 (Pa. 1998) (a defendant, who fled courthouse after jury was impaneled and after subsequent plea negotiations failed, was deemed to have knowingly and voluntarily waived the right to be present); **Commonwealth v. Sullens**, 619 A.2d 1349 (Pa. 1992) (when a defendant is absent without cause at the time of his or her trial is scheduled to begin, the defendant may be tried in absentia).

Pa.R.Crim.P. 602, cmt. (internal citations modified).

The decision to conduct a trial in absentia is within the trial court's discretion. **Wilson**, 712 A.2d at 739. Our Supreme Court has stated that in determining whether a defendant is absent without cause, a trial court should consider whether the defendant had notice of the proceeding; whether "he voluntarily, knowingly, and without justification failed to be present"; the "likelihood that the trial could soon take place with the defendant present"; the "difficulty of rescheduling, particularly in multiple-defendant trials"; the "burden on the Commonwealth in having to undertake two trials"; and any other factors "the situation requires." **Id.** (citation omitted). The Commonwealth bears the burden of proving by a preponderance of the evidence that a defendant is absent without cause. **Hill**, 737 A.2d at 259 ("Where the Commonwealth has demonstrated by a preponderance of the

evidence that the defendant is absent 'without cause' and that he knowingly and intelligently waived his right to be present, he may be tried in absentia.") (citations omitted).

Kirkpatrick argues that the Commonwealth did not present any evidence to meet its burden of proving he was absent without cause. Kirkpatrick's Brief at 25. He claims that the trial court abused its discretion in proceeding to trial in absentia, contending it was his first trial listing, there was no evidence he fled the jurisdiction, and he had a valid explanation for his absence that he communicated to his counsel. *Id.* at 25-26 (discussing **DeCosta**, 197 A.3d at 818; **Commonwealth v. Pantano**, 836 A.2d 948 (Pa. Super. 2003)).

In its opinion, the trial court reiterated its decision to proceed to trial in absentia because Kirkpatrick received actual notice of his trial date both in person and by mail, it was the second listing of his trial, and he was voluntarily absent without cause. Trial Court Opinion, 9/18/2025, at 15-17. It further observed that, although defense counsel indicated Kirkpatrick was unlikely to appear for trial because of a conflicting court appearance, Kirkpatrick failed to mention that when he appeared at the call of the list the week before. *Id.* at 17. The trial court stated that it specifically scheduled trial for the afternoon of February 5 because Kirkpatrick said he had a doctor's appointment that morning. *Id.* It also noted that it gave Kirkpatrick sufficient time to appear as it did not begin his proceedings until 1:27 p.m. *Id.*

The record unequivocally shows that Kirkpatrick received actual notice of the date, time, and location of his trial. On November 19, 2024, the trial court issued an order scheduling a half-day bench trial for December 16, 2024, which it sent by first-class mail to Kirkpatrick and electronically to his counsel. Order Scheduling Bench Trial, 11/19/2024. On December 16, 2024, the trial court granted Kirkpatrick's request to be rescheduled for the January call of the list trial, which it sent to his counsel. Call of the Trial List Order, 12/16/2024.

On January 7, 2025, the trial court issued a notice directing Kirkpatrick to appear for a call of the trial list on January 29, 2025 at 9:00 a.m. in Courtroom F. Notice of Call of the Trial List, 1/7/2025. The notice was mailed to both Kirkpatrick and his counsel. ***Id.***

Following a conference at the call of the trial list on January 29, 2025, the trial court issued an order scheduling Kirkpatrick's trial on February 5, 2025 at 1:00 p.m. in Courtroom F. Scheduling Order for Bench Trial, 1/31/2025.⁶ The order further provided that the matter would remain on standby status for trial from February 6 to February 14, 2025, and that the trial court "shall not grant a continuance for the unavailability of counsel, the

⁶ On January 30, 2025, the trial court issued another notice directing Kirkpatrick to appear for a call of the trial list on February 19, 2025 at 10:00 a.m. in Courtroom F, which was again mailed to Kirkpatrick and his counsel. Notice of Call of the Trial List, 1/30/2025. It appears this notice was rendered moot by the parties' appearance at the call of the trial list on January 29, 2025.

defendant or any witnesses.” **Id.** If the trial court was unable to conduct trial during the standby period, it ordered the case to be scheduled at the next call of the trial list on February 19, 2025. **Id.** The order was sent by first-class mail to Kirkpatrick and electronically to his counsel. **Id.**

There is nothing in the record to indicate that Kirkpatrick did not receive these mailed orders and notices. At trial on February 5, 2025, Kirkpatrick’s counsel confirmed that Kirkpatrick had appeared in person at the call of the list on January 29, 2025 and received notice of his trial date. N.T., 2/5/2025, at 3-4.⁷ The following exchange then occurred:

[DEFENSE COUNSEL]: I’ve received one voicemail from Mr. Kirkpatrick this morning. He informed me that he was not likely to make it here today, as he had another court arrangement. I’m not sure where; I assume in Philadelphia for a civil case. I was not made aware of it until he left me a voicemail this morning. I had left him three voicemails. I have not received a return phone[]call.

THE COURT: So, when we scheduled the trial and he was here, he did not say he was not available?

[DEFENSE COUNSEL]: He told me he had a doctor’s appointment in the morning. And I told him that he needed to be here by 1:00 [].

THE COURT: Okay. And that’s why we made it 1 o’clock, because he had that doctor’s appointment?

[DEFENSE COUNSEL]: I think, just based on the Court’s calendar, we settled for 1:00 because the morning was full.

⁷ We observe that the notes of testimony from the trial incorrectly indicate Kirkpatrick was present and that it was his sentencing hearing. **See** N.T., 2/5/2025, at 1, 3.

THE COURT: All right. So he never mentioned to you having any other court appearance?

[DEFENSE COUNSEL]: That's correct.

THE COURT: And he certainly never showed you any documentation that he had to be elsewhere, correct?

[DEFENSE COUNSEL]: That is correct, Judge.

THE COURT: And as we sit here, he has not provided any information that he has to be elsewhere?

[DEFENSE COUNSEL]: That is correct, Judge.

THE COURT: All right. Well, I will issue a bench warrant for his failure to appear. And that will be a judge-only bench warrant. He has certainly -- he certainly was given notice of today. He is aware of today's proceedings. How does the Commonwealth wish to proceed?

[PROSECUTOR]: Your Honor, at this time the Commonwealth would like to continue the trial in absentia, as the defendant had notice of, and this is the second listing of his trial.

Id. at 4-6. Defense counsel objected. The trial court continued:

THE COURT: ... I'm going to proceed in absentia. He was given actual notice of this Court proceeding and knew that he needed to be here from multiple different ways. He is absence [sic] without cause. And I believe it's appropriate for us to proceed with the bench trial.

Id. at 6-7.

In support of his claim that the trial court abused its discretion by proceeding in absentia, Kirkpatrick relies on this Court's decision in ***Pantano***. In that case, we held the trial court abused its discretion when it denied his motion for a continuance and tried him in absentia. ***Pantano***, 836 A.2d at 949. The defendant was scheduled for trial on charges of selling marijuana.

Id. A week before trial, the Commonwealth sought, and the trial court granted, a continuance because its officers were unavailable. **Id.** On the new trial date, the defendant failed to appear and his counsel relayed to the court that he received a phone message stating there was a death in the defendant's family and the defendant would not appear in court. **Id.** The Commonwealth did not object to counsel's request for a continuance based on its own request the week before. **Id.** Nevertheless, the trial court denied the continuance and tried the defendant in absentia. **Id.**

This Court reviewed cases where trials in absentia were upheld based on a defendant's failure to appear for trial without explanation or was absent to avoid the jurisdiction of the court. **Id.** at 950 (collecting cases). Though we acknowledged there "is no question that a trial court has both the authority, as well as the need, to run efficiently," we concluded that the record reflected the defendant's right to be present at his trial outweighed the court's need for efficient administration. **Id.** This Court determined the relevant circumstances included the Commonwealth's agreement to the continuance, the reason for the request (i.e., a message to counsel about a death in the defendant's family), and the lack of prior continuances granted to the defendant. **Id.** at 951. We expressly noted that "other remedies were available to the trial court before resort to the drastic remedy of a trial in absentia[,]" such as a bench warrant. **Id.** at 951 n.1. The **Pantano** Court concluded that the record "lack[ed] a compelling reason to hold the trial in the

[defendant's] absence with due regard to the inherent prejudice arising from trials in absentia." **Id.** at 951.

[The defendant] did not flee the jurisdiction of the trial court. Also, this was [the defendant's] first request for a continuance. Thus, the case is not analogous to ones where trials in absentia were held following numerous continuances to locate the defendants. Finally, [the defendant] did not absent himself without explanation, but rather presented the trial court with his request for a continuance through his counsel. Under the circumstances in this case, trial in absentia was not the appropriate remedy.

Id. As such, we held that the trial court abused its discretion when it refused to grant the continuance. **Id.**

Instantly, the record reflects several factors weighing against holding Kirkpatrick's trial in absentia. First, as in **Pantano**, there is nothing in the record to indicate that Kirkpatrick absconded or fled the jurisdiction. Additionally, Kirkpatrick explained his absence and communicated through counsel that he would not be present because of a conflicting court appearance. Although this was his second continuance, the record does not indicate why Kirkpatrick sought the first continuance and nothing in the record suggests it was a result of Kirkpatrick's absence. Further, the record reflects that this was a short trial: the trial court scheduled one half day, and the notes of testimony show the trial concluded at 2:33 p.m., just over an hour from when the proceedings began (including the pretrial matter of proceeding in his absence). **See** N.T., 2/5/2025, at 1, 60. The record is indeterminate as to how difficult it would have been to reschedule trial, but given the court's

order indicating standby status and the possibility of being placed on the next call of the list, it is likely the trial could have taken place soon after, particularly where the trial court issued a bench warrant to secure Kirkpatrick's appearance and Kirkpatrick was taken into custody less than a week later on February 11, 2025.

The record likewise reflects factors weighing in favor of holding the trial in absentia. First, as discussed above, Kirkpatrick received actual notice of the trial date. In addition, the record shows Kirkpatrick previously failed to appear one other time—at his formal arraignment on February 21, 2024—resulting in the trial court issuing a bench warrant. Further, the call of the list hearing was just one week before trial and therefore, and it is therefore highly likely Kirkpatrick would have known at that time of his conflicting court date and could have alerted his counsel and the trial court. Instead, he waited until the proverbial eleventh hour to inform counsel and notify him that he would not appear at trial and provided no documentation to counsel or the trial court to support his excuse. Additionally, the trial court's order expressly stated it would not grant continuances based on Kirkpatrick's unavailability. And continuing the trial would undoubtedly inconvenience the trial court, the Commonwealth, its four witnesses, and defense counsel.⁸

⁸ Because the record is unclear as to whether the trial court scheduled the trial to start at 1:00 p.m. on February 5, 2025 based on the trial court's calendar or because Kirkpatrick had a doctor's appointment that morning, we do not
(Footnote Continued Next Page)

Under the circumstances of this case, we conclude that the trial court did not abuse its discretion when it proceeded to trial in Kirkpatrick's absence. Unlike ***Pantano***, which involved an unplanned and unexpected death in the defendant's family, the reason for Kirkpatrick's absence would have been known to him in advance and could have (and should have) been brought to the court's attention at the call of the list the week before. Also differentiating this matter from ***Patano*** is that this matter had already been continued at Kirkpatrick's request, the Commonwealth objected to another continuance, and the trial court expressly stated that no further continuances would be granted.

We emphasize our standard of review is for an abuse of discretion, which does not permit this Court to second guess the trial court's decision or to enter the decision we would have if in the shoes of the trial court. Instead, it permits reversal only where the trial court misapplied the law, entered a manifestly unreasonable decision, or acted with bias, ill-will, partiality, or prejudice. ***See Commonwealth v. Harrington***, 262 A.3d 639, 644 (Pa. Super. 2021). Finding none, this Court is compelled to conclude that Kirkpatrick's first issue does not entitle him to relief.

Kirkpatrick further challenges the denial of his suppression motion. "Our standard of review in addressing a challenge to the denial of a suppression

weigh this factor in favor of or against holding the trial in absentia. ***See*** N.T., 2/5/2025, at 4-5.

motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct." **Commonwealth v. Persico**, 343 A.3d 311, 315-16 (Pa. Super. 2025) (citation omitted). "Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole." **Id.** at 316 (citation omitted). "Where the suppression court's factual findings are supported by the record, we are bound by these findings and may reverse only if the court's legal conclusions are erroneous." **Id.** (citation omitted). "The suppression court's legal conclusions are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the conclusions of law of the courts below are subject to our plenary review." **Id.** (citation omitted).

"Moreover, appellate courts are limited to reviewing only the evidence presented at the suppression hearing when examining a ruling on a pretrial motion to suppress." **Id.** (citation omitted). "It is within the suppression court's sole province as factfinder to pass on the credibility of witnesses and the weight to be given their testimony." **Commonwealth v. Gallagher**, 896 A.2d 583, 585 (Pa. Super. 2006) (citation and quotation marks omitted).

The Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution protect individuals from

unreasonable searches and seizures.⁹ “The administration of a blood test, performed by an agent of, or at the direction of the government, constitutes a search under both the United States and Pennsylvania Constitutions.” ***Commonwealth v. Johnson***, 188 A.3d 486, 489 (Pa. Super. 2018) (quotation marks and citation omitted). “[W]here a blood draw is conducted for medical purposes, and the results of the blood test are obtained after proper execution of a search warrant, the results of the blood draw are admissible in the prosecution of a DUI defendant.” ***Commonwealth v. Miller***, 996 A.2d 508, 513 (Pa. Super. 2010). The Commonwealth has no

⁹ The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, paper, 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 particularity describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV. Article I, Section 8 of the Pennsylvania Constitution states:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizure, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

PA. CONST. art. I, § 8.

obligation to prove a blood sample was taken for independent medical purposes where there is no evidence to suggest otherwise. **Id.** at 515.

"[S]earch warrants may only issue upon probable cause and '[t]he issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.'" **Commonwealth v. Leed**, 186 A.3d 405, 413 (Pa. 2018) (quoting Pa.R.Crim.P. 203(B)). "The existence of probable cause is measured by examining the totality of the circumstances." **Commonwealth v. Kimmel**, 331 A.3d 26, 30 (Pa. Super. 2025) (quoting **Commonwealth v. Jacoby**, 170 A.3d 1065, 1081 (Pa. 2017)). "Probable cause exists where the facts and circumstances within the affiant's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a search should be conducted." **Leed**, 186 A.3d at 413 (citation and quotation marks omitted).

A magisterial district judge, when deciding whether to issue a search warrant, must make a practical, common-sense decision whether, given all of the circumstances set forth in the affidavit[,], including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Kimmel, 331 A.3d at 30 (quoting **Jacoby**, 170 A.3d at 1082). A police officer's experience can be a relevant factor in determining probable cause if the officer demonstrates a nexus between his experience and the search. **Commonwealth v. Randolph**, 151 A.3d 170, 183 (Pa. Super. 2016) (citing **Commonwealth v. Thompson**, 985 A.2d 928, 935 (Pa. 2009)).

“Upon the filing of a motion to suppress evidence, the Commonwealth bears both the burden of production and the burden of persuasion that law enforcement did not unlawfully seize the evidence in question.” **Persico**, 343 A.3d at 322 (citing **Commonwealth v. Price**, 284 A.3d 165, 168 (Pa. 2022); Pa.R.Crim.P. 581(H)). At a hearing on a motion to suppress evidence obtained pursuant to a search warrant, “no evidence shall be admissible to establish probable cause other than the affidavits.” Pa.R.Crim.P. 203(D). Still, “a defendant at a suppression hearing has the right to test the veracity of the facts recited in the affidavit in support of probable cause” through cross-examination and “a right to challenge omissions or ambiguities in the affidavit of probable cause.” **Commonwealth v. James**, 69 A.3d 180, 187, 189 (Pa. 2013) (citations omitted). “If a search warrant is based upon an affidavit containing deliberate or knowing misstatements of material fact, the search warrant is invalid, unless probable cause exists notwithstanding any deliberate omissions or misrepresentations of fact.” **Kimmel**, 331 A.3d at 30 (citation and quotation marks omitted).

“[A] court reviewing a search warrant determines only if a substantial basis existed for the [magisterial district judge] to find probable cause.” **Kimmel**, 331 A.3d at 30 (quoting **Jacoby**, 170 A.3d at 1082). “In analyzing whether a warrant was supported by probable cause, judicial review is confined to the four corners of the affidavit.” **Commonwealth v. Coleman**, 830 A.2d 554, 560 (Pa. 2003). A “reviewing court must accord deference to

the issuing authority's probable cause determination, and must view the information offered to establish probable cause in a common-sense, non-technical manner.'" **Randolph**, 151 A.3d at 182 (quoting **Commonwealth v. Torres**, 764 A.2d 532, 538 (Pa. 2001)).

Kirkpatrick argues that statements made by the officers in the affidavit of probable cause were contradicted by Officer McCormack's testimony at the suppression hearing, which the trial court found credible. Kirkpatrick's Brief at 15-19. Specifically, he contends there was a discrepancy between statements in the affidavit that Kirkpatrick appeared to be under the influence of alcohol or a controlled substance,¹⁰ and her testimony that she did not suspect he was under the influence; did not smell alcohol, see any drug paraphernalia, or conduct field sobriety tests; did not place him under arrest; was unsure what caused the accident; and believed he may be having a medical episode. **Id.** As a result, Kirkpatrick contends that the misstatements must be excised from affidavit. **Id.** at 19. According to Kirkpatrick, when

¹⁰ The statements are: (1) "Officer McCormack told Kirkpatrick that based on his actions, he appeared to be under the influence of a controlled substance or having a medical episode"; (2) "Officer McCormack and Sgt. Eckert took Kirkpatrick into custody. From all observations it was Officer McCormack's opinion that Kirkpatrick was intoxicated on alcohol and/or controlled substance, to a degree it rendered him incapable of safe motor vehicle operation"; (3) "During this investigation Officer McCormack discovered [] Kirkpatrick operating, or in actual physical control, of a motor vehicle while under the influence of alcohol and/or controlled substance"; and (4) "Kirkpatrick was transported to Lankenau [H]ospital for medical treatment due to his intoxicated state and altered mental status." **See** Kirkpatrick's Brief at 8, 17-19 (quoting N.T., 11/15/2024, Ex. D-1 (Affidavit, 7/17/2023, at 3-4)).

those statements are removed, no independent basis existed for the probable cause determination and thus, the trial court erred in refusing to suppress the results of his blood testing. **Id.** at 19-22 (discussing **Commonwealth v. Gause**, 164 A.3d 532 (Pa. Super. 2017) (en banc)).

The trial court disagreed that Officer McCormack's testimony at the suppression hearing was "at odds" with the statements in the affidavit of probable cause. Trial Court Opinion, 9/18/2025, at 11-13. It found them consistent because, in both instances, Officer McCormack stated that "she was unsure if [Kirkpatrick] was under the influence and sought the search warrant to forensically analyze his blood sample to determine such." **Id.** at 11.

The record supports the trial court's determination. Kirkpatrick is correct that Officer McCormack explained on cross-examination that she did not conduct any field sobriety testing at the scene because she did not suspect Kirkpatrick to be under the influence, nor did she smell alcohol, find any drug paraphernalia, or place him under arrest at the scene. N.T., 11/15/2024, at 12-13, 15, 18. He acknowledges, however, that Officer McCormack testified that it was clear to her that "something was wrong," which prompted her to question Kirkpatrick as to whether he consumed alcohol, took a controlled substance, or had a medical condition. **See** Kirkpatrick's Brief at 15 (citing N.T., 11/15/2024, at 10). Further, she testified multiple times that she was unsure what was causing Kirkpatrick's behavior. N.T., 11/15/2024, at 11-12, 15, 18, 22. When she saw a crack in the vehicle's windshield, she thought he

may have a head injury, but after she arrived at the hospital with other officers, she was unsure that was the case. ***Id.*** at 19. On redirect examination, she explained the uncertainty:

Based on the totality of the circumstances, based on his mood going up and down, unsure as to what was happening, where we were, the un-cooperation, we had medics respond to see if it was a diabetic emergency in which they squashed that immediately, at that point we were still unsure if there were other medical reasons or if he was intoxicated.

Id. at 22. She testified this was the reason she did not initially charge Kirkpatrick with DUI, and that, as part of her investigation, the only way to know what caused his behavior was to obtain a warrant for his blood and medical records, which would reveal whether he was under the influence or having a medical episode. ***Id.*** at 22.

Our review of Officer McCormack's testimony at the suppression hearing confirms that she testified consistently with the statements in the affidavit of probable cause, i.e., that she suspected he was either under the influence or having a medical episode. Through cross-examination at the suppression hearing, Kirkpatrick exercised his right to test the veracity of the facts set forth in the affidavit and challenge any omissions or ambiguities, but we do not agree that Officer McCormack's uncertainty regarding the cause of Kirkpatrick's behavior amounts to a deliberate or knowing misstatement of material fact in the affidavit. ***See Kimmel***, 331 A.3d at 30; ***James***, 69 A.3d at 187, 189. Because Kirkpatrick has not demonstrated that Officer

McCormack deliberately or knowingly made a material misstatement, her statements do not require excision from the affidavit of probable cause.

Even if we were to remove from the affidavit the statements Kirkpatrick identified, we would nonetheless conclude that an independent basis for probable cause existed within its four corners. The affidavit averred that Officer McCormack responded to a vehicle crash in which the vehicle crossed multiple lanes of traffic, came to a stop facing north in a southbound lane and partially on a sidewalk, and struck a tree and banner post. N.T., 11/15/2024, Ex. D-1. She found Kirkpatrick, the sole occupant and owner of the vehicle, in the driver's seat. ***Id.*** When officers asked him questions, he was confused, stared at them with a dazed look, denied any crash occurred, said he was just reading a book, and attempted to put his keys in the ignition. ***Id.*** Officer McCormack observed his eyes to be glassy and bloodshot. ***Id.*** He had lethargic speech and movement, difficulty walking, was unsteady on his feet, and disoriented as to time and location. ***Id.*** He appeared to experience short term memory loss, had difficulty following conversation, and his mood fluctuated. ***Id.*** When asked for his name and address, he repeated himself multiple times. ***Id.*** He denied being under the influence of alcohol or ingesting a controlled substance, claiming instead that he was diabetic and had not eaten since 5:00 a.m. the day before, but medical personnel ruled out a diabetic emergency. ***Id.*** Shortly after leaving in an ambulance, Kirkpatrick became uncooperative, threatened medical personnel, removed his IV line,

gathered his belongings, exited the ambulance, and ran into oncoming traffic.

Id.

Accordingly, even without any statements referencing Kirkpatrick as being under the influence in the affidavit, we conclude a substantial basis existed within the four corners of the affidavit for the magisterial district judge to find probable cause that Kirkpatrick was driving under the influence of alcohol and/or a controlled substance. ***See Kimmel***, 331 A.3d at 30; ***Coleman***, 830 A2d at 560. Given the totality of these circumstances set forth in the affidavit, which were based on Officer McCormack's firsthand observations, along with her eight-year tenure as a police officer and her training in tactics to identify individuals under the influence of controlled substances, there was a fair probability that testing Kirkpatrick's blood would result in evidence of his being under the influence of alcohol or a controlled substance. ***See Kimmel***, 331 A.3d at 30; ***Randolph***, 151 A.3d at 183. According deference, as we must, to the magisterial district judge's probable cause determination, we discern no error. ***See Randolph***, 151 A.3d at 182.

Finally, we are unpersuaded by Kirkpatrick's argument that this case is analogous to this Court's decision in ***Gause***. In that case, we vacated DUI-controlled substance and DUI-general impairment convictions based on insufficient evidence. ***Gause***, 164 A.3d at 534-42. The police had stopped the defendant for broken taillights. ***Id.*** at 535. The only evidence presented for the DUI-controlled substance charge was an officer's testimony that the

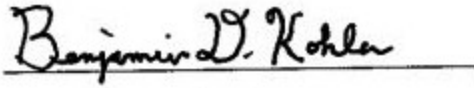
defendant exhibited “eyelid tremors.” **Id.** at 539. Because the officer was not a qualified expert, her testimony attributing such tremors to marijuana use was inadmissible as “lay opinion” and the conviction therefore could not stand. **Id.** As for DUI-general impairment, we concluded the evidence was insufficient to sustain the conviction as the record established that the officer did not detect an odor of alcohol; the defendant admitted to drinking twelve ounces of beer about thirty minutes earlier; he was cooperative, answered questions appropriately, and did not exhibit typical indicators of alcohol impairment; there was no evidence of erratic driving, bloodshot eyes, slurred speech, or difficulty in handing over required documents or standing without support; and his field sobriety tests yielded inconsistent results, the reliability of which could have been affected by the defendant’s leg injury. **Id.** at 535, 538, 541-42.

Although the record in both the instant case and **Gause** did not establish any odor of alcohol or evidence of drug paraphernalia, that is where the factual similarities end. In contrast to **Gause**, and as detailed above, the affidavit of probable cause and testimony at the suppression hearing established that Kirkpatrick crashed his vehicle; had glassy and bloodshot eyes; exhibited confusion, disorientation, slow speech and movement, and mood swings; had trouble walking; had difficulty conversing; denied the crash even happened, claiming he was just reading a book, and repeated himself; tried to restart the vehicle; and exhibited erratic and uncooperative behavior with emergency

medical personnel when he threatened ambulance workers, pulled out his IV, and ran into the road. As **Gause** is factually (and procedurally) inapposite, no relief is due.

Judgment of sentence affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/13/2026