

COMMONWEALTH OF MASSACHUSETTS
THE SUPREME JUDICIAL COURT

BERKSHIRE, SS.

DAR-304__

APPEALS COURT DOCKET No. 2024-P-1467

COMMONWEALTH
APPELLEE

v.

PATRICK VINCENT
DEFENDANT-APPELLANT

ON APPEAL FROM A JUDGMENT OF CONVICTION IN THE
SOUTHERN BERKSHIRE DISTRICT COURT
(PAUL VRABEL, J. AT THE MOTION TO DISMISS
AND JURY WAIVER COLLOQUY,
MARK PASQUARIELLO, J. AT BENCH TRIAL)

PATRICK VINCENT'S APPLICATION FOR
DIRECT APPELLATE REVIEW

JOSEPH N. SCHNEIDERMAN, ESQ.
BBO#684737
51 SOUTHWICK ROAD, UNIT 143
WESTFIELD MASS. 01085
860-214-8020
CONNLAWJOE413@GMAIL.COM
COUNSEL FOR PATRICK VINCENT

JULY 14, 2025

TABLE OF CONTENTS

<u>Glossary</u>	<u>4</u>
<u>Application for Direct Appellate Review</u>	<u>5</u>
<u>Prior Proceedings</u>	<u>7</u>
<u>Statement of Facts</u>	<u>9</u>
<u>1. Background on Brook Lane and the Mountain Grove Association</u> <u>.....</u>	<u>9</u>
<u>2. The February 6 Accident</u> <u>.....</u>	<u>13</u>
<u>3. Trial and Legal Arguments on Public Way</u> <u>.....</u>	<u>18</u>
<u>4. Judge Pasquariello's Decision</u> <u>.....</u>	<u>20</u>
<u>Statement of the Issues and Preservation</u> <u>.....</u>	<u>22</u>

Argument.....23

I. This Court should review Patrick Vincent’s case directly because it presents a unique occasion to clarify the divisive and recurrent question of when and how certain locations constitute the essential element of public way in OUI and other vehicular crime prosecutions.

.....23

Conclusion

.....31

Certificate of Compliance and Service.....33

Addendum Supporting Direct Appellate Review34

Certified Docket Sheets, Commonwealth v. Patrick Vincent, Southern

Berkshire District Court Docket No. 2129CR86.....35

Trial Transcript Excerpt (Motion for a Required Finding of Not Guilty and Judge Pasquariello’s Decision Denying that Motion, Pages 127-140)

.....39-40

Trial Transcript Excerpt (Judge Pasquariello’s Decision Convicting Mr. Vincent, Pages 154-156)

.....54

Glossary

References to the Addendum supporting this application are are “D.”, followed by the page number, for example “D.54”

References to the Record Appendices on file in the Appeals Court are “RA:_:”, followed by the volume and page number, such as “RA1:11”, “RA2:6”, “RA3:6”, “RA4:6”

References to the Trial Transcript on September 20, 2021 on file in the Appeals Court are “T:”, followed by the page number, for example, “T:155”

Application for Direct Appellate Review

The crime of operating under the influence (G.L. c.90, §24(1)(a)(1), OUI) requires proof beyond a reasonable doubt of public way. However, a divided body of caselaw has emerged about whether certain locations qualify as public ways-and Justices of the Appeals Court have written clarion calls for clarification.

This case is an opportunity to answer that clarion call.

One winter Saturday night in 2021, Patrick Vincent spun his truck out near his home on Brook Lane in Becket. Although there were no personal injuries and Mr. Vincent's son was en route to recover the truck, the Becket police arrested Mr. Vincent for OUI.

After a bench trial, a judge sitting in the Southern Berkshire District Court convicted Mr. Vincent of third offense OUI. The judge concluded that Mr. Vincent necessarily operated on nearby Route 8 to reach Brook Lane- despite the Commonwealth's failure to present any evidence that Route 8 was indeed a public way.

But the judge did not confront whether Brook Lane itself was a public way despite the Commonwealth's unabashed assumption that Brook Lane was a public way in their opening.

Pursuant to G.L. c.211A, §10 and Mass. R.A.P. 11, Mr. Vincent now petitions this Court for direct appellate review of his conviction of third offense OUI. The issue of whether Brook Lane in Becket does indeed qualify as a public way presents an opportunity to clarify the thorny and divided body of caselaw that has emerged on this topic since 1988-and the evidence does not substantiate the Commonwealth's bald assumption.

This Court in turn should intervene and accept this case directly.

Prior Proceedings

On February 11, 2021, a complaint issued from the Southern Berkshire District Court against Patrick Vincent alleging OUI, third offense (G.L. §90, §24(1)(a)(1) and possession of an open container of alcohol (G.L. c.90, §24I). D.37, RA1:7, 11. The complaint arose from a single car accident in Becket on February 6, 2021. Id.

In June 2021, Mr. Vincent moved to dismiss the complaint for lack of probable cause. D.37, M:2, RA1:9, 23. Following a short hearing on July 19, 2021, Judge Paul Vrabel denied that motion. (RA1:34, M:7).

After Mr. Vincent waived his right to a jury trial (C:2-4 RA1:3), a bench trial followed on September 20, 2021 before Judge Mark Pasquariello. Four witnesses testified for the Commonwealth. (T:12-127.) Mr. Vincent presented his case through documentary evidence and cross-examination. RA3, RA4.

Mr. Vincent unsuccessfully moved for required findings of not guilty RA1:9, 36, D.41-42, T:127-128, 142. . Judge Pasquariello later found Mr. Vincent guilty as charged of third offense OUI and dismissed the open

container charge. D:55-56, T:155-156. Following a short colloquy, Judge Pasquariello sentenced Mr. Vincent to 180 days in the House of Correction with 150 days to serve, and an eight (8) year license loss. RA1:8, T:172.

On September 30, 2021, Mr. Vincent timely filed an appeal and Mr. Vincent's appeal later entered in the Appeals Court on December 30, 2024. D.38, RA1:9-10, 37, 38. On April 11, 2025, Mr. Vincent filed his opening brief in the Appeals Court. The Commonwealth's brief is currently due in the Appeals Court on or before August 12, 2025.

Statement of Facts

1. Background on Brook Lane and the Mountain Grove Association

In February 2021, Patrick Vincent lived on Brook Lane in the rural town of Becket in Berkshire County. T:46, 88. There are approximately nine or ten homes on Brook Lane-and Jessica Giarolo was one of Mr. Vincent's neighbors on Brook Lane. T:34-35, 37.

Brook Lane is a dirt road within a small grid of streets in the Mountain Grove Association in Becket-a non profit homeowners association that contains 40 homes. RA2:3, T:35, 37.

The other streets in Mountain Grove are Highland Road, Shore Road, Lake Shore Drive. RA2:3, T:34-37. Berkshire Road and Shore Road connect to Route 8-but Brook Lane does not. RA2:3. Rather, Brook Lane is at the end of Berkshire Road. RA2:3 (reproduced on the next page.)

RA2:3



There are six entrances and exits from Mountain Grove-but there are no gates. T:35-36, 83. The streets in Mountain Grove also contain telephone poles. T:35-36, RA4:5. Although there are speed limit signs on the roads, other signs warn against trespassing and that individuals travel at their own risk. RA3:5 (reproduced below.)

RA3:5
RA3:5



Residents of Mountain Grove pay a monthly fee to remove garbage and access a beach. T:60. Mountain Grove also maintains a clubhouse that serves alcohol. RA3:4, T:42. Residents may bring guests-but a member of the general public cannot enter the clubhouse. T:42-43.

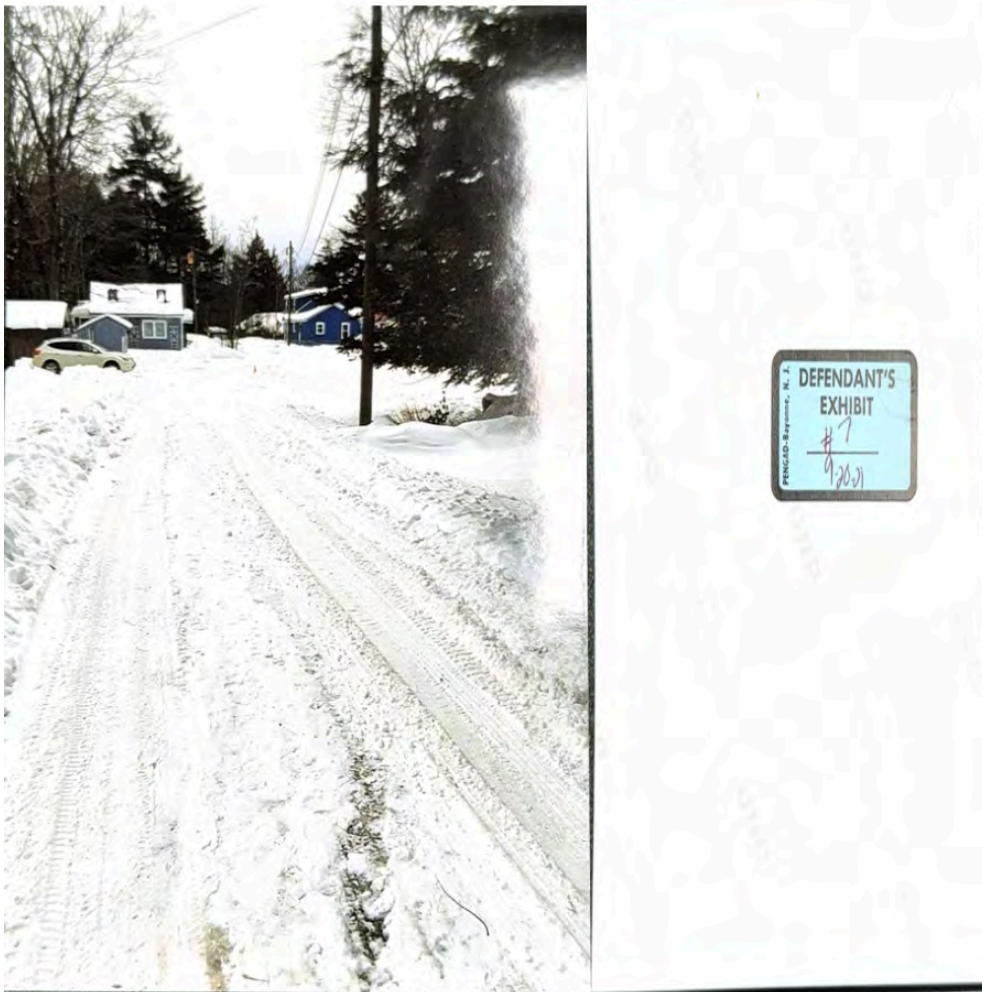
Property owners in Mountain Grove pay a monthly homeowners association fee for garbage removal and access to a nearby beach. T:60. The Town of Becket plows the Mountain Grove Association parking lot so that school buses can turn around. T:60-61, 63.

However, the Town does not maintain Brook Lane or any other streets in Mountain Grove. T:60, 63. Instead, the association maintains the streets through membership dues. T:60, 63. Indeed, Brook Lane residents like Jessica Giarolo's father plow the lane themselves. T:61.

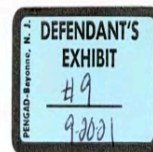
2. The February 6 Accident

On February 6, 2021, Sarah Forsaith and Jessica Giarolo were relaxing at Ms. Giarolo's home on Brook Lane in Becket after working a shift at Otis Ambulance. T:23, 43. At the time, Brook Lane contained a layer of snowpack. RA4:5, RA4:7, T:23, 32, 110, 117.

RA4:5



RA4:7



The area around Ms. Giarolo's house does not contain overhead street lights. T:30. The clubhouse was not open that night due to the COVID-19 pandemic. T:76.

Around 7PM, Stockbridge police Sergeant Kirk Nichols ran a CJIS inquiry on a black Ford F-350 truck in a parking lot at Michael's restaurant on Elm Street in Stockbridge. T:13-16. Stockbridge is approximately a 25 to 30 minute drive from Becket. T:47.

The truck was registered to David Vincent, Patrick Vincent's father. RA3:3, T:17, 18, 86. Although Sergeant Nichols saw Mr. Vincent drive the truck in the past, he did not see Mr. Vincent driving the truck that night. T:14, 16-17.

Around 8PM, Ms. Forsaith a black Ford truck speed and skid around a nearby corner and strike a snowbank near a fence and telephone poll. T:25. Ms. Giarolo went to investigate and saw Patrick Vincent exit the truck, let his dog out, and enter his home. T:26, 44.

Despite their training as first responders, neither Ms. Forsaith nor Ms. Giarolo went to assist Mr. Vincent. T:32-33, 46,52. Indeed, Ms. Giaraolo saw Mr.Vincent walking and not stumbling. T:46, 52.

Becket police Officer Shawn Courtney responded to Sarah Forsaith's 911 call. T:26, 84, RA4:8. When Officer Courtney arrived, he found the Ford truck partially blocking the roadway and stuck in a snowbank sitting against a telephone pole, spinning its tires. T:85.

Officer Courtney did not see anybody near the truck or any shopping bags inside. T:87. However, Officer Courtney did see an empty bottle of Fireball whiskey and empty cans of Twisted Tea and Truly alcoholic seltzer in the backseat. T:87.

After speaking to Ms. Forsaith and Ms. Giarolo, Officer Courtney went to speak to Mr. Vincent, who was sitting alone in his kitchen next to the front door. T:87-89. Mr. Vincent's fly was unzipped, Mr. Vincent had bloodshot and glossy eyes, slurred his words, was unsteady on his feet, and heavily smelled of alcohol. T:89-90.

Mr. Vincent told Officer Courtney that he came from a grocery store in Lee, the corner gave him trouble, and his son was coming to tow the truck out. T:89. Mr. Vincent admitted to drinking a couple of beers. T:90-91.

Officer Courtney directed Mr. Vincent to perform field sobriety tests. T:91. Mr. Vincent's feet broke apart during a walk and turn test and he took ten step instead of nine. T:91-92. Mr. Vincent could not hold his leg up beyond the count of two. T:93.

After putting his foot down, Mr. Vincent said, "Just take me in." T:93-94. When Officer Courtney offered him another chance, Mr. Vincent put his foot down and said "I'm not doing it." T:94-95.

Officer Courtney in turn arrested Mr. Vincent. T:95.

3. Trial and Legal Arguments on Public Way

Trial revolved around whether Brook Lane was a public way. The Commonwealth opened by assuming that Brook Lane was a public way- but did not expand on that point. T:5-9. Mr. Vincent asserted that Brook Lane was not comparable to a grocery store parking lot or Route 8 because there was controlled access. T:10-11.

Although the witnesses referenced Route 8, there was no testimony or other evidence about the nature and character of Route 8. T:36-38, 40, 57, 75, 82-84, 128. The Commonwealth's witnesses claimed to be unaware of no-trespassing signs until trial-although Jessica Giarolo acknowledged one inside the association. T:28, 38-39, 54.

Ms. Giarolo did not believe that random travelers were trespassers- and noted that there was more traffic than ever. T:67, 77. Officer Courtney also stated that he believed the streets were open and would not arrest someone for trespassing on Brook Lane. T:83.

Mr. Vincent moved for a required finding of not guilty and asserted “a glaring absence of any evidence [that] that are of Mountain Grove... [was] a public way.” D.40-41, T:127-128.

Mr. Vincent recalled that Mountain Grove homeowners paid to limit access and that Brook Lane was part of a self-maintained homeowners association. D.41, T:128. Mr. Vincent reasoned that Brook Lane and the nearby streets were not akin to parking lot. D.41-43, T:128-130.

The Commonwealth responded that courts relied on objective factors to resolve whether a location a public way, including whether the location contained a gate, houses, or traffic signs. D.46, T:133. The Commonwealth contended that because residents could visit Mountain Grove off Route 8, it was a public way. D.47, T:134.

Judge Pasquariello denied the motion for a required finding. D.50-53;, RA1:36, T:137-140. Judge Pasquariello emphasized that Brook Lane was partially paved, contained telephone poles, and that delivery trucks visited-and individuals were unaware of no trespassing or travel at your

own risks.. D.51-53, T:138-140. Moreover, a driver could reach Brook Lane from Route 8, which was also a public way. D.51, T:138.

Mr. Vincent repeated in closing that Brook Lane was not a public way because there was no evidence that people could come and go from Brook Lane as they desired and charging membership fees reflecting controlled access. T:141-142.

The Commonwealth emphasized circumstantial evidence, including that the truck was in Stockbridge. T:149. However, Judge Pasquariello discounted the presence of the truck in Stockbridge. T:149.

4. Judge Pasquariello's Decision

After closing, Judge Pasquariello convicted Mr. Vincent. D.54-56, T:154-156. Judge Pasquariello recognized that the case was a circumstantial case. D.55, T:155.

However, Judge Pasquariello also concluded that the Commonwealth established the element of public way, reasoning as follows:

"I think it's also fair to -- fair to infer, and I am entitled based on the ruling in the *Belliveau* case, of inferring that he was operating in that state

on a public way soon before entering the Mountain Grove Association property.

As testified to, Route 8 is a public way. Access from Route 8 and other public ways is the sole means by which one would gain access to the Grove Association, homeowners association property.

(D.56, T:156): So I think it's also fair to draw that inference, that within a short time period before the officer arrived at his house, he was under the influence, both while he was on the Association ways and on public ways. So that's my ruling. I'm satisfied the Commonwealth has met their burden, and I find him guilty of operating under the influence."

D.56, T:156.

After a brief hearing on the subsequent offender portion (T:157-168), Judge Pasquariello sentenced Mr. Vincent.

Mr. Vincent's appeal follows.

Statement of the Issues and Preservation

Mr. Vincent briefed and argued the following issues in the Appeals Court:

(1) Whether the Commonwealth's evidence at trial sufficed to prove that Brook Lane was a public way;

(2) Whether the complaint demonstrated probable cause to believe that Brook Lane was also a public way;

(3) Whether Judge Pasquariello lawfully adjudicated Mr. Vincent as a subsequent offender without engaging in a proper guilty plea colloquy;

(4) Whether Officer Courtney testified to inadmissible sobriety testing refusals.

This application addresses proof of public way at the trial stage.

Mr. Vincent preserved his arguments. Mr. Vincent moved for a required findings of not guilty and asserted "a glaring absence of any evidence [that] that area of Mountain Grove [was] a public way." D.41, T:128, see also D.41-43, T:128-131. Mr. Vincent reiterated that point in closing. T:141-142. The issue is preserved and fair game in this Court.

I. This Court should review Patrick Vincent's case directly because it presents a unique occasion to clarify the divisive and recurrent question of when and how certain locations constitute the essential element of public way in OUI and other vehicular crime prosecutions.

This Court should allow direct appellate review to clarify when small roads like Brook Lane qualify as public ways under Chapter 90. This recurrent issue has spurred a divided body of caselaw that spurred calls for clarification by certain Appeals Court Justices. This case poses the opportunity for clarification.

G.L. c.90, §24(1)(a)(1), as amended by St. 1961, c.347, punishes operating under the influence on a public way or any way that the public has access to or any place that the public has access as licensees or invitees.

The 1961 amendment expanded the definition of public way in response to a decision of this Court holding that a small, privately owned road between two city streets where parking occurred did not constitute a place to which the public has a right of access. See e.g. Commonwealth v. Callahan, 405 Mass. 200, 202-203 (1990), citing Commonwealth v Paccia, 338 Mass. 4, 5-6 (1958).

See also G.L. c.90, §1 (A “way” constitutes any public highway, private way laid out under the authority of a statute, way dedicated to public use, or way under the control of park commissioners having like powers.)

Since then, courts have consistently concluded that parking lots qualify as ways where invitees or licensees have access. See e.g. Commonwealth v. Wurtzberger, 104 Mass. App. Ct. 558, 564-566 (2024), S.C., 496 Mass. 203 (2025) (Involving a town owned permit parking lot on Cape Cod); Commonwealth v. Kiss, 59 Mass. App. Ct. 247, 249-250 (2003) (Smith, J.) (Involving a North Andover shopping mall parking lot at 1:50 AM that contained an ATM, newspaper boxes, and pay phones.)

Caselaw also identifies relevant fact(ors) to assess whether a road qualifies as a public way. These factors include the presence of businesses, the existence of paving, curbing, signage, gates, and may also include any relevant deeds. See e.g. Commonwealth v. Belliveau, 76 Mass. App. Ct. 830, 832-833 (2010) (Kafker, J.)

However, not any or every location that is physically accessible by car constitutes a public way. Compare Callahan, 405 Mass. at 200-205 (Involving a vehicular homicide on sand pits in Norfolk); Commonwealth v. George, 406 Mass. 635, 638-639 (1990) (Involving an operation that occurred on a baseball field in Brockton surrounded by a golf course that was only open for games with a permit.)

This limitation exists because Chapter 90 protects “travellers upon highways” and to avoid making the word “public” superfluous. George, 406 Mass. at 638 (cleaned up); Commonwealth v. Virgillio, 79 Mass. App. Ct. 570, 574 (2011).

But since 1988, as the following chart illustrates, a divided body of caselaw has emerged about whether certain small roads or streets constitute public ways.

Defendant/Caption	Citation	Pertinent Evidence of Accessibility	Public Way, Yes or No?
Hart	26 Mass. App. Ct. 235 (1988)	A 4000 foot paved, illuminated dead end street connected to three other dead end streets, abutting a commercial building that vendors, employees and others used to reach a commercial building and with a gate. 26 Mass. App. Ct. at 236-237	Yes. 26 Mass. App. Ct. at 236-238.
Muise	28 Mass. App. Ct. 964 (1990)	A 200 foot paved way connecting Route 1 to a year-round trailer park.	Yes-28 Mass. App. Ct. at 966.
Stoddard	74 Mass. App. Ct. 179 (2009)	An unpaved roadway without curbs, street signs, illumination, or fire hydrants in a seasonal campground in Salisbury, open from May to Columbus Day, accessible only through a gate with a gate card with a speed limit of 5 mph. 74 Mass. App. Ct. at 180.	No-74 Mass. App. Ct. at 181-184.

Defendant/Caption	Citation	Pertinent Evidence of Accessibility	Public Way, Yes or No?
Belliveau	76 Mass. App. Ct. 830 (2010) (Kafker, J.)	A paved pier with streetlights in the Charlestown Navy Yard only accessible through public streets, and despite the presence of a gate, had a deed allowing public access by foot and car. 76 Mass. App. Ct. at 831.	Yes-76 Mass. App. Ct. at 833-835.
Virgillio	79 Mass. App. Ct. 570 (2011)	A paved driveway between two houses two cars wide with a parking lot at the end for the house's occupants to to park. 79 Mass. App. Ct. at 571.	No-79 Mass. App. Ct. at 573-575.

Certain Justices of the Appeals Court have called for clarification of the element of public way. See Wurtzberger, 104 Mass. App. Ct. at 567-571 (D'Angelo, J., concurring.); Virgillio, 79 Mass. App. Ct. at 575-586 (Sikora, J., dissenting) (Suggesting that a “grudging [and lenient] definition of the location of impaired driving” developed in the caselaw that thwarted the compelling need to deter drunk driving.)

In this case, Judge Pasquariello concluded that Mr. Vincent necessarily operated on Route 8 to reach Brook Lane-and thus Mr. any issue about Brook Lane's status did not matter. D:54-56, T:154-156.

This decision rests on clearly erroneous findings and does not otherwise withstand careful scrutiny.

Although there were ten references to Route 8 at trial (T:36-38, 40, 57, 75, 82-83, 128), the Commonwealth did not actually introduce any documentary evidence or elicit any testimony that Route 8 is indeed a public way. Compare G.L. c.233, §79F (A certificate from the secretary of the public works commission or a city or town clerk is admissible evidence that a way is a public way.). In any event, this Court cannot judicially notice Route 8 as a public way for the first time on appeal. Commonwealth v. Green, 408 Mass. 48, 50 (1990).

There is no evidence that Mr. Vincent operated on a street connecting Route 8 to Brook Lane. Granted, Mr. Vincent admitted to grocery shopping in Lee. T:89. Jessica Giarolo testified that the drive between Stockbridge and Becket takes 25 minutes. T:47.

But the Commonwealth did not introduce evidence about how to reach Lee-only that Route 8 connects to streets surrounding Brook Lane. RA2:3. Moreover, Sarah Forsaith only testified that Mr. Vincent skidded around the corner at a higher than normal rate of speed-but not what corner. T:25. Without evidence of where the corner was and its character, and its connection, any findings that the corner and its abutting locations were a public way are also clearly erroneous.

The case distills to whether or not Brook Lane itself was a public way. Granted, Brook Lane contains houses, speed limit and warning signs, and telephone poles. RA3:5, T:35, 41 There were no gates barring access to Brook Lane. T:35-36, 83.

But Brook Lane is not paved. Judge Pasquariello's contrary finding is clearly erroneous, especially in light of photos that showed snowpack and a lack of pavement. RA4:5, 7, 9-12, T:23, 32, 110, 117. Residents of Brook Lane maintain the lane-like other streets in Mountain Grove. T:60-63, esp. T:61. There are signs warning against trespassing and traveling at your own risk in Mountain Grove. RA3:5.

At best, this evidence is in equipoise about whether Brook Lane is public way. At worst, the evidence requires conjecture to conclude that Brook Lane is a public way.

But the case law does not provide a definitive answer as to whether Brook Lane is as a public way. This uncertainty exists despite the reaffirmed purpose that the element of “public way” protects travelers on the highways-and the word “public” is not superfluous. Compare Callahan; Virgilio.

A person should not have to guess at whether whether their conduct is criminal. Compare Wurtzberger, 104 Mass. App. Ct. at 571 (D’Angelo, J., concurring); *accord* Commonwealth v. Rajiv R., 495 Mass. 646, 660 (2025). The divided jurisprudence on public way leaves this essential element open to guessing. This Court has an opportunity to resolve the division and vacate Mr. Vincent’s flawed conviction that has grown out of that division.

Conclusion

The current divided state of the caselaw on public way leaves that element to guessing as to OUI, but also creates guesswork about proof of several other crimes in Chapter 90.

Citation	Offense
G.L. c.90, §24(2)(a)	Negligent or reckless operation
G.L. c.90, §24(2)(a1 / 2)	Leaving the scene of an accident causing personal injury or death)
G.L. c.90, §24G	Vehicular homicide
G.L. c.90, §24H	Removing abandoned or stolen cars
G.L. c.90, §24I	Possessing an open container of alcohol
G.L. c.90, §24L	OUI causing serious bodily injury
G.L. c.90, §24S	Operating in violation of an ignition interlock restriction

Whatever rule this Court adopts will therefore affect not only Mr. Vincent “but all others other similarly situated” -i.e., every defendant who faces a charge involving the element of public way in the District Court. Patton v. United States, 281 U.S. 276, 305 (1930).

Beyond the divided body of caselaw on public way, statistics indicate that in the last five fiscal years, there have been approximately 6000 cases of

OUI and it is the third most common charge after operating after suspension and operating without a license.

See Massachusetts Trial Court, Charges Dashboard: Trial Court Department of Research and Planning, (<https://public.tableau.com/app/profile/drap4687/viz/MassachusettsTrialCourtChargesDashboard/LeadCharges>) (last visited June 19, 2025).

Finally, this case presents the opportunity for legal clarification that this Court did not have in Wurtzberger because the impaired operation in Wurtzberger occurred in a parking lot-i.e., the very location that the 1961 amendment sought to reach.

For all of these reasons, the application for direct appellate review, should, therefore, be allowed.

Respectfully Submitted,
PATRICK VINCENT, by appellate counsel
/s/Joseph N. Schneiderman, Esq.
Joseph N. Schneiderman, Esq.
BBO #684737
51 Southwick Road, Unit 143
Westfield MA 01085
860-214-8020
connlawjoe413@gmail.com
Dated: July 14, 2025

Certificates of Compliance and Service

Pursuant to Mass. R.A.P. 16(k), I certify, that to the best of my knowledge, that the foregoing application for further appellate review substantially complies with the Massachusetts Rules of Appellate Procedure and the Rules of this Court governing the contents, form and format of applications for direct appellate review.

I also further certify that the foregoing applications contains a proportionally spaced font (Palatino, 14 point) and a word count of 1,301 non-excluded words which I calculated with the word count feature of the Pages word processing application for Mac.

I also further certify that on July 14, 2025, I served one PDF copy of this application via the E-File System on Assistant District Attorney James Petersen and Assistant District Attorney Lori Levinson at James.petersen@mass.gov and Lori.Levinson@mass.gov.

/s/Joseph N. Schneiderman, Esq.
July 14, 2025

Addendum Supporting Application for Further Appellate Review

Certified Docket Sheets, Commonwealth v. Patrick Vincent, Southern

Berkshire District Court Docket No. 2129CR86.....35

Trial Transcript Excerpt (Motion for a Required Finding of Not Guilty and

Judge Pasquariello's Decision Denying that Motion, Pages 127-140)

.....39-40

Trial Transcript Excerpt (Judge Pasquariello's Decision Convicting Mr.

Vincent, Pages 154-156)

.....54

Rota Complete

CRIMINAL DOCKET		DOCKET NUMBER	NO. OF COUNTS	Trial Court of Massachusetts District Court Department	
DEFENDANT NAME AND ADDRESS Patrick R Vincent 43 Brook Lane Becket, MA 01223		DOB 03/02/1971	GENDER Male	COURT NAME & ADDRESS Southern Berkshire District Court 9 Gilmore Avenue Great Barrington, MA 01230	
		DATE COMPLAINT ISSUED 02/11/2021	INTERPRETER REQUIRED		
		PRECOMPLAINT ARREST DATE 02/06/2021			
FIRST FIVE OFFENSE COUNTS					
COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE		
1	90/24/M	OUI-LIQUOR OR .08%, 411 OR GREATER OFFENSE c90 §24(1)(a)(1)	02/06/2021		
2	90/24I	ALCOHOL IN MV, POSSESS OPEN CONTAINER OF * c90 §24I	02/06/2021		
<p>31821 - Hall (private)</p> <p>31821 - Hall (private)</p>					
DEFENSE ATTORNEY CPLS McNamara		OFFENSE CITY/TOWN Becket	POLICE DEPARTMENT BECKET PD		
DATE & JUDGE	DOCKET ENTRY		DATE & JUDGE	FEES IMPOSED	
2-11-21 Rota	<input checked="" type="checkbox"/> Attorney appointed (SJC R. 3:10) <input type="checkbox"/> Atty denied & Deft. Advised per 211 D §2A. <input type="checkbox"/> Waiver of Counsel found after colloquy		2-11-21	Counsel Fee (211D § 2A(1)(2)) 150 <input type="checkbox"/> WAIVED	
	Terms of release set: <input checked="" type="checkbox"/> PR <input type="checkbox"/> Bail <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Held (276 §58A)		Rota	Counsel Contribution (211D § 2) 50 <input type="checkbox"/> WAIVED	
				Default Warrant Fee (276 § 30(1)) <input type="checkbox"/> WAIVED	
				Default Warrant Arrest Fee (276 § 30(1)(2)) <input type="checkbox"/> WAIVED	
2-11-21 Type	Arraigned and advised: <input checked="" type="checkbox"/> Potential of bail revocation (276 §58B) <input type="checkbox"/> Right to bail to review (276 §58) <input type="checkbox"/> Right to drug exam (111E § 10) <input type="checkbox"/> Inquiry made by Court under 276 § 56A			Probation Supervision Fee (276 § 87A) <input type="checkbox"/> WAIVED	
	Abuse Allegation: <input type="checkbox"/> C276 § 56A form filed by Commonwealth <input type="checkbox"/> Allegation of abuse under C276 § 56A found <input type="checkbox"/> No allegation of abuse under C276 § 56A found		7-19-21	Advised of right to jury trial: <input checked="" type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive	
				Advised of trial rights as pro se (Dist. Ct. Supp.R.4)	
				Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)	
SCHEDULING HISTORY					
NO.	SCHEDULED DATE	EVENT	RESULT	JUDGE	TAPE START/STOP
1	02/11/2021	Arraignment	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	3-18-21 PT	Rota / Type
2	3-18-21	PT	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	4-22-21 PT	PV
3	4-22-21	PT	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	5-27-21 PT	R
4	5-27-21	PT	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	6-17-21 PT	Rota
5	6-17-21	PT	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	7-19-21 M	PLM
6	7-19-21	M	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	8-10-21 PT	PL
7	8-5-21	BP/PT	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	9-2-21 BT	PV
8	9-2-21	BT	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	9-20-21 BT	PV
9	9-20-21	BT	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		Thsa
10			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
APPROVED ABBREVIATIONS					
ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAF = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.					
A TRUE COPY ATTEST:	CLERK-MAGISTRATE / ASST CLERK			TOTAL NO. OF PAGES	ON (DATE)
X					3/14/25



CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Patrick R Vincent		DOCKET NUMBER 2129CR000086	
COUNT / OFFENSE 1 OUI-LIQUOR OR .08%, 4th OR GREATER OFFENSE c90 §24(1)(a)(1)		DISPOSITION DATE AND JUDGE 9/20/21 P350			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input checked="" type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT		SURFINE RESTITUTION	
		COSTS V/W ASSESSMENT		OUI §24D FEE BATTERER'S FEE	
		OTHER 			
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by: <i>all news waived</i>			
FINDING <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE DATE	
COUNT / OFFENSE 2 ALCOHOL IN MV, POSSESS OPEN CONTAINER OF * c90 §24I		DISPOSITION DATE AND JUDGE 9/20/21 P350			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input checked="" type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT		SURFINE RESTITUTION	
		COSTS V/W ASSESSMENT		OUI §24D FEE BATTERER'S FEE	
		OTHER 			
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input checked="" type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE DATE	
COUNT / OFFENSE		DISPOSITION DATE AND JUDGE			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT		SURFINE RESTITUTION	
		COSTS V/W ASSESSMENT		OUI §24D FEE BATTERER'S FEE	
		OTHER 			
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE DATE	



CRIMINAL DOCKET DOCKET ENTRIES		DEFENDANT NAME Patrick R Vincent	DOCKET NUMBER 2129CR000086
DATE	DOCKET ENTRIES		
2-11-21	Judge Seto Confers.		
	Judge Seto appears telephonically to been Comm argument for Cof R.		
	After hearing, No Cof R ordered. Type J		
2-1-21	(M) to Dismiss w/ memo fbo		
9-2-21	BT continued at request of Comm over the objection of defense counsel.		
9-20-21	BT Type # 10:59 am		
9-20-21	(M) for Required finding filed - 11/11/21		
9-20-21	After Hearing - (M) for Required finding Denied Pres. Judge		
9-20-21	After Bench Trial, 2 Found Guilty 2 Lewis his right to trial for proving 2 prior convictions.		
9-30-21	Notice of Appeal filed		
9-30-21	(M) to waive transcript fee + cash		
9-30-21	(M) to w/d + appoint appellate counsel filed		
10-4-21	Judge Seto contacted - Call to 10-12-21 status / motion		
10-12-21	M to withdraw and appoint Successor Counsel - Allowed M to waive transcript fee + cash - Allowed - William J.		
APPROVED ABBREVIATIONS ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.			

Date/Time Printed: 02-11-2021 09:14:25

10-12-21 SPK informed BA Hall


 PA Hall to get CPCs
 2129CR000086
 Revised: 07/16

10-22-21 Appearance for Appeal - Schneiderman

 Clerk Magistrate
 [Signature]

Volume: 1 of 3
 Pages: 1-175
 Exhibits: Pg. 3

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

DISTRICT COURT DEPARTMENT
 OF THE TRIAL COURT

* * * * *

COMMONWEALTH OF MASSACHUSETTS

v.

Docket No. 2129CR000086

PATRICK ROBERT VINCENT

* * * * *

JURY-WAIVED TRIAL
 BEFORE THE HONORABLE MARK J. PASQUARIELLO

APPEARANCES:

For the Commonwealth:

Berkshire County District Attorney's Office
 7 North Street
 Pittsfield, Massachusetts 01201
 By: Megan L. Rose, Assistant District Attorney

For the Defendant:

P.O. Box 144
 Lenox Dale, Massachusetts 01242
 By: Jedd Hall, Esq.

Great Barrington, Massachusetts
 Courtroom 1
 September 20, 2021

Jennifer Witaszek, CER, CET
 Approved Court Transcriber

1 THE COURT: I understand.

2 MR. HALL: Secondary argument, but I think we'll start
3 with the public way matter. So I'll probably be back around
4 two, anyway. I don't think I'll be --

5 THE COURT: Okay.

6 MR. HALL: Yeah. Somewhere around there, so -- grab lunch
7 and take it from there. Okay.

8 THE COURT: All right.

9 MR. HALL: Very good. Thank you.

10 MS. ROSE: Thank you.

11 THE COURT: You're welcome.

12 THE COURT OFFICER: Court's in a recess till two. Well,
13 2:45 for you.

14 (Court recessed at 12:54 p.m.)

15 (Court reconvened at 2:17 p.m.)

16 (Defendant present.)

17 MR. HALL: Good afternoon, your Honor.

18 THE COURT: All right. Good afternoon.

19 MS. ROSE: Good afternoon, your Honor.

20 THE COURT: All right. Okay. So Attorney Hall has moved
21 for a required finding. I'll hear you with regard to your
22 motion for a required finding, Attorney Hall.

23 MR. HALL: Thank you very much, your Honor. Your Honor, I
24 have moved for a required finding in this case. And as I
25 stated on the record, I believe that the Commonwealth has not

1 met their burden by establishing the three elements that are
2 required under the statute: operation, obviously public way,
3 and now the issue of whether or not my client was under the
4 influence.

5 I think that there is a glaring absence of any evidence
6 before this Court of that area of the Mountain Grove
7 Association being a public way.

8 I'm sure my sister will argue that the logical conclusion
9 is that the areas surrounding it obviously are public ways,
10 i.e., Route 8 and various other roads that surround this
11 particular development.

12 The Commonwealth's own witnesses basically testified that
13 it's a private homeowners association. I believe Ms. Giarolo
14 stated that she's been there for 16 years, pays a certain
15 amount of money every year to basically be part of this
16 association. Testified at length that basically the
17 maintenance, if you will, of the road itself is done by the
18 private parties on the roads to which they live in, either by
19 snowblowers and/or vehicles with plows. It's not maintained by
20 the town of Becket. They do not plow those roads on a regular
21 basis.

22 Basically, part of their fee structure is also for beach
23 access and I believe for garbage removal. She also testified
24 that the -- we'll call it the bar/restaurant -- I wasn't clear.
25 It didn't sound like they serve food. But the bar area is also

1 not accessible to the public. You could be a guest of somebody
2 who lives there or you have to pay basically sort of some sort
3 of fee in order to actually access that particular bar area.

4 So I think the fact is, Judge, that my client was --
5 basically had gone off the road due to snow conditions. It was
6 initially reported as an accident. He then is basically in his
7 house. Sometime after the initial call, police respond and
8 ultimately make the decision that he was under the influence.

9 So my first argument, Judge, is the required finding
10 should be allowed. I'm not sure if the Court had a chance to
11 look. I did do some research. I think *Stoddard* is a very
12 close case on point. It has to do with a campground.
13 *Commonwealth v. Stoddard*, 74 Mass. App. 179.

14 And also *George v. the Commonwealth*, 406 Mass. 635 -- I
15 don't know if you wish to take a look at these -- *Callahan v.*
16 *Commonwealth*, 405 Mass. 200. *Zagwyn*, also, *v. the*
17 *Commonwealth*, 482 Mass. 1020. And *Kulesa v. Commonwealth*,
18 455 Mass. 447, I believe are some of the cases that may be
19 helpful.

20 *Stoddard*, I think, is most interesting because it actually
21 involves a private campground, which I think the Court could
22 consider the fact that this is, as far as a campground, would
23 have a restricted gate access. Again, this is a little
24 different because of the private homeowners association.

25 But the fact is that the Court reversed the conviction due

1 to the fact that they felt that the Commonwealth had not
2 sustained their burden as to the public way.

3 I would suggest that this is very similar, Judge. It's
4 not the fact that the public can basically drive in there,
5 we'll say unmolested, but the fact is that if they display a
6 private way, enter -- no entry permitted, the implication is it
7 doesn't really matter what they're thinking. The fact is that
8 if someone were to say, listen, there's a car driving around,
9 they're trespassing, the police, by authority, could actually
10 go in arguably to arrest somebody or certainly at least ticket
11 them for a trespass.

12 The fact that people do drive in is irrelevant. The fact
13 that it does happen -- no one's saying it doesn't happen. I
14 think that the homeowner, Ms. Giarolo, even said cars sometimes
15 drive by, maybe ask for directions. Again, nobody seems to be
16 particularly concerned. However, that's not the intent of the
17 public way.

18 This is not a parking lot. This is not the Big Y shopping
19 center. This isn't a bank. This is a private development.
20 The intention is that it's for the people that pay the money to
21 live in a nice area. Presumably they pay a certain amount of
22 money to have good neighbors, I would argue, and obviously to
23 have a safe environment within which to raise their families or
24 their children.

25 So I think that if the Court were to look at that, the

1 Commonwealth has not been able to establish that this is a
2 public way. And it cannot be a bootstrap argument, Judge, to
3 say, well, the only way they can get there is obviously through
4 a public area or a public road. That is not the idea.

5 And I understand there is some case law about cars in
6 parking lots and various such areas. That is different. That
7 is a very, very big distinction.

8 The fact is that if it's -- it's Mountain Grove
9 Association, a nonprofit entity registered with the Secretary
10 of State's Office. A private owner who happened to be here
11 today testified that, yes, it's private. We have a private
12 beach. We have a private club. And the roads are not
13 maintained by the town of Becket. It is very, very different
14 than, say, a Big Y or a bank parking lot.

15 So my first argument is that the Commonwealth has failed
16 to prove the public way. I guess the second argument maybe is
17 more of a question of whether or not there's enough evidence
18 about the impairment issue.

19 I do not believe that the Commonwealth has been able to
20 sustain the burden by the fact that the nexus between what
21 happens and the arrest are in two different times and places.

22 There's no evidence of erratic operation. Nobody called
23 in a hit and run. Nobody called in the fact that there's a car
24 weaving all over the road. There's a stuck car on the side of
25 a road that's unable to move. It's an accident. And that word

1 was used many, many times by pretty much everyone that
2 testified today.

3 So if an accident occurred and then they find the
4 defendant some half hour, 45 minutes later, whatever that time
5 line may be, an hour later, the Commonwealth has to prove that
6 at the time of the incident that Mr. Vincent was under the
7 influence, and there is no evidence to show that.

8 And he has absolutely every right to be able to drink in
9 his own house. He can be as drunk as he wants. He can walk
10 around his own property. That is not a crime.

11 And as this Court knows, it's not a crime to drink and
12 drive. But my client has maintained his innocence from day
13 one. He has said: I basically got stuck. I went into my
14 house, had a few drinks. Cops show up. Next thing I know, I'm
15 getting arrested.

16 So I think at that point, too, Judge, that there's not
17 enough evidence to even consider impairment. And I think that
18 the Commonwealth has basically failed to produce the requisite
19 evidence in this case to convict my client, and I'd ask you to
20 allow our motion for required finding.

21 THE COURT: Okay.

22 MR. HALL: Thank you.

23 THE COURT: Thank you very much, Attorney Hall.

24 Attorney Rose, what do you say?

25 MS. ROSE: Thank you, your Honor. As to the first

1 element, public way. Obviously, I think we're all in agreement
2 that public way might be the bigger issue here.

3 The statute specifically indicates a way or place to which
4 members of the public have access as invitees or licensees.
5 The case law then states -- I believe it was *Commonwealth v.*
6 *Hart* that I gave you -- that a public way is not some piece of
7 paper indicating from the town, you know, of Becket, that it's
8 a public way.

9 Public way is an objective standard that the public may
10 reasonably conclude that it is open to travel. It is not the
11 intent of the homeowners association, whether they intended it
12 to be private or not. It's what this objective standard that
13 the public may reasonably conclude.

14 Some physical characteristics that are taken into account
15 are traffic signs, multiple houses, telephone poles. It's
16 suitable for traffic. Presence or a lack thereof of a gate.
17 Signs indicative of here that you have, you know, slow,
18 children. Slow down, there's children.

19 And also the fact that there was a sign found on one part
20 of this property, it was testified -- Officer Courtney
21 testified that it was almost like it was nailed to a tree; that
22 you could have gone by it a hundred times and not know that
23 this sign was there.

24 *Commonwealth v. Hart* specifically found a public way
25 despite the fact that a private property sign and no authorized

1 person sign was observed there. So I think for that reason,
2 you have -- you actually have public way here.

3 Number two is that you could also, even though it might
4 not be a public way -- oh, let me back up. I'm sorry.

5 The fact that it's not maintained by the town of Becket
6 and it's maintained by the individual is only one factor to
7 take into consideration. It is not indicative of the fact that
8 it's not a public way.

9 Also, I think both Ms. Giarolo and Officer Courtney
10 testified that they would not arrest anybody had they been on
11 those roads for trespassing. It is a road that the public does
12 travel.

13 Again, if this Court is not inclined to find that it's a
14 public way, it could also be a place to which the public has
15 access as invitees or licensees. Ms. Giarolo and Ms. Forsaith
16 testified that individuals travel these roads to go to her
17 house.

18 There were 40 -- approximately anywhere between 20 and 40
19 other houses on all of this property. Individuals are invited
20 to go to people's houses as invitees.

21 Additionally, there is a bar on this property that,
22 although it is for members only, members can invite guests to
23 go to this bar.

24 And third, your Honor, there -- I believe it was
25 *Commonwealth v. Belliveau*, the case that I gave you, which

1 indicates that cars don't just simply land in the spot that
2 they're found. They have to get there some way.

3 The defendant admitted here that he drove. He was
4 driving. He was the individual behind the wheel. And he
5 admitted that he had come from a shopping center in Lee.

6 Jessica Giarolo and Officer Courtney testified that the
7 only way to get to this area is through Route 8, which is a
8 public way.

9 I think, as far as impairment, if I could, your Honor,
10 just take you through -- briefly through the set of facts that
11 we heard today.

12 You have, at 6:59 the -- that vehicle, the black Ford
13 truck, is found in a parking lot in Michael's Restaurant. You
14 heard testimony that it was also shared with a number of other
15 businesses, as well.

16 Ms. Giarolo testified that it takes approximately 20 to
17 25 minutes to get from the main center of Stockbridge to Becket
18 and to Brook Lane.

19 At 08:04, a 911 dispatch comes in that the accident occurs
20 with this same exact Ford truck. The witnesses testified that
21 they called immediately 911. They also testified that it was
22 not snowing that day and it was not hard to drive. It was not
23 icy. There was only snow. It was packed down snow. They did
24 not have trouble driving.

25 So from 6:59 to 08:04, you have roughly an hour and six

1 minutes that the vehicle is found in one location and then
2 found in another. And it takes roughly 20, 25 minutes to get
3 to that location.

4 The officer -- Officer Courtney then testifies that he
5 sees the vehicle and he arrives only roughly ten minutes after
6 the calls came in. And he observes empty bottles in the
7 vehicle. Three empty bottles, to be exact.

8 He then says he gets to Mr. Vincent's house at 8:18,
9 roughly 14 minutes after the call came in, where the witnesses
10 stated they immediately called 911.

11 He indicates he's driving. He drove from Lee. There's a
12 heavy smell of alcohol. He has bloodshot, glassy eyes. He has
13 slurred -- very slurred speech, and he indicated he had a
14 couple of beers.

15 He then goes and does the standard field sobriety tests
16 and he's unsteady on his feet while walking to go to do those.
17 He then is not -- he's then not able to complete the second
18 field sobriety test in which he takes -- he's able to put his
19 foot up for one, one thousand, two, one thousand, and then
20 sways and puts his foot down. The officer testified you're
21 supposed to do it for roughly 30 seconds. He was only able to
22 do it for two seconds.

23 He then indicates: Take me in now. The officer then
24 says: Would you like to attempt again? He says yes. He's
25 only able to do it for one, one thousand, puts his foot down,

1 sways, and indicates: I'm not doing this.

2 He's then arrested. He is uncooperative. When he gets to
3 Becket PD, the alcohol -- the car smells like alcohol. He was
4 the only individual in that car that evening.

5 And for all of those reasons, your Honor, I think the
6 Commonwealth was able to prove public way out of one of the
7 three assertions that we have just set out; and two, I think
8 you have impairment beyond a reasonable doubt, impairment that
9 Mr. Vincent was intoxicated when he drove that car.

10 THE COURT: Okay. Thank you, Attorney Rose.

11 So I'm satisfied that the Commonwealth has met their
12 burden to withstand a required finding on both issues, on both
13 the public way issue and on the issue of intoxication.

14 And I say on the issue of intoxication specifically with
15 regard to the timing of things, because we have evidence that
16 the accident occurred around eight o'clock in the evening,
17 between eight and 8:04, based on the testimony of the witnesses
18 and the time of dispatch. And we have the officer arriving.

19 We have the officer arriving at Mr. Vincent's house either
20 20 minutes to a half an hour later, and we have the officer's
21 testimony as to the level of intoxication.

22 So -- and we also have Mr. Vincent placed in the car or
23 getting out of the car by one of those witnesses and seen
24 walking away from the vehicle towards his home.

25 So we're talking about a half-hour time lapse, possibly,

1 between the time that Mr. Vincent gets out of the car and the
2 time that the officer first encounters him at his house.

3 I'm satisfied that that half hour is not so long, is not
4 such a great amount of time that it clouds the issue of whether
5 he -- whether the Commonwealth is able to sustain their burden
6 of proof for -- at the required finding stage with respect to
7 the issue of intoxication at the time that Mr. Vincent is first
8 seen getting out of his truck.

9 On the issue of public way, I'm satisfied that the
10 Commonwealth meets their burden because, as Attorney Rose said,
11 the *Belliveau* case is clear. It's an objective standard, not a
12 subjective standard.

13 There's sufficient indicia, although the Grove
14 Association, although that road is considered by the owners of
15 the Association to be a private way, there is more than
16 sufficient indicia to indicate objectively that it appeared to
17 the motoring public to be a public way.

18 Access is along Route 8. There's multiple ways to gain
19 access from Route 8, which is a public way. It's a partially
20 paved road. There is some signage on it. There's telephone
21 poles on it. UPS drivers and the like use it to gain access to
22 make deliveries. There's no gate, per se.

23 Unlike the *Stoddard* case that Attorney Hall, that you were
24 relying on, that was a -- a gated way that required a card
25 access to gain access to that private way.

1 An exhibit was offered into evidence suggesting that it's
2 a private way, no trespassers. But the officer testified that
3 he's familiar with that development, and in the years that he
4 has traveled in there, he was unaware that there even was a
5 sign.

6 By all accounts, there's only that one sign. It's a small
7 sign. It's posted to the tree. And as I mentioned, there are
8 multiple other ways to get in there. So I don't think that the
9 sign indicating no trespassing -- can I see the exhibit,
10 Mr. Bartini?

11 I don't remember the exact language of the sign. But I
12 know that it was something to the effect of travel at your own
13 risk or no trespassing. I don't believe that that sign
14 alone -- that sign alone is sufficient, along with the other
15 evidence, to carry the day.

16 So the sign is -- let's see -- is Commonwealth -- the sign
17 is Defendant's Exhibit No. 3, and it says: Private road, no
18 trespassing, travel at your own risk.

19 There also happens to be a speed limit sign that's also on
20 that same tree, which is more suggestive of a public way. In
21 any event, I'm making note of it. Defendant's Exhibit 3 does
22 indicate private road, no trespassing.

23 But for all the other reasons, I'm satisfied that
24 objectively, the road had the appearance of being a public way,
25 and there were other sufficient indicia to indicate consistent

1 with it being a public way.

2 So those are my rulings. I'm satisfied, for those
3 reasons, the Commonwealth has met their burden to withstand
4 your required finding at this stage. So your motion for a
5 required finding is denied.

6 Where does that leave us, Attorney Hall?

7 MR. HALL: Your Honor, for the record, I would ask the
8 Court to make written findings on the public way element, as
9 well as the finding on evidence of intoxication to preserve the
10 record.

11 THE COURT: Okay. So I'm not going to make written
12 findings. I've just announced them on the record. And the
13 record facts -- I'll simply indicate this. I'll add this to
14 what I've just said.

15 I find the witnesses that testified, the arresting officer
16 and the two civilian witnesses, I find their testimony to be
17 credible. And for the reasons that I've just indicated, my
18 oral findings, those are my findings with -- those are my
19 specific findings with regard to the evidence that I find
20 supports the Commonwealth's position that at the required
21 finding stage, they've been able to meet their burden.

22 So I'm not going to make written findings, but those are
23 my oral findings.

24 Attorney Hall, any evidence from the defense?

25 MR. HALL: No. We'd rest.

1 issue, he was never charged with negligent operation. It's not
2 on the -- it is not part of this case.

3 So if he was such a danger and he was operating so
4 erratically, there was such concern from the Commonwealth, they
5 did not charge him with negligent operation. They simply
6 charged him with an OUI.

7 And I think that the argument, again, trying to bootstrap
8 the fact that, oh, he went off the road presumably at some rate
9 of speed is not evidence that you should be considering.

10 The fact is it was snowy, it was icy, he went off the
11 road, got stuck. And again, at the time of the incident, the
12 Court has to find that he was under the influence. If he went
13 into his house and drank, then so be it.

14 But the fact is at the time, there's no evidence before
15 this Court. And again, not charged with negligent operation.
16 Officers simply charged him with OUI and alcohol in possession,
17 and that was it.

18 So in light of that, Judge, I think that the Court should
19 find him not guilty and discharge my client from this case.

20 THE COURT: All right. Thank you, Attorney Hall.

21 VERDICT

22 THE COURT: After trial, I'm satisfied the Commonwealth
23 has met their burden. I'm satisfied --

24 THE COURT OFFICER: Stand up.

25 THE COURT: -- that they've proven their case --

1 THE COURT OFFICER: Stand up.

2 THE COURT: -- beyond a reasonable doubt.

3 THE COURT OFFICER: Stand up.

4 THE COURT: It is circumstantial. It is a circumstantial
5 case, but I'm satisfied that it's a reasonable inference to
6 draw, given the level of intoxication that the officer
7 testified to, his observations that the defendant had a strong
8 odor of alcohol on his breath. He failed the two field
9 sobriety tests. He had bloodshot eyes. He was unsteady on his
10 feet.

11 And all of this is observed by the officer approximately
12 half an hour after Mr. Vincent is first observed getting out of
13 his truck.

14 I think it's also fair to -- fair to infer, and I am
15 entitled based on the ruling in the *Belliveau* case, of
16 inferring that he was operating in that state on a public way
17 soon before entering the Mountain Grove Association property.

18 As testified to, Route 8 is a public way. Access from
19 Route 8 and other public ways is the sole means by which one
20 would gain access to the Grove Association, homeowners
21 association property.

22 So I think it's also fair to draw that inference, that
23 within a short time period before the officer arrived at his
24 house, he was under the influence, both while he was on the
25 Association ways and on public ways. So that's my ruling. I'm

1 satisfied the Commonwealth has met their burden, and I find him
2 guilty of operating under the influence.

3 Okay. So he's charged with OUI third offense, I think.
4 Is that right?

5 MS. ROSE: That's correct, your Honor.

6 THE COURT: All right. Attorney Hall, does he move for a
7 separate trial on that?

8 MR. HALL: Absolutely, Judge. Under 278, 11A, he has an
9 absolute right to a separate trial. I'd ask you to stay any
10 execution of sentence.

11 It is objectionable, in terms of moving for sentencing at
12 this point, because as of right now, it's a simple conviction
13 for an OUI first. He is going to elect for jury trials on both
14 of those matters, and I'll try those cases in due course. I'd
15 ask you to stay the sentence --

16 THE COURT: I don't think he's entitled to a jury trial on
17 the issue of second offense once he's waived.

18 MR. HALL: I think he is, Judge. I think he absolutely
19 has that right to a jury trial. I checked with appellate
20 counsel just recently.

21 THE COURT: Do you think you can have a bench trial on the
22 issue of OUI and a jury trial on the issue of second offense?

23 MR. HALL: It doesn't say I can't.

24 THE COURT: Yeah. I don't believe he's --

25 MR. HALL: And quite honestly, Judge, I will be appealing