COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

MIDDLESEX COUNTY NO. 2026-P-0699

COMMONWEALTH

v.

RYAN VIBBER

APPLICATION FOR DIRECT APPELLATE REVIEW

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June 8, 2026

REQUEST FOR DIRECT APPELLATE REVIEW

Ryan Vibber, appellant in Docket No. 2026-P-0699, seeks direct appellate review of the denial of a certain motion filed in Lowell District Court (entitled "Motion for Reimbursement of Driver Alcohol Education Fee and License Reinstatement Fee"), pursuant to Mass.R.App.P. 11. Review by this Court is particularly appropriate for two reasons.

First, the case raises the question of whether the invalidation of a conviction or plea requires the Commonwealth to reimburse a Defendant for fees paid to private parties, an issue which this Court expressly left undecided, while observing that "it may not be long before we confront a case that demands [its] resolution". Commonwealth v. Martinez, 480 Mass. 777, 789-90 (2018). This is precisely such a case.

Second, Mr. Vibber's OUI plea was invalidated pursuant to Commonwealth v. Hallinan, 491 Mass. 730 (2023), which recognized that egregious government misconduct by OAT "impacted thousands of OUI prosecutions" (Id., at 746), and since countless other Defendants with meritorious Hallinan motions will likewise seek reimbursements, this case unquestionably presents a question of public interest.

STATEMENT OF PRIOR PROCEEDINGS

On August 7, 2012, the Lowell District Court issued a Criminal Complaint against Mr. Vibber, which alleged, in part, operation of a motor vehicle while under the influence of liquor (hereinafter, "OUI") (28)[1]. On February 25, 2013, Mr. Vibber tendered a plea, and the charge of OUI was continued without a finding, pursuant to G.L. c.90, s.24D (24, 9-11). As a term of his probation, Mr. Vibber was required to attend the Driver Alcohol Education Program (hereinafter, "DAEP") (24, 29-30). And his driver's license was suspended (24, 29-31).[2] On July 20, 2023, Mr. Vibber filed a Motion for a New Trial (25, 32-34). On August 22, 2023, Mr. Vibber's Motion for New Trial was allowed without objection from the Commonwealth (25).

On December 7, 2023, Mr. Vibber filed a Motion to Suppress (27). On December 19, 2023, at the hearing on said motion, the Commonwealth was not prepared to

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1 Mass.R.App.P. 11 provides that: "[a] copy of the docket entries shall be appended to the application [for further appellate review]", and that "[t]he applicant shall also append a copy of any written decision, memorandum, findings, rulings, or report of the lower court relevant to the appeal".

2 G.L. c.90, s.33(36) conditions the reinstatement of any license suspended under G.L. c.90, s.24D, on the payment of $500.00.

go forward, and the OUI count pending against Mr. Vibber was dismissed (25).

Subsequently[3], Mr. Vibber filed a "Motion for Reimbursement of Driver Alcohol Education Fee and License Reinstatement Fee", in Lowell District Court, along with a series of exhibits, including a supporting affidavit signed by Mr. Vibber, attachments thereto, and a series of proposed orders (41-65). On March 25, 2025,[4] a hearing took place on said motion, over which the Honorable Leo Fama presided. On March 26, 2025, Mr. Vibber's motion for reimbursement was denied (27, 66).

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3 The docket does not reference the filing of this motion, and therefore does not provide a date.

4 This date appears on the docket. Although the transcript of the hearing on Mr. Vibber's motion dates the hearing to April 22, 2025, this appears to be inaccurate, insofar as Judge Fama's denial of the motion is dated March 26th.

Thereafter[5], Mr. Vibber filed a "Motion for Rulings" (27, 67-68). On April 4, 2025, the motion was denied (27, 67). On April 23, 2025, Mr. Vibber filed a Notice of Appeal, relative to the denial of his "Motion for Reimbursement of Driver Alcohol Education Fee and License Reinstatement Fee" (27, 69). And on May 19, 2026, the present appeal was entered on the docket of the Appeals Court.

SHORT STATEMENT OF FACTS RELEVANT TO THE APPEAL

On August 7, 2012, Mr. Vibber was charged in a Complaint alleging OUI, listing August 7, 2012, as the date of offense (28). On February 25, 2013, Mr. Vibber tendered a plea on the charge of OUI liquor in Lowell District Court, whereupon the charge was continued without a finding, pursuant to G.L. c.90, s.24D, as a result of which he incurred a 210 day license loss and was ordered to attend the DAEP (24, 29-31). On July 20, 2023, he moved for a new trial pursuant to Commonwealth v. Hallinan, 491 Mass. 730 (2023), alleging that he would have rationally pursued

[5] The record is ambiguous as to the date on which the Motion for Rulings was filed. The motion is dated April 4, 2025, and the docket's first reference to this filing is dated April 11, 2025. However, the next entry appearing on the docket states that the motion was denied on April 4th.

a trial had he known of the egregious misconduct of the Office of Alcohol Testing, which rendered his breath test result inadmissible (25, 32-34). On August 22, 2023, the motion was allowed. On December 19, 2023, the OUI charge was dismissed (26).

Mr. Vibber moved, in Lowell District Court, for reimbursement of the $993.00 fee he had paid to attend the DAEP, and reimbursement of the $500.00 license reinstatement fee he had tendered to the RMV, including with his motion a signed affidavit (41-65). His motion asserted that he tendered a plea to the charge of OUI liquor, that the Court allowed his subsequent Motion for New Trial, and that it later entered a dismissal for lack of prosecution (1). Mr. Vibber argued that both the DAEP fee and license reinstatement fee were exacted as a consequence of an invalidated plea, that his interest in reimbursement outweighed the government's interest in withholding same, and that the Commonwealth must therefore reimburse him, pursuant to Nelson v. Colorado, 137 S. Ct. 1249 (2017) (41-65). And he asserted that he is entitled to reimbursement under the Due Process provisions of the Fifth and Fourteenth Amendments of the United States Constitution, as well as the Due

Process protections enshrined in Article 12 of the Massachusetts Declaration of Rights (41-42).

His supporting affidavit avers that his conviction is no longer valid (60). It establishes that he is requesting reimbursement for fees assessed as a result of his plea (60). It states the amount of the requested refund (60). And it affirms that he paid the fees for which he seeks reimbursement (60). Also, it explains that he sought a refund from both the DAEP and RMV, via telephone, and via written letters (which he attached as exhibits), but received no refund (61-62).

Mr. Vibber served his motion and affidavit upon the Commonwealth, counsel for the District Court Department of the Trial Court, counsel for the Massachusetts State Police, the Office of Alcohol Testing, the Office of General Counsel for the Massachusetts Department of Transportation, the Massachusetts Attorney General, the Office of the Comptroller, and the RMV (59).

ISSUES OF LAW, AND WHETHER THEY WERE PROPERLY RAISED AND PRESERVED IN THE LOWER COURT

Mr. Vibber's appeal raises two issues: 1) whether Nelson v. Colorado, 137 S. Ct. 1249 (2017), requires the Commonwealth to reimburse Mr. Vibber for the fee he paid the DAEP, in order to attend this program, and 2) whether Nelson requires the Commonwealth to refund the license reinstatement fee which Mr. Vibber tendered to the RMV.

Mr. Vibber properly raised both issues by filing a motion in the lower court, and by satisfying the initial burden of production articulated in Commonwealth v. Martinez, 480 Mass. 777 (2018), as demonstrated, infra. The question of issue preservation is not implicated. When a motion is denied in the trial court, Massachusetts law does not require the moving party to register any formal objection in order to preserve the issue for appeal.

ARGUMENT

I.

AFTER MR. VIBBER'S PLEA TO OUI LIQUOR WAS VACATED, THE COURT ERRED IN DENYING HIS MOTION FOR REIMBURSEMENT OF THE DRIVER ALCOHOL EDUCATION FEE PURSUANT TO NELSON V. COLORADO, BECAUSE THIS FEE WAS "EXACTED UPON, AND AS A CONSEQUENCE OF," HIS PLEA, AND BECAUSE THE *BALANCING TEST* EMPLOYED IN NELSON WEIGHS IN HIS FAVOR.

a) Nelson and other binding precedent entitle Mr. Vibber to reimbursement for the DAEP fee.

When a criminal conviction is invalidated and no retrial will occur, the government must reimburse fees, court costs and restitution, "exacted from the defendant upon, and as a consequence of, the conviction". Nelson v. Colorado at 1252. Nelson held that a Defendant's request for such reimbursement is "govern[ed]" by Mathews v. Eldridge, 96 S.Ct. 893 (1976), which employed a three part balancing test. Nelson, at 1255. Because that test weighed in favor of the Nelson petitioners, they were entitled to relief. Id., at 1258.

The first prong of Matthews considers "the private interest affected", and the Court recognized the petitioners' "obvious" interest in reimbursement. Id., at 1255-7. The second prong evaluates "the risk of erroneous deprivation of that interest through the procedures used", and since Colorado's "Exoneration Act" offered the petitioners no feasible opportunity to recoup their funds, Nelson found a risk of erroneous deprivation. Id. And as to the third prong, which weighs the "governmental interest at stake", Colorado, wrote the Court, had no interest in withholding reimbursement of monies to which it has "zero claim of right". Id.

In Massachusetts, to launch a request for reimbursement pursuant to Nelson, a Defendant must 1) attest that his conviction is neither still valid nor subject to retrial, 2) attest that he seeks reimbursement for monies assessed solely as a result of an invalidated conviction, 3) state the amount requested, and 4) state that he paid this amount. Martinez, at 793-4. Thereafter, Nelson entitles a Defendant to reimbursement of all "monies" generally, where paid solely as a consequence of an invalidated conviction, unless the government satisfies its burden to prove otherwise. Martinez, at 784-5.

Because Mr. Vibber satisfied his initial burden of production,[6] and the government failed to satisfy its burden of disproving that the DAEP fee was exacted as a consequence of his plea, all binding precedent, including Nelson, would hold that Mr. Vibber is entitled to reimbursement of the DAEP fee.

b) Dicta questioning the scope of Nelson is irrelevant.

While Martinez held that Nelson required the state to reimburse restitution which the Defendant had paid to the Haverhill Police Department, in *obiter*

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[6] There is "no chance" of a retrial "within the meaning of Nelson and Martinez". See Commonwealth v. Nieves, 486 Mass. 1006, 1008 (2020). Following the dismissal of Mr. Vibber's OUI charge, the Commonwealth declined to seek a new Complaint.

dictum, it added that "it is another matter to order the Commonwealth to repay a defendant for restitution that the Commonwealth never received because that restitution was paid to a private victim". Id., at 789-90. And one might be tempted to assume that reimbursement of any fee which would result in a similar economic loss to the state (including Vibber's DAEP fee) stands on equal footing.

But Commonwealth v. Dragotta, 96 Mass. App. Ct. 154 (2019), the only case which has so far interpreted the Martinez dicta, unequivocally rejected this view, holding that when a Defendant pays probation fees to a foreign state, and his conviction is overturned, Nelson requires the state to accept the loss and reimburse the Defendant. Id., at 156-7. Dragotta observed that probation fees are "easily distinguishable" from restitution, since they "defray the costs associated with the provision of services to probationers", whereas restitution constitutes "money or services which a court orders a defendant to pay or render to a victim as part of the disposition". And DAEP fees are equally distinguishable from restitution, for precisely the same reason. In fact, the Court cannot fairly reject Mr. Vibber's claim, on grounds that his DAEP fee is equivalent to restitution paid to a private party, unless it overrules Dragotta.

c) Dicta questioning the scope of Nelson is unpersuasive in any event, and should not be adopted.

If, contrary to Dragotta, this Court reads the Martinez dicta to question whether a Defendant is entitled to reimbursement of fees where the Commonwealth would thereby incur an economic loss, the Court should decline to adopt this dicta. The only argument offered by Martinez, to suggest that Nelson doesn't necessarily require the state to reimburse Defendants for monies it ordered them to pay to third parties, is *unpersuasive*. Martinez acknowledges that all restitution paid by the Nelson petitioners were received by the victims (or their service providers), and that the Supreme Court did order Colorado to reimburse the petitioners. Martinez, at 789. But Martinez conjectures that the Supreme Court *mistakenly believed* that the restitution (which was, in fact, collected from the petitioners by the state before being distributed to the victims) remained in the state's coffers at all times. Id. Martinez draws this inference because Nelson contains language to the effect that Colorado is not permitted to "retain" monies collected from the petitioners. Id. And if the Supreme Court majority had appreciated that Colorado had divested itself of the restitution it collected from the petitioners, the Court would not necessarily have required the state to reimburse the petitioners, or so the Martinez dicta implies.

But language in Nelson, that Colorado cannot "retain" the petitioners' money, is hardly sufficient to support the grand proposition that the Supreme Court failed to appreciate that Colorado transferred the restitution to the victims. Nelson never suggested that Colorado had retained restitution monies in particular, and may have been referring to court costs and other fees. And even as to restitution, an assertion that the government may not "retain" such monies need not necessarily imply actual possession of them. Indeed, Martinez itself casually speaks about whether the Commonwealth must "refund" restitution paid to a private victim (Martinez, at 789) even though the verb "refund", if taken literally, presumes that the restitution was received by the Commonwealth.

Moreover, there are several affirmative indications that the Nelson majority knew Colorado had transferred the restitution to the victims and their service providers. First, Martinez concedes that both Colorado Supreme Court opinions under review stated this explicitly (Martinez, at 789), and since the majority opinion in Nelson cites from these very paragraphs, it must surely have read them.[7]

Second, Justice Alito's concurrence laments that the majority opinion requires the state to "foot the bill" when it reimburses Defendants for restitution (Nelson, at 1263), so the majority cannot have been unaware that its decision would have this effect.

Third, "restitution", by its nature, is necessarily received by a crime victim, and since both petitioners in Nelson had been convicted of sex offenses (Nelson, at 1252-3), the Supreme Court must have known that any restitution would remit to the private victims rather than to the state of Colorado.

Fourth, if the Nelson majority mistakenly believed that Colorado had retained all restitution,

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[7] "Between Nelson's conviction and acquittal, the Colorado Department of Corrections withheld $702.10 from her inmate account, $287.50 of which went to costs and fees and $414.60 to restitution. See 362 P. 3d, at 1071, and n. 1. Following Madden's conviction, Madden paid Colorado $1,977.75, $1,220 of which went to costs and fees and $757.75 to restitution. See 364 P. 3d, at 867. Nelson, as 1253.

it would not have issued a needlessly overinclusive holding, couched in the passive voice, requiring the state to reimburse any restitution "exacted from" a Defendant. Nelson, at 1252.

And fifth, other Courts have not generally contested that Nelson requires the state to reimburse for restitution paid to private victims. People v. Billups-Dryer, ...N.E.3d... (2025), which recently held that the state must provide reimbursement in this context, noted its efforts to find decisions from other jurisdictions, to assist it in interpreting Nelson. Id., at paragraph 25.[8] It references only a single decision which read Nelson to permit the government to withhold reimbursement of restitution received by a crime victim, namely United States v. Medicine Horn, No. CR 98-40126, 2019 WL 981643, *1 (D. S.D. Feb. 28, 2019). And Medicine Horn only declined to order the state to reimburse the Defendant because it *misread* Nelson, incorrectly concluding that "the restitution funds in that case had not been dispersed and were still possessed by the State of Colorado". Medicine Horn, at 2; B.A. 125.

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[8] No official page citation is available at this time.

d) Dicta questioning the scope of Nelson, even if adopted, cannot defeat Mr. Vibber's claim.

Even if this Court finds that the Nelson majority incorrectly believed that Colorado had retained the petitioners' restitution (as the Martinez dicta posits), it must ask whether the Supreme Court would require the Commonwealth to reimburse Mr. Vibber for the DAEP fee he paid. His claim, like that of the Nelson petitioners, is governed by Mathews, which employed a three part balancing test. Under the first prong, Mr. Vibber has an obvious interest in recouping his loss, now that his plea has been invalidated, and no retrial will occur. As to the second prong, he faces the risk of an erroneous deprivation (of his interest in reimbursement) if he is denied relief on appeal, since Massachusetts law provides no other avenue by which he might be reimbursed.[9] The third prong weighs the government's interest in declining reimbursement to Mr. Vibber. And the government's interest is debatable at best, given that it awarded Mr. Vibber a new trial precisely because of the

[9] G.L. c.258D provides a form of relief to certain persons who suffer an erroneous felony conviction, but Mr. Vibber was neither "convicted", nor charged with a *felony*.

egregious governmental misconduct of the Office of Alcohol Testing (hereinafter, "OAT"), as outlined Commonwealth v. Hallinan 491 Mass. 730 (2023).[10] So Mathews' balancing test clearly weighs in favor of Mr. Vibber.

II.
AFTER MR. VIBBER'S PLEA TO OUI LIQUOR WAS VACATED, THE COURT ERRED IN DENYING HIS MOTION FOR REIMBURSEMENT OF THE RMV LICENSE REINSTATEMENT FEE PURSUANT TO NELSON V. COLORADO, BECAUSE THIS FEE WAS "EXACTED UPON, AND AS A CONSEQUENCE OF," HIS PLEA, AND BECAUSE THE *BALANCING TEST* EMPLOYED IN NELSON WEIGHS IN HIS FAVOR.

The Commonwealth must refund the license reinstatement fee which Mr. Vibber paid the the RMV because it was exacted as a consequence of his invalidated plea. See, Nelson, at 1252. The only conceivable objection, that Mr. Vibber was never explicitly ordered to pay the license reinstatement fee, and therefore it was not paid solely as a consequence of his invalidated conviction, was

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[10] While space constrains preclude an exhaustive survey of OAT's misconduct here, suffice it to say that its "intentional withholding of exculpatory evidence ..., blatant disregard of court orders, and other misconduct ... undermined the criminal justice system in the Commonwealth, compromised thousands of prosecutions for OUI offenses, and potentially resulted in inaccurate convictions". Hallinan, at 741, 45-6.

squarely rejected in Nieves, which held that Nelson required reimbursement of *parole fees* tied to an invalidated conviction (even though the Defendant could have chosen to forego parole and thereby incur no fee). Nieves, at 1007-8.

Mr. Vibber's license reinstatement fee must also be refunded because under the Mathews balancing test, his interests clearly outweigh those of the government. The government has no legitimate interest whatever in denying Mr. Vibber a refund, where it still holds the monies it exacted from him.

REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Mass.R.App.P. 11(a) permits an appellant to request direct appellate review where an appeal presents "questions of such public interest that justice requires a final determination by the full Supreme Judicial Court". This standard is fully satisfied in Mr. Vibber's case. Hallinan recognized that OAT's misconduct impacted *thousands* of OUI prosecutions, and referred to the "myriad public interests at stake". Hallinan, at 746.

These thousands of OUI Defendants must each assess the feasibility of pursuing a new trial motion under Hallinan (on grounds that they might rationally have demanded a trial had their breath test results been excluded). And in many cases, their decision will turn on whether they can expect to receive the reimbursements promised by Nelson. Defendants currently straddled with work and familial obligations may be reticent to expend their energies in pursuit of exoneration, unless they are assured that they will thereafter be reimbursed for the DAEP fees and license reinstatement fees which were exacted from them as a consequence of their invalidated convictions and pleas. Indeed, one might fairly assert that this Court's commitment to rectify the injustice of OAT's misconduct requires not only a pronouncement that prejudiced defendants are entitled to a remedy (as it did in Hallinan), but that it *articulate the scope of that remedy*, as Mr. Vibber implores.

Mass.R.App.P. 11(a) also permits an appellant to request direct appellate review where an appeal presents "questions of first impression or novel questions of law". Mr. Vibber's appeal warrants direct appellate review for that reason as well. Martinez, after observing that the Defendant had been fully reimbursed for the restitution he paid to the

Haverhill Police Department following the invalidation of his conviction, observed:

> we need not decide whether Nelson requires the Commonwealth to refund restitution paid by a defendant as a consequence of an invalidated conviction where the restitution was paid not to the Commonwealth, but to a private victim ... but it may not be long before we confront a case that demands the[ ] resolution [of this issue]".

Martinez, at 789-90.

Although Mr. Vibber is seeking reimbursement for a DAEP fee rather than restitution, he is in the same proverbial boat. Defendants who were obliged to pay third parties as a consequence of an invalidated conviction, whether in the form of restitution or a DAEP fee, continue to face *uncertainty* as to whether the government must reimburse them. Until the law is clarified, the Commonwealth can always argue that Martinez casts doubt on whether the state must provide reimbursement in instances where it would thereby incur an economic loss.

And finally, Mass.R.Crim.P. 11(a) permits an appellant to request direct appellate review where an appeal involves "questions of law concerning the Constitution of the Commonwealth or questions concerning the Constitution of the United States which have been raised in a court of the Commonwealth". Mr.

Vibber's denied motion asserts that he is entitled to reimbursement under Nelson, which, in turn, predicated relief on Fifth Amendment Due Process, applicable to the states by way of the Fourteenth Amendment. Nelson, at 1252. In the alternative, he argued, that he is entitled to reimbursement pursuant to Article 12 of the Massachusetts Declaration of Rights. He requests direct appellate review on these grounds as well.

Respectfully submitted,
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By his attorney,
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Dated: June 8, 2026

CERTIFICATE OF COMPLIANCE

I hereby certify that, to the best of my knowledge, this brief complies with the rules of court pertaining to the filing of applications for direct appellate review, including, Mass.R.App.P. 11(b). Compliance with the length limit of Rule 11(b) was ascertained by employing Courier New typeface, in 12 pitch font, not exceeding 10.5 characters per inch, and confining all non-excluded pages to a number not exceeding ten (10).

/s/ John M. Corridan

CERTIFICATE OF SERVICE

I hereby certify that I have made service on counsel for each other party by electronically serving said brief and record appendix upon the Office of the District Attorney for Middlesex County. I further certify that I have mailed a copy of said brief and record appendix, first class, postage prepaid, to:

District Court Department of the Trial Court; Two Center Plaza; Suite 540; Boston MA 02108;

Massachusetts State Police; 470 Worcester Rd.; Framingham, MA 01702;

Office of Alcohol Testing; Massachusetts State Police; 124 Acton Street; Maynard, MA 01754;

MassDOT; Office of General Counsel; 10 Park Plaza; Suite 3510; Boston, Massachusetts, 02116; Attn: Litigation Center of Excellence;

Massachusetts Attorney General; One Ashburton Place; Boston, MA 02108;

Office of the Comptroller; One Ashburton Place; Boston, MA 02108; and

Massachusetts Registry of Motor Vehicles; 136 Blackstone Street; Boston, MA 02109.

Subscribed under the pains and penalties of perjury, this 8th day of June, 2026.

/s/ John M. Corridan

CRIMINAL DOCKET	DOCKET NUMBER 1211CR004764	NO. OF COUNTS 3	Trial Court of Massachusetts District Court Department

DEFENDANT NAME AND ADDRESS	DOB	GENDER	COURT NAME & ADDRESS
Ryan Vibber 23 Baldwin St Tewksbury, MA 01876	10/09/1992	Male	Lowell District Court 41 Hurd Street Lowell, MA 01852
	DATE COMPLAINT ISSUED 08/07/2012		
	PRECOMPLAINT ARREST DATE 08/07/2012		INTERPRETER REQUIRED

FIRST FIVE OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	90/24/J	OUI-LIQUOR OR .08% c90 §24(1)(a)(1)	08/07/2012
2	90/24/E	NEGLIGENT OPERATION OF MOTOR VEHICLE c90 §24(2)(a)	08/07/2012
3	90/24/C	LEAVE SCENE OF PROPERTY DAMAGE c90 §24(2)(a)	08/07/2012

DEFENSE ATTORNEY	OFFENSE CITY/TOWN	POLICE DEPARTMENT
Y. Mercure	Tewksbury	Tewksbury PD

DATE & JUDGE	DOCKET ENTRY		DATE & JUDGE	FEES IMPOSED
8/7/12 J Brennan	☒ Attorney appointed (SJC R. 3:10) ☐ Atty denied & Deft. Advised per 211 D §2A ☐ Waiver of Counsel found after colloquy		8/7/12	Counsel Fee (211D § 2A¶2) 150 ☐ WAIVED Counsel Contribution (211D § 2) $ ☐ WAIVED
	Terms of release set:	☐ PR ☐ Bail ☐ See Docket for special condition ☐ Held (276 §58A)		Default Warrant Fee (276 § 30¶1) $ ☐ WAIVED Default Warrant Arrest Fee (276 § 30 ¶2) $ ☐ WAIVED
8/7/12	Arraigned and advised:	☐ Potential of bail revocation (276 §58) ☐ Right to bail to review (276 §58) ☐ Right to drug exam (111E § 10)	2/25/13 (Prince)	Probation Supervision Fee (276 § 87A) $ 65 per month ☒ WAIVED Bail Order Forfeited
	Advised of right to jury trial	☒ Waiver of jury found after colloquy ☐ Does not waive	2/25/13 (Prince)	C S allowed for: 1) Agalliu = 15 Hrs 2) PSF = 96 Hrs
	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	08/07/2012	Arraignment	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		
2	10/3/12	PTH	☒ Held ☐ Not Held but Event Resolved ☐ Cont'd		
3			☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		
4	12/18/12	CWOF	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		
5			☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		
6	2/25/13	G	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		
7			☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		
8	2/25/14	PR	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		
9			☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		
10			☐ Held ☐ Not Held but Event Resolved ☐ 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 WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.

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1211CR004764

23

CRIMINAL DOCKET - OFFENSES	DEFENDANT NAME	DOCKET NUMBER
	Ryan Vibber	1211CR004764

COUNT / OFFENSE 1 OUI-LIQUOR OR .08% c90 §24(1)(a)(1)

DISPOSITION DATE AND JUDGE: 2/25/13 ([illegible])

DISPOSITION METHOD

- ☐ Guilty Plea or ☑ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
			$250	$50
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**
$250		$50		

SENTENCE OR OTHER DISPOSITION

- ☑ Sufficient facts found but continued without a finding until: 2/25/14
- ☐ Defendant placed on probation until:
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

ASAP 24-D (under 21) 210 day loss of license 1/2 day [illegible]

FINDING

- ☐ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE: 2/25/14

- ☑ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☑ ~~Sentence or disposition revoked (see cont'd page)~~

([illegible]) 8/27/13

COUNT / OFFENSE 2 NEGLIGENT OPERATION OF MOTOR VEHICLE c90 §24(2)(a)

DISPOSITION DATE AND JUDGE: 2/25/13 ([illegible])

DISPOSITION METHOD

- ☐ Guilty Plea or ☑ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION

- ☑ Sufficient facts found but continued without a finding until: 2/25/14
- ☐ Defendant placed on probation until:
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

[illegible] ct 1

FINDING

- ☐ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE: 2/25/14

- ☑ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☑ ~~Sentence or disposition revoked (see cont'd page)~~

8/27/13 ([illegible])

COUNT / OFFENSE 3 LEAVE SCENE OF PROPERTY DAMAGE c90 §24(2)(a)

DISPOSITION DATE AND JUDGE: 2/25/13 ([illegible])

DISPOSITION METHOD

- ☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☑ Dismissed upon:
  - ☑ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - Other: of consent of defendant
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION

- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until:
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING

- ☐ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE

- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Ryan Vibber	DOCKET NUMBER 1211CR004764

DATE	DOCKET ENTRIES
2/25/13	Last Drink: Private.
	No license to suspend
	(Private)
4-16-13	(M) to allow out of state
	travel + waive fees is
	allowed
7/20/23	Motion new Trial - put on 8/22/23
8/22/23 (1)	Δ's motion for a new trial as to Ct #1
	+ 2 - allowed w/o objection by CW (Coffey)
9/12/23	Status - SJ Δs app waived
8/25/23	Motion to reconsider motion filed
9/29/23	Mtn to Reconsider (atty: J Coffey)
9-29-23	Mot to Reconsider Allowed Cts 2+3 closed (Coffey, J)
10-30-23	PTH
10/30/23	(1) PTCR
	(Rabbitt, J)
12/21/23	(JT) (OCC 11/21/23)
11/2/23	Δ Mot ATC - put on 11/9/23
11/9/23 (1)	Δ's motion to ATC - allowed (Chan J)
12/19/23	MTS - SJ

12/19/23 MTS [illegible]

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: 08-07-2012 09:52:48

1211CR004764

Vers.cn 2.0 - 11/06/

DOCKET CONTINUATION	NAME OF CASE Ryan Vibber	DOCKET NUMBER 1211CR 4764

NO.	DATE	DOCKET ENTRIES
	12/19/23	CW not ready on MTS. D's motion only addressed Ct. 1 (Cts. 2+3 already closed) Ct. 1 is now dismissed (Bailey, J.)
	12/21/23	D's Motion to Refund - put on 1/22/24 9:00 am
	12/21/23	Clarification of Motion for New Trial:
		1) On 8/22/23 Motion for new trial on Cts. 1+2 was allowed by Judge Coffey
		2) On 9/29/23 - CW's Motion to reconsider Motion for new trial was allowed. Therefore Ct 2 remains as a CWOF as stated on the docket & the count remains closed. Also Ct 3: remains dismissed as of 2/25/13. (Coffey J)
		3) Ct 1: is the only count in which the Motion for New Trial was allowed. Finding + disposition were vacated. Case restored to the trial list as of 8/22/23 (Coffey J)
		4) As to Ct 1 - on 12/19/23 Case was on for MTS. Court ruled CW did not answer ready for Motion. Complaint

CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME RYAN VIBBER	DOCKET NUMBER 12-4764

DATE	DOCKET ENTRIES
1/22/24	Δ's motion for Corrected Abstract + Δ's motion for a Refund.
12/22/2023	Revised Abstract issued to RMV (JR)
1/22/24	No action: abstract be already corrected (1) Mtn for Refund - allowed (Coffey J)
1/23/24	$1,530. - ck# 17,734 mailed to defendant as refund for invalid conviction, motion allowed by Judge Coffey. (MC)
3/25/25	Mtn for Reimbursement of DAE Fees lic Reinstatement Fee (Attn: J Coffey)
3.26.25	MTN for reimbursement of DAE fee + lic denied (Fama J)
4/11/25	Mtn for Rulings (attn J Fama)
4/4/25	Bfd MTN for Rulings denied (Fama J)
4/23/25	Notice of Appeal filed

APPROVED ABBERIVATIONS
ARR = Arraignment PT= Pretrial hearing CE = Discovery compliance & jury selection T = Bench trial JT = Jury trial PC = Probable cause hearing M = Motion hearing SR= Status review
SRP = Status review of payments FA = First appearance in jury session S = Sentencing CW = Continuance-without-finding scheduled to terminate P = Probation scheduled to terminate
DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PR = probation revocation hearing

CRIMINAL COMPLAINT ORIGINAL	DOCKET NUMBER 1211CR004764	NO. OF COUNTS 3	Trial Court of Massachusetts District Court Department

DEFENDANT NAME & ADDRESS Ryan Vibber 23 Baldwin St Tewksbury, MA 01876				COURT NAME & ADDRESS Lowell District Court 41 Hurd Street Lowell, MA 01852 (978)459-4101
DEFENDANT DOB 10/09/1992	COMPLAINT ISSUED 08/07/2012	DATE OF OFFENSE 08/07/2012	ARREST DATE 08/07/2012	
OFFENSE CITY / TOWN Tewksbury	OFFENSE ADDRESS			NEXT EVENT DATE & TIME 08/07/2012 9:00 AM
POLICE DEPARTMENT Tewksbury PD		POLICE INCIDENT NUMBER 12-38002		NEXT SCHEDULED EVENT Arraignment
OBTN TTEW201202857				ROOM / SESSION Arraignment Session

The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date(s) indicated below the defendant committed the offense(s) listed below and on any attached pages.

COUNT	CODE	DESCRIPTION
1	90/24/J	OUI-LIQUOR OR .08% c90 §24(1)(a)(1)

On 08/07/2012 did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, in violation of G.L. c.90, §24(1)(a)(1).

PENALTY: imprisonment for not more than 2½ years; or not less than $500, not more than $5000 fine; or both imprisonment and fine; plus $50 Victims of Drunk Driving Assessment; plus (if OUI $250 Head Injury Assessment; no filing or continuance without a finding; and license revoked for 1 year. §24Q: Defendants with a blood alcohol level of .20% must also attend alcohol or drug assessment by DPH or other court-approved program. §24D alternative disposition: If defendant eligible, after guilty finding or continuance without a finding, judge may allow as alternative: probation not more than 2 years, plus driver alcohol or controlled substance abuse education program, or alcohol or controlled substance abuse treatment or rehabilitation program, or both, plus its program fee, plus $250 assessment for apprehension, treatment and rehabilitation programs, plus $50 Victims of Drunk Driving Assessment, plus (if OUI $250 Head Injury Assessment, plus license suspended for not less than 45 days, not more than 90 days (or for 210 days, if defendant under age 21 on offense date . Defendants aged 17-21 with a blood alcohol level of .20% or more must attend a "14-day second offender in-home program."

2 90/24/E NEGLIGENT OPERATION OF MOTOR VEHICLE c90 §24(2)(a)

on On 08/07/2012: did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or in a place to which members of the public have access as invitees or licensees, negligently, so that the lives or safety of the public might be endangered, in violation of G.L. c.90, §24(2)(a).

(PENALTY: imprisonment for not less than 2 weeks, not more than 2 years; or not less than $20, not more than $200, plus $250 Head Injury Treatment Services Trust Fund surcharge; or both imprisonment and fine; subsequent offense may not be filed or continued without a finding except upon motion and judge's certificate that such is in the interests of justice; RMV may (and shall unless judge recommends otherwise) revoke license for 60 days or, for subsequent offenses within 3 years, for 1 year, subject to reinstatement after investigation; RMV may revoke registration if defendant is owner or has exclusive control of vehicle. For violations on and after 3/31/07, RMV shall suspend junior operator's license or learner's permit 90 days for first offense and 1 year for subsequent offense; junior operator must also complete attitudinal change program.)

3 90/24/C LEAVE SCENE OF PROPERTY DAMAGE c90 §24(2)(a)

On 08/07/2012 did operate a motor vehicle upon a way, as defined in G.L. c.90, §1 or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, and did go away without stopping and making known his or her name, residence and the register number of his or her motor vehicle, after knowingly colliding with or otherwise causing injury to the vehicle or property of Paul Mirabella, in violation of G.L. c.90, §24(2).

PENALTY: imprisonment for not less than 2 weeks, not more than 2 years; or not less than $20, not more than $200; or both; subsequent offense may not be filed or continued without a finding except upon motion and judge's certificate that such is in the interests of justice; RMV may (and shall unless judge recommends otherwise revoke license for 60 days or, for subsequent offenses within 3 years, for 1 year; RMV may revoke registration if defendant is owner or has exclusive control of vehicle.

SIGNATURE OF COMPLAINANT X	SWORN TO BEFORE CLERK-MAGISTRATE/ASST.CLERK/DEP. ASST. CLERK X		DATE 8/7/12
NAME OF COMPLAINANT	A TRUE COPY ATTEST	CLERK-MAGISTRATE/ ASST. CLERK X	DATE

Notice to Defendant: *42 U.S.C. § 3796gg-4(e) requires this notice: If you are convicted of a misdemeanor crime of domestic violence you may be prohibited permanently from purchasing and/or possessing a firearm and/or ammunition pursuant to 18 U.S.C. § 922 (g) (9) and other applicable related Federal, State, or local laws.*

TENDER OF PLEA OR ADMISSION & WAIVER OF RIGHTS	DOCKET NO. 1211 CR 4764	**Trial Court of Massachusetts District Court Department**

NAME OF DEFENDANT
Ryan Vibber

COURT DIVISION
Lowell District Court
41 Hurd Street
Lowell, MA. 01852

[illegible]

Defendant tenders the following: ☐ **PLEA OF GUILTY** ☐ **ADMISSION TO FACTS SUFFICIENT FOR A FINDING OF GUILTY**

COUNT NO.	**DEFENDANT'S RECOMMENDATION(s)** *(Include all fees, costs and conditions of probation)*	**PROSECUTOR'S RECOMMENDATION(s)** *(Required when Prosecutor disagrees with Defendant's recommendations)*	**JUDGE'S DISPOSITION** WHEN DEFENDANT'S RECOMMENDATION IS REJECTED
1	CWOF 1 yr. probation 24D under 21 210 day loss of license statutory fees / 1/2 BAR Day	Guilty 1 yr prob. 24D 210 day LOL 1/2 BAR	
2	CWOF 1 yr.	CWOF 1 yr concurrent w/ 001	
3	dismissed	dismissed	

DIST. / MUN. CTS. R. CRIM. P. 4(c) REQUIRES COUNSEL TO CONSULT WITH THE PROBATION DEPARTMENT REGARDING PROBATIONARY TERMS.

SIGNATURE OF DEFENSE COUNSEL OR PRO SE DEFENDANT	DATE	SIGNATURE OF PROSECUTOR	DATE
X Jeanine E. Mercurio	2/25/13	X [signature]	2/25/13

THE COURT ☒ **ACCEPTS DEFENDANT'S TENDER** ☐ **REJECTS DEFENDANT'S TENDER**

SIGNATURE OF JUDGE	DATE
X [signature]	2/25/13

DEFENDANT'S DECISION WHEN COURT REJECTS DEFENDANT'S RECOMMENDATION

☐ **Defendant WITHDRAWS the tendered plea or admission.** ☐ **Defendant ACCEPTS judge's disposition set forth above.**

SIGNATURE OF DEFENSE COUNSEL	DATE	SIGNATURE OF DEFENDANT	DATE
X		X	

DC-CR 22 (8/08)

SECTION II — DEFENDANT'S WAIVER OF RIGHTS (G.L. c. 263, § 6) & ALIEN RIGHTS NOTICE (G.L. c. 278, § 29D)

I am not now under the influence of any drug, medication, liquor or other substance that would interfere with my ability to fully understand the constitutional and statutory rights that I am waiving when I plead guilty, or admit to sufficient facts to support a finding of guilty.

I have decided to plead guilty, or admit to sufficient facts, freely and voluntarily upon the conditions which I have tendered in Section I. My guilty plea or admission is not the result of force or threats, promises or other assurances.

I understand and acknowledge that I am voluntarily giving up the right to be tried by a jury, or by a judge without a jury, on these charges. I understand that the jury would consist of six jurors chosen at random from the community, and that I could participate in selecting those jurors, who would determine unanimously whether I was guilty or not guilty.

I understand that by entering my plea of guilty or admission, I will also be giving up my right to confront, cross-examine, and compel the attendance of witnesses; to present evidence in my defense; to remain silent and refuse to testify or provide evidence against myself, all with the assistance of a defense attorney; and to be presumed innocent until proven guilty by the prosecution beyond a reasonable doubt.

I am aware of the nature and elements of the charge(s) to which I am entering my guilty plea or admission. I am also aware of the nature and range of the possible sentence(s); I am aware that sentences can be imposed one after the other. I have been advised if my plea of guilty or admission to the charges could trigger the provisions of the sex offender registration statute, or lifetime community parole supervision, or commitment as a sexually dangerous person under G.L. c. 123A, §12.

I understand that if I am not a citizen of the United States, the acceptance by this court of my plea of guilty, plea of nolo contendere, or admission to sufficient facts may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States.

SIGNATURE OF DEFENDANT	DATE	I have translated this document for the defendant. SIGNATURE OF INTERPRETER
x [illegible signature]	2/25/13	x

SECTION III — DEFENSE COUNSEL'S CERTIFICATE (G.L. c. 218, § 26A)

As required by G.L. c. 218, § 26A, I certify that as legal counsel to the defendant in this case, I have explained to the defendant the legal rights and consequences referred to in Section II above.

SIGNATURE OF DEFENSE COUNSEL	BBO NO.	DATE
x Jeannine E Mercure	559323	2/25/13

SECTION IV — JUDGE'S CERTIFICATION

I, the undersigned Judge of the District Court, addressed the defendant directly in open court. I made appropriate inquiry into the education and background of the defendant and am satisfied that the defendant fully understands all of the defendant's rights as set forth in Section II above, and that the defendant is not under the influence of any drug, medication, liquor or other substance that would impair the defendant's ability to fully understand those rights. I find, after a colloquy with the defendant, that the defendant has knowingly, intelligently and voluntarily waived all of the rights as explained during these proceedings and as set forth in this form.

After a hearing, I have found a factual basis for the charge(s) to which the defendant is pleading guilty or admitting and I have found that the facts as related by the prosecution and admitted by the defendant would support a conviction on the charge(s) to which the plea or admission is made.

I certify that I have advised the defendant as follows: "If you are not a citizen of the United States, you are hereby advised that the acceptance by this court of your plea of guilty, plea of nolo contendere, or admission to sufficient facts may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States."

SIGNATURE OF JUDGE	DATE
x [illegible signature]	2/25/13

ORDER OF PROBATION CONDITIONS
UPON FINDING OF GUILTY OR SUFFICIENT FACTS

☑ RISK/NEED OR OUI SUPERVISION
☐ ADMINISTRATIVE SUPERVISION

DOCKET NO(S). IN WHICH PROBATION WAS ORDERED: 1311CR4764

PROBATIONER'S NAME & ADDRESS:
Ryan Vibber
23 Baldwin St.
Tewksbury, MA 01876

DISPOSITION:
CWOF 2-25-14
PCF# 523951

Trial Court of Massachusetts
District Court Department

Lowell District Court
41 Hurd Street
Lowell, MA. 01852

TO THE ABOVE-NAMED PROBATIONER: You are hereby placed on probation by this Court. Unless you are excused by your probation officer, you must appear in court on the probation end date indicated, at which time a report on your probation progress will be made. If you fail to appear on that date or any other date required, a warrant may be issued for your arrest.

PROBATION START DATE: 2-25-13
PROBATION END DATE: 2-25-14

GENERAL CONDITIONS OF PROBATION [illegible]

1. Obey all court orders and all local, state and federal laws, including any support order, as defined in G.L. c. 119A, § 1A.
2. Report to your probation officer at such times and places as he or she requires, and make no false statements to your probation officer.
3. Notify your probation officer within 48 hours if you change residence or employment.
4. Pay any ordered Probation Supervision Fees monthly or, if permitted by the court, perform community service monthly.
5. Submit a DNA sample to the State Police, if required to do so by law. Register with the Sex Offender Registry, if required to do so by law.
6. Sign all releases necessary for supervision and verification of compliance.

[illegible]

7. Allow the probation officer to visit you in your home with or without notice.
8. Report to your probation officer within 48 hours after you are released from any incarceration. #978-944-7895
9. Do not leave Massachusetts unless you get the express permission of your probation officer and sign a waiver of rendition.

SPECIAL CONDITIONS OF PROBATION [illegible]

10. ☐ **EMPLOYMENT/SCHOOL:** Remain employed or make reasonable efforts to obtain employment or attend school, and provide verification as required.
11. ☐ **WORK/SCHOOL VISITS:** Allow the probation officer to visit your place of employment or school with or without notice.
12. ☐ **SUBSTANCE ABUSE EVALUATION/TREATMENT:** As directed by the probation officer, and subject to review by a judge on request, submit to and successfully complete any substance abuse evaluation, treatment and aftercare at a non-residential program. ☐ and/or a residential program.
13. ☐ **DRUG/ALCOHOL TESTING:** Remain ☐ drug free ☐ alcohol free. Submit to random testing as required.
14. ☐ **MENTAL HEALTH EVALUATION/TREATMENT:** ☐ Submit to evaluation ☐ Complete treatment and take medications as prescribed
15. ☒ **SPECIFIC PROGRAMS:** Complete the following program(s), including any aftercare: ☒ Driver Alcohol Education (G.L. c. 90, § 24D) ☐ 14-Day Residential Driver Alcohol Education ☐ Certified Batterer's Intervention ☐ Anger Management Treatment ☒ Other: 1/2 day [illegible]
16. ☐ **HAVE NO CONTACT WITH** ☐ and STAY *(distance)* ______ **AWAY FROM:** *(name(s))* ______
17. ☐ **COMMUNITY SERVICE:** Perform ______ hours of community service as directed by probation.
18. ☐ **HOME CONFINEMENT:** Submit to home confinement and electronic monitoring until ______ pursuant to the schedule approved by the Court.
19. ☒ **OTHER CONDITIONS:** 210 day loss of license. Report to PO Coughlin as directed beginning on 3-21-13 at 10:30 am. Verify residence and income at 1st visit.
20. Make all **FINANCIAL PAYMENTS** listed below, as directed by probation.

TYPE	AMOUNT	DUE DATE AND/OR TERMS
Counsel Fee/Contribution	$150	CS option
Default Warrant Fee	Total $1530	
Default Warrant Arrest Fee	$	by 9:00 am
Court Costs		on 2/25/14
Fine/Surfine/Civil Assessment	$	
Restitution	$	
Victim/Witness Assessment	$50	
Probation Fee & Surcharge	$65/mo (total $780)	CS option
OUI § 24D State Fee	$250	
OUI Victims Assessment	$50	
Head Injury Assessment/Surfine	$250	
Drug Analysis Fee	$	
Batterer's Program Assessment	$	

JUDGE'S SIGNATURE

SIGNATURE OF JUDGE: x [signature] DATE: 2/25/13

INTERPRETER'S SIGNATURE

SIGNATURE OF INTERPRETER, if any: I have translated the terms of this Order and the acknowledgment set forth above to the probationer prior to his/her signature.

x ______ DATE: ______

PROBATIONER'S ACKNOWLEDGMENT OF ORDER

SIGNATURE OF PROBATIONER: I have read and understand the above conditions of probation and I agree to observe them. I understand that if I violate any such condition it may result in my arrest, revocation of probation, the entry of a guilty finding (if not already entered), and the imposition or execution of sentence. I have received a copy of this Order.

x [signature] DATE: 2/25/13

PROBATION OFFICER'S SIGNATURE

SIGNATURE OF WITNESSING PROBATION OFFICER: x [signature] DATE: 2/25/13

TC-CR-27 (8/04)

COURT ORIGINAL

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

LOWELL DISTRICT COURT
Docket No: 1211CR004764

COMMONWEALTH

v.

RYAN VIBBER

2023 JUL 20 AM 8: 37
TRIAL COURT OF MASS.
DISTRICT COURT DEPT.
LOWELL DIVISION

MOTION FOR NEW TRIAL

NOW COMES, Ryan Vibber, by and through Counsel, and respectfully submits to this Honorable Court, pursuant to Mass. R. Crim. P. 30(b), the following Motion for New Trial.

The Massachusetts State Police Office of Alcohol Testing's (OAT's) egregious misconduct, which was material to the defendant's decision to admit to sufficient facts on February 25, 2013 to the above-numbered complaint rendered the defendant's admission unknowing and involuntary.

Mr. Vibber further states:

1. On August 7, 2012, Ryan Vibber was driving in Tewksbury, MA and was stopped by the police.
2. After the stop, Mr. Vibber performed field sobriety assessments.
3. Mr. Vibber was then arrested and brought to the police station.
4. Mr. Vibber took a breathalyzer test.
5. Mr. Vibber was informed the breath test results were .16%.
6. Mr. Vibber was arraigned in Lowell District Court on August 7, 2012.
7. Mr. Vibber was represented by Attorney Jeannine Mercure.

8. Mr. Vibber understood from Attorney Mercure that the breath test results strengthened the Commonwealth's case because Mr. Vibber would likely be convicted if the jury believed his blood alcohol content (BAC) exceeded .08%.

9. The BAC result appeared unassailable so Mr. Vibber decided to forego a trial and tendered a plea on February 25, 2013.

10. In 2021, Mr. Vibber learned for the first time that the OAT had committed egregious misconduct by engaging in a longstanding pattern of intentionally withholding exculpatory evidence such as failed certification worksheets and internal repair records.

11. Had Mr. Vibber known about OAT's misconduct and understood the breath test result was not admissible at trial, then Mr. Vibber would have not pled to sufficient facts and proceeded to trial. This would have been a reasonable decision because the Commonwealth's remaining evidence of impairment was not overwhelming.

12. Also, there was little risk in proceeding to trial because if convicted, Mr. Vibber would likely have received a sentence of 1 year probation with the same conditions.

13. Likewise, plea counsel has averred she would have advised Mr. Vibber to proceed to trial because Mr. Vibber's statement as to how the accident happened could have been corroborated by the passenger in the car, the street where the accident occurred is a narrow and winding road and is fairly dark at night, and having just been in an accident and his young age (19-years-old) could have certainly explained his state of mind, his nervousness and an inability to complete the field assessments to the officer's satisfaction.

In light of the above-described errors regarding Mr. Vibber's plea, the attendant conviction was thus obtained in violation of his due process rights as guaranteed by Art. 12 of the Massachusetts Declaration of Rights and U.S. Const. Amends. V and XIV. Commonwealth v. Hallinan, SJC-10331 (Slip Op. April 26, 2023); Commonwealth v. Scott, 467 Mass. 336 (2014), Commonwealth v. DeJesus, 468 Mass. 174 (2014). The defendant submits that, as such, justice was not done and Mr. Vibber's admission to sufficient facts to the OUI charge must be vacated. Mass. R. Crim. P. 30(b).

Reasons therefore are set out more fully in the accompanying affidavits and memorandum of law.

Respectfully Submitted,
RYAN VIBBER,
By his attorney,

/s/ Lindsey Kelly

Lindsey Kelly
BBO# 704510
Committee for Public Counsel Services
40-44 Church Street, 4TH Floor
Lowell, MA 01852
(978) 446-3912

Date: July 20, 2023

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

LOWELL DISTRICT COURT
Docket No: 1211CR004764

Allowed cts 2+3 remain CLOSED 9.29.23 JAbs

COMMONWEALTH

v.

RYAN VIBBER

DEFENDANT'S MOTION TO RECONSIDER MOTION FOR NEW TRIAL RULING

NOW COMES, Ryan Vibber, by and through Counsel, and requests this Honorable Court reconsider its ruling on the Defendant's Motion for New Trial.

Mr. Vibber further states:

1. On August 22, 2023, the Honorable J. Coffey allowed the Defendant's Motion for New Trial in the above-captioned matter.

2. The Commonwealth assented to the motion but asked that the Court re-open not only the OUI charge, but also the leaving scene of property damage charge.

3. This Court re-opened counts one and two[1].

4. The basis for the motion for new trial was in accordance with the SJC's recent ruling in Commonwealth v. Hallinan, 491 Mass. 730 (2023)[2].

5. The SJC in Hallinan cites to Bridgeman and states, "In Bridgeman I, 471 Mass. at 477, we concluded that defendants who sought a new trial because of a particular police chemist's misconduct could not be charged with a greater offense than the one of which the defendant originally had been convicted. In addition, if convicted at a new trial, the defendant could not receive a harsher sentence than the one originally imposed. We decided that anything less would be 'giving the Commonwealth a second bite at the proverbial apple in its efforts to convict the [defendants].'" Id at 752.

[1] Count two is negligent operation of motor vehicle, but the Court may have intended to re-open count three, which is the leaving scene of property damage charge.

[2] See Defendant's Motion for New Trial

6. The SJC makes it clear that the egregious conduct of the Commonwealth does not and should not give them a second opportunity to convict Mr. Vibber and particularly on either the negligent operation charge or the leaving scene charge.

7. The SJC goes on to say, "So too here. Our 'goal is to fashion a remedy that will, as much as possible, place [the defendant] in the position that [he] would have been in if the government had not violated [his] constitutional right to [d]ue [p]rocess." Id at 752.

8. The Court in both Bridgeman and Hallinan wanted to ensure defendants could challenge their convictions without risk. Certainly, re-opening either of the other charges, which are not the OUI, would expose Mr. Vibber to more risk, as both have already been dismissed by the Commonwealth.

9. "Our holding also will safeguard the integrity of the criminal justice system by ensuring that defendants may challenge convictions of drug crimes based on tainted evidence." Bridgeman v. District Attorney for Suffolk District, 471 Mass. 465, 478 (2015). The SJC appears to incorporate the holding of Bridgeman into Hallinan and should be applied to the current case.

10. Hallinan prohibits the Commonwealth from gaining any advantage and it would be utterly counter to the spirit of that passage to allow the Commonwealth to revive the dismissed charges. Moreover, Bridgeman, which Hallinan relies on, makes clear any resentence is "capped" at the terms of the original plea.

11. "Therefore, we hold that in cases in which a defendant seeks to withdraw a guilty plea under Mass. R.Crim. P. 30(b) as a result of the revelation of Dookhan's misconduct, and where the motion is allowed, the defendant cannot (1) be charged with a more serious offense than that of which he or she initially was convicted under the terms of a plea agreement; and (2) if convicted again, cannot be given a more severe sentence than that which originally was imposed. In essence, **a defendant's sentence is capped at what it was under the plea agreement**." Bridgeman at 477 (emphasis added).

12. "In those cases where Dookhan defendants have completed service of their sentences, the Commonwealth has obtained the full benefit of its plea agreements. If, following a Dookhan defendant's successful withdrawal of a guilty plea, the Commonwealth could reinstate previously dismissed charges … and reprosecute a defendant on all of the charges, the Commonwealth ultimately could benefit from Dookhan's misconduct. Successful reprosecution of a defendant could result in the imposition of a longer sentence. Even if the Commonwealth's reprosecution were not successful, such a defendant already would have served the agreed-upon sentence under the previous plea agreement." See Bridgeman, footnote 9. It is clear that the SJC does not intend for the Commonwealth to be able to benefit from its own misconduct, and re-opening either of the non-OUI charges in this case would do just that.

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13. "In the ordinary course, 'when a defendant withdraws his [guilty] plea after sentencing, he may receive a harsher sentence than was originally imposed.' Commonwealth v. DeMarco, 387 Mass. 481, 486, 440 N.E.2d 1282 (1982). ... However, a defendant who files a motion to withdraw a guilty plea as a consequence of Dookhan's misconduct is not doing so in the context of an ordinary criminal case in which the original charges brought by the Commonwealth, and their attendant sentences, simply can be reinstated as if the plea bargain had never occurred." Id at 475.

14. The SJC makes it clear that cases like the drug lab cases and these breathalyzer cases are in contrast to the ordinary course which reinstates charges after a vacated plea. The previously dismissed charges should not be reinstated as they would be if Mr. Vibber withdrew his plea in the ordinary course.

15. This Court must reconsider its holding as to re-opening Count 2 (or Count 3), as the SJC has been clear Mr. Vibber cannot be exposed to a greater penalty or be in a worse position for filing a motion for new trial because the Commonwealth's egregious misconduct is what got us here in the first place.

For these reasons, the Defendant requests that this Court only open Count 1 on the above-captioned docket and leave Counts 2 and 3 dismissed.

Respectfully Submitted,
RYAN VIBBER,
By his attorney,

/s/ Lindsey Kelly

Lindsey Kelly
BBO# 704510
Committee for Public Counsel Services
40-44 Church Street, 4TH Floor
Lowell, MA 01852
(978) 446-3912

Date: August 25, 2023

(1)

MOTION FOR REFUND AFTER INVALIDATED CONVICTION	CASE DOCKET NUMBER 1211CR4764	TRIAL COURT OF MASSACHUSETTS
COMMONWEALTH vs. Ryan Vibber DEFENDANT		Lowell Court
		District District/Superior/BMC Juvenile

INTERPRETER/TRANSLATION SERVICES:

☐ I request the assistance of a ______________ language interpreter or translator to complete this form.

Note: There is no charge to you for interpreter or translation services.

INSTRUCTIONS:

Please check all of the boxes below that apply to your request for a refund of the court fees and fines you paid.

The Trial Court's records for this case may show the types and amounts of fines and fees ordered and the amount you paid. The clerk's office will get those records and give you a copy.

REASONS FOR MY REQUEST FOR A REFUND:

☑ I am eligible for a refund because:

1. I was convicted or my case was continued without a finding of guilt; and
2. I paid money to the court as part of my sentence; and
3. My conviction or continuance without a finding was invalidated (vacated or overturned); and
4. To the best of my knowledge, I will not be re-prosecuted.

2023 DEC 2? PM 3:08
TRIAL COURT OF MASS.
DISTRICT COURT DEPT.
LOWELL DIVISION

FINES AND FEES:

Check all that apply:

I paid the following:

☑ Victim-Witness fee. I paid $ 50.00

☐ I do not remember how much I paid.

☐ Fine. I paid $____________

☐ I do not remember how much I paid.

☐ Court costs. I paid $____________

☐ I do not remember how much I paid.

Allowed
1-22-24
[signature]

38

- [ ] Drug assessment fee. I paid $____________
    - [ ] I do not remember how much I paid.
- [x] Monthly probation supervision fees. I paid $ 780.00
    - [ ] I do not remember how much I paid.
- [ ] Restitution. I paid $____________
    - [ ] I do not remember how much I paid.
- [x] Other fines or fees ordered. I paid $ 700.00

  Specify types of fines or fees:

  $150 counsel fee, $250 OUI 24D state fee, OUI victim assessment fee $50, Head and Injury assessment fee $25,

    - [ ] I do not remember how much I paid.

- [ ] I do not know/remember what types of fees I paid.
- [x] Total amount paid $ 1530.

DOCUMENTATION: (Check the box that applies to you.)

- [ ] I have attached receipts or other papers showing what I paid.
- [ ] I do not have receipts or other papers showing what I paid.

THEREFORE, I ask the court to order the Commonwealth to return the money I paid.

I understand the penalties for perjury and I swear that the above statements are true to the best of my knowledge.

SIGNATURE: [signature] DATE SIGNED: 12/21/2023

PRINT NAME: Ryan Vibber	ADDRESS: 138 Patrick rd. Tewksbury MA 01876	PHONE NUMBER: 978-944-7895

FOR CLERK-MAGISTRATE'S USE ONLY:

☐ **1.** The clerk's office has printed and attached to this motion the handwritten Docket Sheet;

☐ **2.** The clerk's office has transmitted this motion, with attachments, to the Trial Court's Fiscal Department to retrieve all financial data related to fees paid by this claimant (e.g. MassCourts Criminal Case Summary, MassCourts Financial Case Summary, MassCourts Financial Docket Summary, MassCourts View Case Receipts); Date: att'd

Upon Receipt of Documents from the Fiscal Department:

☐ **3.** The Clerk's office has attached to this motion all documents, if any, received from the ~~Trial Court's~~ cash office ~~Fiscal Department~~;

☐ **4.** The Clerk's office has transmitted this motion, with all attachments, to the District Attorney's or Attorney General's Office for a response to be filed within 30 days; and

☐ **5.** The Clerk's office has transmitted a copy of this motion, **where practicable,** to Kelly, the attorney who represented the defendant in the underlying case; and

☐ **6.** The Clerk's office has provided the defendant **with one** complete copy of this motion (including all attachments). The defendant may file any response within the deadline provided below.

DATE: 12-21/23	CLERK-MAGISTRATE OR DESIGNEE SIGNATURE:	RESPONSES DUE ON: 1/22/24

Marked up for 1/22/24 motion sess

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

LOWELL DISTRICT COURT
Docket No: 1211CR004764

COMMONWEALTH

v.

RYAN VIBBER

MOTION FOR REIMBURSEMENT OF DRIVER ALCOHOL EDUCATION FEE AND LICENSE REINSTATEMENT FEE

PROCEDURAL POSTURE AND INTRODUCTION

Mr. Vibber tendered a plea to the charge of operating a motor vehicle while under the influence of alcohol (hereinafter "OUI") in the above matter, and his case was continued without a finding (Exhibit A). Mr. Vibber's license was accordingly suspended for 210 days, and he was ordered to attend a Driver Alcohol Education Program (hereinafter "DAEP") (Exhibit B). In the wake of the District Court matter of Commonwealth v. Ananias, 1248CR1075,[1] Mr. Vibber filed a Motion for New Trial. The motion was allowed, and Mr. Vibber's CWOF was vacated after the Commonwealth answered not ready for trial and requested a dismissal on the charge (Exhibit C). The Court entered a dismissal for lack of prosecution on the record (Exhibit C).

Subsequently, Mr. Vibber filed a pro se motion seeking reimbursement of fees and costs (Exhibit D). Court records indicate that Mr. Vibber had been assessed $1,530.00 (for probation fees, a head injury fee, a victim witness fee, a victim of OUI fee, and a s.24D fee), that Mr. Vibber paid $1,530.00, and that this amount was refunded to him (Exhibit D).

Additionally, however, as recited in an affidavit signed by Mr. Vibber, he had paid at least $993 to attend the DAEP, and had tendered $500.00 to the Registry of Motor Vehicles (hereinafter, "RMV), to reinstate his license after the suspension (Exhibit E). These fees were never refunded, despite requests, and Mr. Vibber now seeks reimbursement, from the government, pursuant to the Due Process provision of the Fifth and Fourteenth Amendments of the Federal Constitution, and the Due Process protections

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[1] In Ananias, a consolidated group of OUI defendants challenged the admissibility of their breath test results on grounds that they were not shown to be reliable, and the Court ruled that certain breath test results were presumptively inadmissible because they were obtained in the absence of formal protocols governing the calibration of breath test devices. Memorandum of Decision issued February 16, 2017. And when it was later discovered that the Office of Alcohol Testing had withheld important discovery from the consolidated defendants, the Court formally endorsed a stipulation reached by the parties, expanding the number of breath test results which would be deemed presumptively inadmissible. Memorandum of Decision issued January 9, 2019.

enshrined in article 12 of the Massachusetts Declaration of Rights. See Nelson v. Colorado, 581 U.S. 128 (2017). Jurisdiction lies in Northampton District Court. Commonwealth v. Martinez, 480 Mass. 777, 793 (2018).

ISSUES PRESENTED

Mr. Vibber hereby moves that this Honorable Court order reimbursement, by the District Court Department of the Trial Court, of the $993 which Mr. Vibber paid to the DAEP.[2] In the alternative, Mr. Vibber moves that the Court order that reimbursement be made by the Massachusetts State Police (hereinafter, "MSP"), or by some other specific governmental entity designated by the Court[3].

Additionally, Mr. Vibber moves that this Honorable Court order reimbursement, by the RMV, or the Department of Transportation (hereinafter, "DOT"), of the $500.00 license reinstatement fee he paid to expunge the license suspension.[4] In the alternative, Mr. Vibber moves that the Court order that reimbursement be made by some other specific governmental entity.

Mr. Vibber seeks the aforementioned reimbursements pursuant to the Due Process provision of the Fifth and Fourteenth Amendments of the Federal Constitution, and the Due Process protections enshrined in article 12 of the Massachusetts Declaration of Rights. See Nelson v. Colorado, 581 U.S. 128 (2017). Jurisdiction lies in Northampton District Court. Commonwealth v. Martinez, 480 Mass. 777, 793 (2018).

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[2] To facilitate the execution of any such order granted by the Court, Mr. Vibber has filed herewith a *Proposed Order*, addressed to the District Court Department of the Trial Court generally, and to the Administrative Office of the Trial Court in particular.

[3] Note that although Martinez names "the Commonwealth, generally its general fund" as the "source" of any refund, this does not necessarily mean that court-issued orders for reimbursement should be directed towards "the Commonwealth" or "the general fund". Such an order might arguably fail to legally bind any individual in particular.

Moreover, if Martinez intended lower courts to direct any reimbursement orders exclusively to "the Commonwealth" or to "the general fund", it would not likely have remarked: "We will not attempt to specify the means by which such payment is accomplished..." Id.

That the "source" of any refund may be "the general fund" means, perhaps, only that any governmental entity providing a refund to a defendant, such as the Administrative Office, will ultimately be reimbursed out of the general fund (so that it does not suffer a financial loss). The Office of the Comptroller has generated a "815 CMR 5.00 - NON-TORT SETTLEMENT/JUDGMENT PAYMENT AUTHORIZATION FORM", page eight (8) of which directs Commonwealth agencies and departments to satisfy any legal obligation by submitting a claim to the Comptroller unless the department or agency has legally available funds with which it can discharge its obligation without creating a deficiency in the funding account. Additionally, 815 CMR 5.02, 10(1)(b) stipulates that when litigation results in a monetary award against any Commonwealth agency or department which lacks "legally available funds", "the Comptroller will refer the certified amount to the agency with instructions for the agency to initiate a deficiency budget request".

[4] To facilitate the execution of any such order granted by the Court, Mr. Vibber has filed herewith a *Proposed Order*, addressed to the RMV.

REIMBURSEMENT FOR DAEP FEE

In Nelson v. Colorado, the United States Supreme Court addressed the claims of two petitioners (Shannon Nelson and Louis A. Madden) whose criminal convictions had been vacated. Id., at 131. Nelson was thereafter retried and acquitted, while the state elected not to retry Madden. Id.. Nelson and Madden each moved for reimbursement of the court costs, fees, and restitution they had paid. Id., at 132. The Supreme Court noted that the eradication of their convictions *restored their presumption of innocence*. Id., at 135. And it announced that "[t]he familiar procedural due process inspection instructed by Mathews v. Eldridge, 424 U.S. 319 (1976) "govern[ed]" the petitioner's claims. Id. Matthews utilized a three part balancing test which, as applied in Nelson, examined:

- "the private interest affected" (i.e., the petitioner's interest in obtaining reimbursement),
- "the risk of erroneous deprivation of that interest through the procedures used" (i.e., the risk of erroneous deprivation of the petitioner's interest in reimbursement if the government was not required to provide it), and
- "the governmental interest" (i.e., the state's interest in denying reimbursement).

Id., at 135-139. Upon consideration of these three factors, the Supreme Court ruled that the state of Colorado[5] was required to reimburse Nelson and Madden. Id., at 139. Additionally, the Court established a blanket rule that Due Process requires the government to refund "fees, court costs, and restitution" "exacted from" a defendant "upon, and as a consequence of" a conviction. Id., at 130.

As demonstrated below, Mr. Vibber is entitled to reimbursement of his DAEP fee under either of two theories. He is entitled to reimbursement from the government[6] because the DAEP was exacted from him "upon, and as a consequence of", the CWOF. In the alternative, he is entitled to reimbursement from the government because the balancing test employed in Nelson weighs in his favor.

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[5] Nelson contains no discussion about whether, in addition to the government, third parties may be required to reimburse a defendant in some circumstances, such as where a defendant pays restitution to a complaining witness. Dicta in Commonwealth v. Martinez, 480 Mass. 777 (2018), does broach this topic, although without reaching any definitive conclusion. Id., at 788-90.

Additionally, where it is the government which must provide reimbursement, Nelson does not specify which branch must provide reimbursement, much less what arm of a given branch must do so. But Martinez does provide guidance, to an extent. In Martinez, the defendant had paid restitution to the Haverhill Police Department, a governmental entity, and was entitled to reimbursement, when some of his convictions were overturned. Id., at 786, 789. The SJC held that any obligation to provide reimbursement falls to "the Commonwealth and any other governmental entity" (such as the Haverhill Police Department) who received whatever monies were to be reimbursed. Id., at 789. And where a defendant tenders monies to the court, in the form of probation fees and the like, Martinez presumably requires reimbursement to come from whichever department, or office thereunder, ultimately received the funds. But Martinez is silent as to which faction of the government bears the responsibility in cases where the Commonwealth must reimburse for a fee which the defendant paid to a third party, such as in Commonwealth v. Dragotta, 96 Mass.App.Ct. 154 (2019), where the defendant was entitled to reimbursement, from the Commonwealth, for probation fees paid to the state of New Hampshire. Id., at 156-7.

[6] Mr. Vibber takes no position as to which branch of the government must provide reimbursement.

The DAEP fee was exacted upon, and as a consequence of, an adverse disposition:

Nelson held that where a conviction is vacated, and no retrial will occur, a defendant is entitled to reimbursement of any fees, court costs, and restitution exacted from him upon, and as a consequence of, his conviction. Nelson, at 130. And Massachusetts case law elaborates on the meaning of Nelson's holding in several respects. For instance, to prove that a fee was exacted "upon" his conviction, he need not show that it was due at the time of sentencing. See Commonwealth v. Nieves, 486 Mass. 1006, 1007 (2020) (parole fees, which were directly attributable to the sentence, but which were not due at the time of sentencing, were exacted "upon" defendant's conviction). And whereas Nelson held that a defendant was entitled to reimbursement of "court costs, fees, and restitution", he is also generally entitled to reimbursement for other monies exacted upon, and as a consequence of, a conviction. See Martinez, at 785-90 (2018) (defendant entitled to reimbursement of probation fees, victim witness fees, and fines); see also Nieves, 1006-7 (2020) (defendant entitled to reimbursement of parole fees). But the SJC has also read Nelson to require a showing that a given fee was exacted "solely" as a result of a conviction. Martinez, at 785. For instance, a defendant is not entitled to reimbursement of "account maintenance and administration fees" associated with his inmate account, where the fees were triggered not solely by a criminal conviction but also because certain financial transactions occurred. Commonwealth v. Watt, 482 Mass. 1031, 1032-3 (2019). And *dicta* in Martinez, examined in detail below, questions the scope of Nelson's holding as it relates to restitution.

Against this backdrop, Mr. Vibber is entitled to reimbursement for his DAEP fee on the basis that it was exacted from him upon, and as a consequence of, his adverse disposition.[7] As set forth in his affidavit, Mr. Vibber expended at least $993 to attend the DAEP. His affidavit constitutes prima facie evidence that he did, in fact, pay this amount. Martinez, at 793-4.[8] The fee was clearly "exacted from" him. And it was exacted solely "upon, and as a consequence of" his adverse disposition because it was directly attributable to his sentence. He would not have had to pay the fee but for the present case. He was not, for example, required to attend the DAEP in two separate cases, and satisfied both obligations by paying a single fee. And he had no means of avoiding the fee. Additionally, Mr. Vibber's CWOF was vacated, and the case has been dismissed upon the request of the Commonwealth, which satisfies Mr. Vibber's obligation of demonstrating that no retrial will occur. So on its face, Nelson requires that the Commonwealth reimburse him for the DAEP fee he paid.

Nevertheless, a discussion of the merits of Mr. Vibber's claim would be incomplete absent consideration of certain *dicta* contained in Martinez. One of the defendants in

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[7] Needless to say, while Mr. Vibber never suffered a "conviction", his presumption of innocence was restored when his CWOF was vacated. Nothing in Nelson (or Massachusetts case law) suggests that he may be denied the Due Process protections recognized in Nelson simply because his CWOF, although an adverse disposition, was not a "conviction".

[8] Pursuant to article 12 of the Massachusetts Declaration of Rights, if the Commonwealth is not satisfied that the fee was actually paid, it now bears the burden of proving that Mr. Vibber failed to pay it. Martinez, at 793-4

Martinez had paid restitution to the Haverhill Police Department. Martinez, at 789. Martinez held that because the Haverhill Police Department was a governmental entity rather than a private individual, Nelson required the Commonwealth to reimburse the defendant. Id. Martinez explicitly declined to decide whether a defendant was entitled to reimbursement for restitution paid to a private victim rather than a governmental entity. Id. But it did question whether the Supreme Court in Nelson ever contemplated this scenario. Id., at 789-90.[9] And although Martinez does not declare that the Supreme Court would necessarily permit a state to deny reimbursement for restitution just because it was paid to a private victim, its dicta forms at least the starting point for any argument that Nelson is not in fact controlling on this issue. The Martinez dicta warrants detailed analysis here because one might claim that Mr. Vibber's request for reimbursement for the DAEP fee he paid, not to the court but to a third party, is analogous to a request for reimbursement for restitution paid directly to a private individual.

The first question to consider is whether, if the SJC was called upon to decide the case of a defendant seeking reimbursement for restitution paid to a private victim, it would actually embrace the Martinez dicta at all, insofar as dicta is "nonbinding". Commonwealth v. Dayton, 477, 244, 247 (2017). The SJC is under no obligation to absorb even its own dicta into subsequent holdings, and might well decline to do so here, where it cannot withstand scrutiny.

Martinez states that the Supreme Court "appeared to assume that the restitution was paid to the State, and not to a private victim", but that this assumption "may have been unwarranted". Martinez, at 789. That, says Martinez, is because the victims were themselves entitled to receive restitution, as stated in Justice Alito's concurrence, and because Colorado did in fact pay out the restitution for their benefit, as stated in the Tenth Circuit's Nelson and Madden opinions.[10] Id. Read literally, the Martinez dicta appears to state that the Supreme Court erred when it assumed that the government had received the restitution. If so interpreted, the Martinez dicta is factually incorrect. Restitution was in fact paid to Colorado; the state simply distributed it to the victim (or his counsellor) thereafter. Nelson, at 131.

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9 Martinez dicta also places two additional potential limitations on a defendant's right to reimbursement for restitution, but neither of these have any bearing on Mr. Vibber's motion. First, the SJC questions whether a defendant is entitled to demand reimbursement for restitution directly from the private victim who received it. The SJC also observed that a restitution order issued in Colorado creates a civil judgment in favor of a crime victim (albeit one which is vacated if the criminal conviction is ever vacated), whereas a restitution order issued in Massachusetts creates no civil judgment (but a crime victim can sue for restitution, and any resulting judgment may survive even if the criminal conviction is vacated). Martinez, at 787-8. Martinez recognized the anomaly which would be created if, when a conviction is vacated, the government was required to reimburse a defendant for any restitution he paid, notwithstanding that the complaining witness had sued for restitution and had obtained a still viable civil judgment. Id.

10 As phrased in Martinez, "[T]he restitution paid by both Nelson defendants was used to pay for mental health therapy and counselling for the victim children. See Madden, 364 P.3d at 867-68 (defendant was ordered to pay $910 in restitution to victim and actually paid $757.75, which went to counselling services); Nelson, 362 P.3d at 1071 & n.1 (defendant was ordered to pay $7,845 to victims as restitution and actually paid $414.60)." Martinez, at 789.

But even if one reads the Martinez dicta, in context, to hold simply that the Supreme Court was unaware that Colorado had dispersed the restitution monies after receiving them from Nelson and Madden, Martinez still had no basis to speculate that the Supreme Court was confused about this. The dicta does quote Nelson as stating that the government may not "retain" the monies it took from the petitioners. Nelson, at 136; Martinez, at 789. But even if the verb "retain" was technically accurate only as to the court costs and fees, and not to the restitution Colorado transmitted to third parties, there are several indicators that the Supreme Court was, in fact, fully aware that Colorado had divested itself of the restitution it had collected. First, as Martinez itself conceded, this fact was referenced explicitly in both Circuit Court opinions, which the Supreme Court surely reviewed. Moreover, restitution, by definition, compensates one for a loss, and in the cases of Nelson and Madden, both of whom were convicted of sex offenses, the state of Colorado suffered no loss, so it is difficult to conceive that Colorado would have kept the restitution. Nelson, at 131. Additionally Nelson requires the government to reimburse restitution "exacted from" a defendant, and not merely restitution which "the government exacted". Nelson, at 130. This shows that the Court contemplated the reimbursement of restitution which, although not exacted by the government, a defendant was ordered to pay to a victim (and, logically, the reimbursement of restitution collected from Nelson and forwarded to a victim). And finally, other courts interpreting Nelson, including those of Colorado, have declined to place on its holding the same kind of limitations considered by the Martinez dicta. See Cowen v. People, 431 P.3d 215 (2018) (state is required to refund restitution exacted from a defendant upon, and as a consequence of, vacated conviction, if there will be no retrial). In light of the foregoing, one should not assume that the SJC, if faced with the question of whether Nelson requires reimbursement for restitution paid to a private victim, would embrace the dicta contained in Martinez.

And if there is no basis to assume that the SJC would embrace the Martinez dicta, it cannot topple Mr. Vibber's claim that he is entitled to reimbursement of the fee he paid to the DAEP program.

But let us assume for the sake of argument that the SJC would maintain that the Supreme Court was confused about the facts of its own case in Nelson, and did not appreciate that restitution was ultimately received by the victims (or distributed for their benefit). What, then, are the implications of this dicta, both as to a defendant's claim of reimbursement for restitution paid to a private victim, and as to Mr. Vibber's claim of reimbursement for his DAEP fee? In theory, there are three possibilities.

Martinez remarks that although Nelson requires the government to reimburse a defendant for any restitution the government itself received upon, and as a consequence of, a vacated conviction, "it is another matter to order the Commonwealth to repay a defendant for restitution that the Commonwealth never received because that restitution was paid to a private victim". Martinez, at 789. And the SJC could, in theory, hold that Nelson, had it considered the issue, would have concluded that where reimbursement would cause the government to suffer a pecuniary loss, as where restitution is directly or indirectly received by a private victim, due process concerns are simply not implicated, and no kind of analysis is even necessary. But this polar position is untenable. Irrespective of whether the

Supreme Court would find that a defendant is entitled to reimbursement of restitution paid to a private victim, this kind of claim would obviously raise due process concerns, calling for analysis of some kind. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." Mathews, supra, at 332.[11] So the SJC could not fairly hold that Nelson, had it been aware that Colorado paid out the restitution it exacted, would have denied the claims of the petitioners, and that of Mr. Vibber, on grounds that they did not require any kind of due process analysis.

On the other end of the spectrum, the SJC could hold that the Nelson Court, although unaware of Colorado's disbursement of the restitution, would have in any event declared that a defendant is entitled to reimbursement of monies exacted upon, and as a consequence of, a conviction. If so, can one read into the Martinez dicta any hint that restitution paid to a private victim is not exacted upon, and as a consequence of, a conviction, and is Mr. Vibber 's claim vincible because his DAEP fee is analogous? No, on both accounts. A court's levy of restitution is no less "upon, and as a consequence of" a conviction just because it is received by a private victim. Moreover, Mr. Vibber's DAEP fee is not necessarily analogous to restitution paid to a private party. In Dragotta, the defendant sought reimbursement of probation fees paid not to Massachusetts but to New Hampshire. Id., at 154. The Court held that, under Martinez, a defendant is entitled to reimbursement of probation fees if they were exacted upon, and as a consequence of, his conviction. Id., at 156. And the Court rejected the Commonwealth's position, that it was not required to reimburse for restitution which it never received, distinguishing probation fees from restitution. Id., at 156-7. Dragotta cited as dispositive to its holding the fact that Massachusetts retained control over the defendant's probation, and also observed that probation fees are "easily distinguishable" from restitution since the former compensates for government expenses while the latter is paid to a victim. Id.[12] Mr. Vibber's DAEP fee is analogous to the probation fee in Dragotta. In both cases, Massachusetts retained control of the defendant's probation. See Dragotta, at 156-7. And the DAEP fee, like the probation fees at issue in Dragotta, offsets expenses incurred by the payee, rather than making a victim whole. Id. So if the SJC was to conclude that restitution paid to a private victim is not exacted upon, and as a consequence of a conviction, and if probation fees paid to

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[11] That due process concerns are implicated even where the reimbursement sought would cause a financial loss for the government is further demonstrated in Dragotta, supra. There, the defendant had paid probation fees, not to the Commonwealth, but to New Hampshire, and ordering reimbursement would cause the Commonwealth to suffer a pecuniary loss. Dragotta, at 154. The Appeals Court held that Nelson (which was concerned with due process analysis) was controlling, and explicitly referenced due process. Id., at 156, n.6. In fact, it ruled in favor of the defendant. Id., at 156-7. Without delving into Dragotta's analysis (which will be considered momentarily), the Court declined to read into the Martinez dicta any hint that the SJC might be poised to recognize an exception to Nelson's general rule in all cases where its application would cause the government to sustain a loss. And it certainly didn't question whether the defendant's claim for reimbursement raised due process concerns.

[12] Admittedly, Dragotta does not explain how these differences support its apparent holding (that probation fees paid to New Hampshire, but not restitution paid to a third party, are exacted upon, and as a consequence of, a conviction). But the important thing, for the purposes of Mr. Vibber's motion, is that Dragotta makes a clear distinction between a defendant's right to reimbursement for restitution paid to a private victim on the one hand, and probation fees paid to a foreign jurisdiction on the other.

another state *are* so exacted, so too was Mr. Vibber's DAEP fee, and he is entitled to reimbursement accordingly.

The third possibility, if the SJC affirms the Martinez dicta, is that it could embrace Nelson's balancing test, to the *exclusion* of any rule requiring reimbursement of monies exacted upon, and as a consequence of, a conviction. The SJC might acknowledge that restitution is clearly exacted upon, and as a consequence of, a conviction, even when paid to a private victim, and that Nelson would have arrived at this same conclusion had it considered the issue. And the SJC might assume that the Supreme Court would have had some concerns about ordering reimbursement, and would have held that reimbursement of restitution and other monies is required only if this outcome was supported by the balancing test (rather than extending reimbursement to all restitution exacted upon, and as a consequence of, a conviction). While Mr. Vibber maintains that restitution paid to a private party, as well as his DAEP fee, is subject to reimbursement because "exacted upon, and as a consequence of a conviction", if one denies the viability of this test, *the only yardstick remaining* is Nelson's balancing test. Id., at 130-140. And he prevails under that analysis too, as will now be demonstrated.

Nelson's balancing test weighs in favor of Mr. Vibber's request for reimbursement of the DAEP fee:

Mr. Vibber is entitled to reimbursement of the DAEP fee if Nelson's three part balancing test weighs in his favor. This holds true irrespective of whether this fee was exacted as a consequence of his CWOF, and irrespective of how future courts might interpret or elaborate on the Martinez dicta. Although Massachusetts Courts have this far generally confined their analysis to whether a fee was exacted upon, and as a consequence of, a conviction, Nelson instructs that it is the balancing test which literally "governs" a petitioner's claim for reimbursement of fees when a conviction is vacated. Nelson, at 134.[13]

Concerning the first factor of Nelson's balancing test, which considers the private interest affected, the Supreme Court held that both Nelson and Madden had "an obvious interest in regaining the money they paid to Colorado". Id., at 135. In the case of Nelson, who had been given a prison sentence, the state had withheld monies from her inmate account, some of which went towards costs and fees, while the remainder was assigned to

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[13] At no point did Nelson suggest that a petitioner, in addition to showing that the balancing test weighed in his favor, had to demonstrate that a fee was exacted upon, and as a consequence of, a conviction. Rather, it held that the petitioners were entitled to relief if the balancing test weighed in their favor, *and*, held that the government was required to reimburse court costs, fees, and restitution exacted upon, and as a consequence of, a defendant's conviction.

One must also reject any argument that Mr. Vibber's DAEP fee falls outside the scope of "court costs, fees, and restitution", and that Nelson's balancing test is therefore inapplicable. Nelson did not inquire whether the petitioners were seeking reimbursement of court costs, fees, or restitution when applying the balancing test. It spoke of this only when articulating its holding that such monies must be reimbursed if exacted upon, and as a consequence of, a conviction. Nelson, at 130. And even there, Massachusetts courts have assumed that Nelson did not intend to confine this holding to court costs, fees, or restitution. See Watt, infra (Nelson is dispositive of defendant's claim for reimbursement of inmate account fees).

restitution. Id., at 131. Madden, in his case, paid a sum directly to the state of Colorado, a portion of which covered costs and fees, with the rest going towards restitution. Id. And when their convictions were vacated, the presumption of innocence was restored, giving rise to their legitimate interest in obtaining reimbursement. Id., at 135-6.

Similarly, Mr. Vibber paid a DAEP fee, his CWOF was thereafter vacated, restoring his presumption of innocence, and he therefore has an "obvious interest" in obtaining reimbursement. That the Commonwealth may sustain a small financial loss if required to provide reimbursement has no logical bearing on Mr. Vibber's interest in reimbursement (even if it evinces a governmental interest in denying reimbursement).

As to the second factor in Nelson's balancing test, the "risk of erroneous deprivation" of the petitioners' interest, the Supreme Court found that this risk would indeed be present unless the petitioners' motions for reimbursement were granted. Id., at 137. The only alternative means of obtaining reimbursement was Colorado's "Exoneration Act", which did not protect the petitioners' interest in reimbursement. It applied only to those incarcerated for a felony. Id., at 133-4. Even then a defendant had to produce clear and convincing proof of his innocence. Id, at 134. And the cost of hiring counsel to seek reimbursement under the Act would often be prohibitive. Id., at 137.

Likewise, as to Mr. Vibber, whose misdemeanor OUI conviction was overturned, and who wants reimbursement for a paid DAEP fee, there would exist a risk of an erroneous deprivation of his interest in obtaining reimbursement if the court were to deny the present motion. In Massachusetts, G.L. c.258D provides a defendant's only statutory avenue to secure reimbursement of fees and costs when a conviction is overturned. While G.L. c.258D does provide a form of a relief in some cases, the statute is riddled with caveats, not the least of which is that it is applicable only to those incarcerated for a felony, removing Mr. Vibber from consideration entirely. G.L. c.258D, s.1(C)(ii), (iv). Notwithstanding the inapplicability of G.L. c.258D, it might still be said that there was no risk of erroneous deprivation if Mr. Vibber could simply obtain a refund directly from the DAEP. But this is not realistic, as any DAEP program is unlikely to provide a refund for services which it actually provided. Nevertheless, as set forth in Mr. Vibber's affidavit, he did call the program several times to request a refund. In addition, CPCS called Lowell House, the DAEP, to request a refund on Mr. Vibber's behalf. On July 25, 2024, Lowell House confirmed that Mr. Vibber did pay at least $993. In addition, a letter was sent out to the DAEP requesting reimbursement on Mr. Vibber's behalf on July 5, 2024 (Exhibit E), and there has been no response. Nor, of course, would the DAEP be civilly liable if Mr. Vibber were to sue for a refund, again because the program did provide the service for which Mr. Vibber made payment.[14]

And as to the last Nelson factor, which examines the governmental interest in denying reimbursement, the Court held that Colorado "has no interest in withholding from

[14] Moreover, Dragotta rejected the Commonwealth's argument that it is from the state of New Hampshire that the defendant must seek reimbursement of probation fees paid to that state, finding that it "undercuts the core tenets of Nelson and Martinez", and that requiring a defendant to expend resources to pursue New Hampshire would have a "chilling effect". Dragotta, at 156, n.6.

Nelson and Madden money to which the State currently has zero claim of right". Id., at 139. Indeed, the Supreme Court found this to be so axiomatic that its opinion contains no analysis as to this point. Nor does Nelson ever suggest that the government might have an interest in denying reimbursement to a defendant in the wake of a vacated conviction if it has *divested itself* of the monies it collected from him, as in the case of the two petitioners.

Admittedly though, one cannot conclude that the Commonwealth has no interest in denying reimbursement of the DAEP fee without first considering the dicta in Martinez. The SJC could ultimately hold, as suggested in the Martinez dicta, that while Colorado had paid out the restitution it collected from the petitioners, the Supreme Court failed to realize this. In theory, it could also hold that, had the Supreme Court been aware of this, it would have acknowledged that Colorado had an interest in denying reimbursement. And it could hold that Mr. Vibber's claim for reimbursement of the DAEP fee is analogous to a claim for reimbursement for restitution received by a private victim.

But as examined in some detail above, it is hardly a foregone conclusion that the SJC will ever transform the Martinez dicta into a binding precedential. The dicta is somewhat confusing. And it rests, in any event, on the fragile premise that the Supreme Court was unaware of the facts of its own case, facts which were recited explicitly in the two Circuit Court opinions it was reviewing. So the SJC might simply decline to be bound by the Martinez dicta, in which case it cannot impact Mr. Vibber's argument that the government has no interest in denying reimbursement of his DAEP fee.

But let us suppose that the SJC would conclude, as contemplated by the Martinez dicta, that the Nelson Court failed to realize that restitution was received by a private victim. If the Supreme Court had been fully aware of the facts, what interest would it have said a state has, in refusing reimbursement for restitution? The likely answer is *virtually none* (at least in most cases). This is because where a conviction is vacated, and the defendant is subsequently acquitted (or no retrial will occur), there has typically been some legal error or irregularity for which one or more branches of the government is ultimately responsible.[15] The government's interest in denying reimbursement for restitution rests on shaky ground where a defendant loses at trial, pays restitution, and his conviction is overturned due to a legal error made, albeit in good faith, by the trial judge (a member of the judicial branch of the government). The same logic applies when a prosecutor (an agent of the executive branch) relies, albeit blamelessly, on a dubious drug certificate or breath test result to induce a plea, and the plea is later vacated as a result. See Commonwealth v. Bridgeman, 471 Mass. 465 (2015); Commonwealth v. Ananias, 1248CR1075.

At best, the SJC could conclude that the Nelson Court, had it known that Colorado paid out the restitution it received, might have reluctantly acknowledged that the government has some nominal interest in denying reimbursement for restitution in cases where this would bring about a financial loss. And Dragotta calls into question even this possibility. Again, the defendant was there seeking reimbursement for probation fees paid

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[15] Mr. Vibber is not suggesting that there is any culpability on the part of a governmental actor when a conviction is overturned. On the contrary, that is the rare exception rather than the rule. He merely notes that a conviction is typically vacated because of some act or omission on the part of an individual employed by one or another branch of the Commonwealth.

to New Hampshire. Dragotta, at 155. The Commonwealth argued that it should not be forced to provide reimbursement for fees it never possessed. Id., at 155-6. Although not acknowledged by the Court explicitly, the Commonwealth was obviously drawing on the Martinez dicta, which queried whether the government could be required to reimburse for restitution which it never received. Martinez, at 789-90. Not only did the Court rule for Dragotta, but its opinion is conspicuously devoid of any suggestion that the government had some interest in avoiding a financial loss.

Returning now to Mr. Vibber's case, because the SJC would ultimately be constrained to find that a state has little interest in denying reimbursement for restitution received by a third party, it would be similarly compelled to conclude that the governmental interest in denying reimbursement of the DAEP fee in his case was slight. Mr. Vibber's CWOF was overturned because the Office of the District Attorney, part of the government's executive branch, relied upon an unreliable breath test result.[16] The government has no obvious interest in refusing to reimburse a defendant for a fee triggered by a conviction (or CWOF), where the conviction was vacated as a result of the actions of its own agent. Nor is the governmental interest in the present case distinguishable from that in Nelson on grounds that Colorado served as a conduit, collecting restitution before passing it on to the victim (or his therapist), whereas the Commonwealth never collected the DAEP fee. That kind of argument elevates form over substance. The same might be said of any attempt to distinguish the facts of Mr. Vibber's case from those in Nelson on the basis that Mr. Vibber was merely ordered to attend the DAEP and was never explicitly ordered to pay the attendant fee. Since the DAEP fee was not waived, Mr. Vibber had to pay the DAEP fee in order to comply with the court's order that he attend the program.

And finally, even if the SJC would conclude that there exists a governmental interest in denying reimbursement for restitution received by a private third party, the holding in Dragotta casts doubt on whether the SJC would necessarily say the same about other types of monies received by a private third party. Dragotta distinguished restitution received by a private victim from the probation fees the defendant paid to New Hampshire on grounds that the Commonwealth always retained ultimate control of the defendant's probation. Dragotta does not articulate why this distinction was dispositive to its holding. But it inferably took the position that the Commonwealth cannot maintain control of the defendant's probation and then, when the conviction is overturned, proclaim an interest in distancing itself from the defendant's reimbursement claim.

Likewise, the Commonwealth retained control over Mr. Vibber's probation, including his weekly attendance of the DAEP. So even if, arguendo, the SJC would ultimately find that the government has an interest in denying reimbursement for restitution received by a private party, the government arguably lacks a commensurate interest in denying reimbursement of Mr. Vibber's DAEP fee.

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16 Once again, Mr. Vibber is not suggesting that the prosecutor in his case engaged in any improper conduct by relying on the breath test result.

Based on the foregoing, the Nelson balancing test weighs in favor of Mr. Vibber. He unquestionably has an interest in securing reimbursement of his DAEP fee. There is a risk, indeed, a certainty, that an erroneous deprivation of that interest will occur if the government is not required to provide reimbursement. And the governmental interest in denying reimbursement is, if cognizable at all, insufficient to eclipse Mr. Vibber's interest in reimbursement.

Reimbursement should be provided by the District Court Department of the Trial Court, the Massachusetts State Police, or an appropriate government entity designated by the Court:

Whereas Nelson obligates the Commonwealth to reimburse Mr. Vibber's DAEP fee, it does not necessarily follow that an order for reimbursement directed at "The Commonwealth" is enforceable. Instead, Mr. Vibber requests that the Court order payment either by the District Court Department of the Trial Court, or the MSP (or in the alternative, by some other appropriate governmental subdivision of the Court's choosing).

Directing an order at the District Court Department of the Trial Court is appropriate. In Commonwealth v. Gonsalves, 432 Mass. 613 (2000), a defendant charged with trafficking in cocaine prevailed on a motion to suppress. Id., at 614. The Commonwealth was permitted an interlocutory appeal, which both the Appeals Court and SJC subsequently denied. Id. Accordingly, defense counsel, who had been privately retained, applied for payment of attorney's fees associated with his successful opposition to the Commonwealth's interlocutory appeal before the SJC, pursuant to Mass.R.Crim.P. 15(d). Id. The Superior Court ordered that the District Attorney pay said fees (absent payment by the Administrative Office of the Trial Court, which ultimately had no bank account to satisfy the order). Id. But the District Attorney refused to comply. Id., at 614-5. Upholding the order of payment, the SJC wrote that "the imposition of the costs of counsel on [the District Attorney] appropriately places the burden on the office whose conduct caused the costs of counsel to be incurred". Id., at 618, n.5.

Just as the conduct of the District Attorney caused Mr. Gonsalves to incur additional legal fees when he prosecuted an interlocutory appeal in good faith, the conduct of Mr. Vibber's plea judge, (an agent of the District Court Department of the Trial Court), caused Mr. Vibber to incur a DAEP fee when he duly ordered him to attend the program in good faith. And just as the District Attorney in Gonsalves was required to hold the defendant harmless, the District Court Department of the Trial Court might properly be expected to hold Mr. Vibber harmless.

That the District Court Department of the Trial Court was not a party to the case is irrelevant. The SJC has repeatedly held that court orders may be directed against a non-party. In Commonwealth v. Martinez, in fact, the Court had occasion to note that the Haverhill Police Department was required to reimburse the restitution it received from the defendant once his conviction was overturned. Martinez, at 789. Similarly, in Bird v. Capital Site Management Company, & others, 423 Mass. 172, (1996), where the trial court found a party defendant in contempt but declined to assess whether his non-party wife was also in contempt, the Court remanded for such a determination to be made, explicitly finding that a non-party may indeed be held in contempt. Id., at 178-9. And Geehan, administratrix v. Trawler Arlington, Inc., 371 Mass. 815 (1977), held that Mass.R.Civ.P. 69 authorized a court order directing payment of a judgment against insurers not parties to the suit. Id., at 817-818.

Nor is there any argument that the District Court Department of the Trial Court lacks the ability to sue or be sued, or otherwise lacks the ability to appeal any order to reimburse Mr. Vibber, such that it cannot properly be the subject of a court order. Where this entity was a named party defendant in Bishay v. District Court Department of the Trial Court, 477 Mass. 1030, the SJC ruled *on the merits* (upholding the decision of a single justice dismissing plaintiff's G. L. c. 211, § 3 petition, where plaintiff could use normal appellate channels to challenge the District Court's refusal to return his appeal bond). Id., at 1030-1. Similarly, in Fitzgerald v. District Court Department of the Trial Court, 471 Mass. 1001 (2015), rather than holding that the District Court Department of the Trial Court was not a proper party defendant, the SJC again ruled on the merits (there holding that a G. L. c. 211, § 3 petition would not lie, where the plaintiff could have filed a Motion for New Trial). Id., at 1001-2. Along similar lines, in Anzalone v. Administrative Office of the Trial Court, 457 Mass. 647 (2010), the Court provided a ruling on the merits, that the Chief Justice of Administration and Management was not required to approve plaintiff's appointment as a probation officer where, at a minimum, it would create the appearance of nepotism. Id., at 654-9.

Should the Court be disinclined to order reimbursement by the District Court Department of the Trial Court, Mr. Vibber moves that the Court order MSP to reimburse the DAEP fee. Directing payment by MSP is clearly appropriate where the conduct, indeed, the egregious *misconduct*, of its Office of Alcohol Testing induced Mr. Vibber to tender a plea and sustain the DAEP fee.[17] It is of no consequence that MSP was not a party to Mr. Vibber 's case. Nor is there any question but that MSP can sue, be sued, and if it so chooses, appeal any order issued against it. See Yee v. Massachusetts State Police, 481 Mass. 290, 291 (2019) (lower court erred when it found that denial of a trooper's request for a lateral transfer to a different troop station could not qualify as "adverse employment action" on the basis of age, race, or national origin).

Moreover, an order directed at MSP would not violate the Massachusetts Declaration of Rights, Art. 30, separation of powers provision. Commonwealth v. Gonsalves held that a District Attorney could be ordered to pay attorney's fees of privately retained defense counsel, where the fees were generated in response to the District Attorney's unsuccessful interlocutory appeal. Gonsalves explicitly observed that "separation of powers does not require three 'watertight compartments' within the government." Gonsalves, at 619. "An act of one branch of government does not violate art. 30 unless the act 'unduly restrict[s]' a core function of a coordinate branch." Id. And

[17] Mr. Vibber proposes that reimbursement come from the MSP generally, and not OAT in particular, only because enforcement of an order against OAT might prove difficult, should OAT contend that it is not a discrete, legally recognized, governmental unit, but merely a sub-unit of MSP.

clearly, ordering reimbursement of Mr. Vibber's DAEP fee does not impact any core function of MSP.

And in the absence of any order directed at the District Court Department of the Trial Court or MSP, Mr. Vibber leaves it to the discretion of the Court to designate an alternative governmental entity, to provide reimbursement of the DAEP fee.

<u>REIMBURSEMENT FOR LICENSE REINSTATEMENT FEE PAID</u>

As set forth in Mr. Vibber's affidavit, this case precipitated a license suspension which was expunged by his payment of a license reinstatement fee. As with the DAEP fee, Mr. Vibber has a right to receive reimbursement under either of two theories. He is entitled to be made whole because his license reinstatement fee was exacted upon, and as a consequence of, his CWOF. And he must also prevail because <u>Nelson's</u> balancing test supports his claim. Mr. Vibber has no particular interest in whether reimbursement comes specifically from the Registry of Motor Vehicles, or from some other governmental unit instead, and will address the question of who, precisely, bears the obligation to provide reimbursement only to the extent necessary to advance his claim. Nevertheless, <u>Martinez,</u> suggests that it is the RMV which bears the responsibility, insofar as this entity received the payment for which Mr. Vibber seeks reimbursement. <u>Id.</u>, at 789.

The license reinstatement fee was exacted upon, and as a consequence of, an adverse disposition:

<u>Nelson</u> holds that a defendant is entitled to reimbursement for fees, costs, and restitution exacted upon, and as a consequence of, a vacated conviction, if no retrial will occur. <u>Nelson</u>, at 130. And Massachusetts courts have held that other monies are generally reimbursable upon the same showing. <u>Martinez,</u> at 785-90 (2018); <u>Nieves,</u> at 1006-7 (2020). The only potential exception derives from dicta in <u>Martinez,</u> the most expansive interpretation of which suggests that a defendant cannot demand reimbursement from the government if it would thereby suffer a financial loss. <u>Martinez,</u> at 789-90. Although not definitively addressed in <u>Nelson</u> or Massachusetts case law, one may reasonably doubt whether a fee is "exacted" from a defendant where he elects to pay it on a discretionary basis, in order to receive something superfluous or inessential. Nevertheless, to show that a fee was "exacted", a defendant need not demonstrate that he was ordered to make payment, much less that he was so ordered as part of his sentence. For instance, <u>Nieves</u> held that a defendant was entitled to reimbursement of parole fees even though he was not ordered to pay them as part of his sentence and could have, presumably, declined parole, thereby circumventing the fee. <u>Nieves,</u> at 1006-7. But even as to fees which were "exacted" from him, a defendant can claim reimbursement only of those which were exacted "solely" because of an adverse disposition.. <u>Watt,</u> at 1033. Massachusetts case law does not define this requirement with particularity, but the courts appear to be concerned not with the defendant's motivation for paying the fee, but with whether the fee was triggered by some event other than the defendant's conviction. For instance, Nieves' parole fees were exacted solely as a consequence of his conviction even though he was presumably motivated to pay them in order to be released, rather than to comply with a

sentencing requirement. Nieves, at 1033. But Watt declined to find that the defendant's inmate account fees were exacted solely as a consequence of his conviction where they were triggered, in part, by an intervening event, namely, the completion of certain financial transactions. Watt, at 1032-3.

The fee Mr. Vibber paid, to reinstate his license after it was suspended as a result of his plea, was clearly "exacted" from him. He could not lawfully operate a motor vehicle, a nearly indispensable activity for anyone not living in a major metropolitan area, without paying the reinstatement fee. His payment of the fee was not a mere elective act. And the license reinstatement fee was exacted solely as a consequence of his adverse disposition. No other event precipitated the fee. But for his adverse disposition, no fee would have been owed. And that Mr. Vibber was motivated to pay it because he wanted to drive lawfully, and not because he was ordered to obtain a license as a condition of his disposition, is irrelevant. Moreover, because the RMV will suffer no pecuniary loss if it is forced to return Mr. Vibber's license reinstatement fee, his claim for reimbursement is entirely unaffected by the Martinez dicta.

Nelson's balancing test weighs in favor of Mr. Vibber's request for reimbursement of the license reinstatement fee:

While Mr. Vibber posits that all fees are reimbursable upon a mere showing that they were exacted as a consequence of an adverse disposition, if reimbursement of restitution and other monies received by a third party (such as the RMV) requires some additional showing, Nelson's balancing test must surely be dispositive, since that is the only other touchstone referenced in Nelson. Mr. Vibber is entitled to reimbursement of the license reinstatement fee he paid on or about September 21, 2013, if Nelson's balancing test supports his claim. The balancing test "governs" his claim. Nelson, at 136. And unless one concedes that a defendant is necessarily entitled to reimbursement of monies exacted upon, and as a consequence of, a conviction, one must agree that Nelson's balancing test is controlling, since that is the only other yardstick envisioned by Nelson. Id., at 130-140.

The first factor in the balancing test considers Mr. Vibber's interest in securing reimbursement of the license reinstatement fee. He has an obvious interest in reimbursement because his CWOF was vacated, and his presumption of innocence has been restored. See Nelson, at 135-6.

The second factor measures the risk of an erroneous deprivation of Mr. Vibber's interest in reimbursement if his motion is denied. Id., at 135. This risk is present because he has no alternative means to obtain reimbursement. Again, G.L. c.258D provides for reimbursement of certain monies expended by a defendant whose conviction is overturned, but offers no assistance to Mr. Vibber because he was not incarcerated for a felony. G.L. c.258D, s.1(C)(ii), (iv). And as outlined in his affidavit, although Mr. Vibber sought a refund from the RMV, he was unsuccessful (Exhibit E).

The third factor examines the "governmental interest" in denying reimbursement. Nelson, at 135. Just as Colorado had no governmental interest in denying reimbursement of the court costs and fees it exacted from Nelson and Madden, the RMV has no governmental interest in denying reimbursement of the reinstatement fee it exacted from Mr. Vibber.[18] His CWOF was vacated, which calls into question the legitimacy of any governmental interest in denying reimbursement. But more importantly, the RMV, if required to hand back Mr. Vibber's reinstatement fee, will suffer no pecuniary loss. Whereas Mr. Vibber's DAEP fee was paid to offset costs incurred by the DAEP, and the DAEP would therefore have an interest in denying reimbursement, the same cannot be said about the RMV, which incurred no costs, save the nominal expense of printing out a plastic license.

The balancing test favors Mr. Vibber's claim for reimbursement of the fee he tendered to the RMV to reinstate his license, after it was suspended as a result of his adverse disposition. He has an interest in reimbursement. There is a risk of erroneous deprivation of that interest unless the RMV is ordered to return the fee. And the RMV has no interest in returning the fee. Mr. Vibber is therefore entitled to reimbursement.

Reimbursement should be provided by the RMV, DOT, or an appropriate government entity designated by the Court:

To ensure that he has the ability to enforce any court order regarding the reimbursement of the RMV fee, Mr. Vibber asks that the Court direct the RMV in particular to provide the refund. Martinez held that where a defendant has paid restitution to a particular governmental entity, and the conviction is later vacated, reimbursement must be made by the entity which received the restitution. Martinez, at 789. And license reinstatement fees are collected by the registrar and his agents. G.L. c.90, s.33. An order directed at the RMV would not violate the Massachusetts Declaration of Rights separation of powers provision, since the order would in no way interfere with any "core function" of the Registry. See Commonwealth v. Gonsalves, at 619. That the RMV was not a party to Mr. Vibber's case does not insulate it from a court order. See Commonwealth v. Gonsalves. Nor does there exist any argument that the RMV is not a legally recognized entity which can appeal a court order, and that it therefore cannot be the subject of a court order. Gordon v. Registry of Motor Vehicles, 75 Mass.App.Ct. 47 (2009) produced a ruling *on the merits* (to the effect that the RMV's revocation of plaintiff's hardship license, occasioned by his failure to install an ignition interlock device, did not violate the federal constitutional bar on ex post facto laws).

If, however, the Court should have any concern as to whether the RMV may properly be the subject of a court order, Mr. Vibber asks that the court order DOT to reimburse Mr. Vibber 's license reinstatement fee. G.L. c.6C, s.2 created the Department of Transportation. G.L. c.6C, s.2. The Act provides that "[t]here shall be within the

[18] Mr. Vibber suggests that, in his case, the "governmental interest" is that of the RMV (an arm of the executive branch) rather than that of the Commonwealth as a whole, even though Nelson considered the governmental interest of Colorado as a whole, rather than that of the branch or department which received the monies exacted from the petitioners. But Mr. Vibber's claim would not be adversely affected were the Court to assess the governmental interest of the Commonwealth as a whole instead. Had Nelson been prepared to acknowledge that "Colorado" could have an interest in denying reimbursement, over and above the interest of whatever department took possession of the exacted monies, it would naturally have said so.

department [of transportation] an office of transportation planning which shall oversee and administer the planning responsibilities of the office of planning and programming, and which shall be under the supervision and control of the secretary. G.L. c.6C, s.10. It further provides that "[t]he office of planning and programming shall contain ... the registry of motor vehicles". G.L. c.6C, s.299b). And DOT is a legally cognizable entity, and therefore possesses the legal authority to appeal any court order if it so chooses. See Smiley First, LLC v. Department of Transportation, 492 Mass. 103 (2023) (DOT required to provide plaintiff with compensation over and above that previously tendered in connection with a 1991 easement, where a subsequent 2018 easement constituted an additional taking).

And finally, if for any reason the Court is disinclined to order either the RMV or DOT to reimburse the license reinstatement fee, Mr. Vibber asks that the Court designate an alternative governmental entity.

Respectfully submitted,
Ryan Vibber,
Through his counsel,

/s/ Lindsey Kelly

Lindsey Kelly
BBO #704510
Committee for Public Counsel Services
40-44 Church Street, 4th Floor
Lowell, MA 01852
978-458-7161
Lkelly@publiccounsel.net

CERTIFICATE OF SERVICE

I, Lindsey Kelly, do hereby certify that on this 18th day of March, 2025, I caused the above motion to be served upon:

Middlesex County District Attorney's Office; 151 Warren St, Lowell, MA 01852;

Daniel P. Sullivan, Esq.; District Court Department of the Trial Court; Two Center Plaza; Suite 540; Boston MA 02108;

Daniel P. Brunelli, Esq.; Massachusetts State Police; 470 Worcester Rd.; Framingham, MA 01702;

Office of Alcohol Testing; Massachusetts State Police; 124 Acton Street; Maynard, MA 01754;

MassDOT; Office of General Counsel; 10 Park Plaza; Suite 3510; Boston, Massachusetts, 02116; Attn: Litigation Center of Excellence;

Andrea Joy Campbell-Scheier; Massachusetts Attorney General; One Ashburton Place; Boston, MA 02108;

Amy Lynn Nable; Office of the Comptroller; One Ashburton Place; Boston, MA 02108; and

Massachusetts Registry of Motor Vehicles; 136 Blackstone Street; Boston, MA 02109.

Subscribed under the pains and penalties of perjury, this 18th day of March, 2024.

/s/ Lindsey Kelly

Lindsey Kelly

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

LOWELL DISTRICT COURT
Docket No: 1211CR004764

COMMONWEALTH

v.

RYAN VIBBER

<u>DEFENDANT'S AFFIDAVIT IN SUPPORT OF MOTION FOR REIMBURSEMENT OF FEES</u>

I, Ryan Vibber, state the following:

1. I am the defendant in the above-captioned case. On August 7, 2012, I was arraigned in Lowell District Court on the following charges: OUI-Liquor, Negligent Operation of Motor Vehicle, and Leaving Scene of Property Damage.
2. On February 25, 2013, I was sentenced to a CWOF on these charges. My license was accordingly suspended for 210 days, and I was ordered to attend a Driver Alcohol Education Program.
3. I completed the Driver Alcohol Education Program, and I paid at least $993 to attend the program.
4. I also had to pay a license reinstatement fee at the RMV of $500.
5. With the help of my attorney, I filed a Motion for New Trial. The motion was allowed, and my CWOF was vacated. The Court dismissed the charges.
6. I have personally called both the DAEP at Lowell House and the RMV in Boston requesting refunds for both of these fees, and nobody has gotten back to me.
7. Letters have gone out to both Lowell House and the RMV on my behalf (see enclosed).
8. These fees were never refunded to me.

Ryan Vibber

Signed under penalty of perjury this 3/6/25 day of March, 2025.

Committee for Public Counsel Services
Defending the People of Massachusetts

Committee for Public Counsel Services
Lowell Trial Unit

40-44 Church St., 4th Floor
Lowell, MA 01852
Tel.: 978-458-7161
Fax: 978-970-1414

Anthony J. Benedetti, Chief Counsel
Lynda Dantas, Attorney in Charge

July 25, 2024

Lowell House, INC.
101 Jackson Street, 4th Floor
Lowell, MA 01852

Re: ***Ryan Vibber***
D.O.B.: ***10/9/92***

Dear Sir or Madam:

I am writing to formally request that the Lowell House issue a full refund to Mr. Ryan Vibber, D.O.B. 10/9/92, for the Driver Alcohol Education Program (hereinafter "DAEP") program fee he tendered on or after September 21, 2013, for the following reasons.

I am counsel of record for Mr. Vibber in docket #1211CR4764. On August 7, 2012, Mr. Vibber was arrested on the charge of operating a motor vehicle while under the influence of alcohol (hereinafter, "OUI"). On February 25, 2013, Mr. Vibber tendered a plea to the charge of OUI and was mandated to complete DAEP as part of his plea. Mr. Vibber attended and successfully completed the program through the Lowell House. On July 20, 2023, I filed a motion for a new trial. In response, the Commonwealth stated that it had no objection to the allowance of the motion and had no intention of re-prosecuting Mr. Vibber. The Lowell District Court thereafter acknowledged the same on the docket and allowed the new trial motion. On December 19, 2023, the conviction was vacated, and the case was dismissed for lack of prosecution.

Under Nelson v. Colorado, 581 U.S. 218, (2017), Mr. Vibber is entitled to a refund of the DAEP fee he paid following his conviction, since it was payable as a consequence of a conviction which was later vacated. But for Mr. Vibber's conviction, he would not have been required to pay or attend the DAEP program.

On Monday July 22nd, 2024 a Lowell House representative indicated that Mr. Vibber paid between $993.00 and $997.00.

Thank you for your time and attention.

Sincerely,

Lindsey Kelly, Esq., BBO #704510
lkelly@publiccounsel.net

CPCS
Committee for Public Counsel Services
Defending the People of Massachusetts

Committee for Public Counsel Services
Lowell Trial Unit

40-44 Church St., 4th Floor
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Anthony J. Benedetti, Chief Counsel
Lynda Dantas, Attorney in Charge

January 22, 2025

Registry of Motor Vehicles
PO Box 55889
Boston, MA 02205

Re: ***Ryan Vibber***
D.O.B.: ***10/9/92***

Dear Sir or Madam:

I am writing to formally request that the Registry of Motor Vehicles issue a full refund to Mr. Ryan Vibber, D.O.B. 10/9/92, for the license reinstatement fee he tendered on or after September 21, 2013, for the following reasons.

I am counsel of record for Mr. Vibber in docket #1211CR4764. On August 7, 2012, Mr. Vibber was arrested on the charge of operating a motor vehicle while under the influence of alcohol (hereinafter, "OUI"). On February 25, 2013, Mr. Vibber tendered a plea to the charge of OUI and suffered a two-hundred-and-ten (210) day license loss. On or about September 21, 2013, this license loss expired, and Mr. Vibber re-acquired his license, upon payment of a $500.00 license reinstatement fee. On July 20, 2023, I filed a motion for a new trial. In response, the Commonwealth stated that it had no objection to the allowance of the motion and had no intention of re-prosecuting Mr. Vibber. The Lowell District Court thereafter acknowledged the same on the docket and allowed the new trial motion. On December 19, 2023, the conviction was vacated, and the case was dismissed for lack of prosecution, and a corrected abstract was sent to the RMV (see enclosed).

Under Nelson v. Colorado, 581 U.S. 218, (2017), Mr. Vibber is entitled to a refund of the license reinstatement fee he paid following his conviction, since it was payable as a consequence of a conviction which was later vacated. But for Mr. Vibber's conviction, he would not have been required to pay a fee to reinstate his license.

Thank you for your time and attention.

Sincerely,

Lindsey Kelly, Esq., BBO #704510
lkelly@publiccounsel.net

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

LOWELL DISTRICT COURT
Docket No: 1211CR004764

COMMONWEALTH

v.

RYAN VIBBER

PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR REIMBURSEMENT OF DRIVER ALCOHOL EDUCATION FEE

Having considered the Defendant's Motion for Reimbursement of Driver Alcohol Education Fee and the accompanying memorandum it is **HEREBY ORDERED** that:

1. Plaintiff's Motion for Reimbursement of Driver Alcohol Education Fee is **GRANTED**.

2. The District Court Department of the Trial Court is directed to reimburse the Defendant the $993 spent on the Driver Alcohol Education Program.

Dated: This __ day of ________, ____ .

____
Honorable Judge of the Lowell District Court

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

LOWELL DISTRICT COURT
Docket No: 1211CR004764

COMMONWEALTH

v.

RYAN VIBBER

PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR REIMBURSEMENT OF DRIVER ALCOHOL EDUCATION FEE

Having considered the Defendant's Motion for Reimbursement of Driver Alcohol Education Fee and the accompanying memorandum it is **HEREBY ORDERED** that:

1. Plaintiff's Motion for Reimbursement of Driver Alcohol Education Fee is **GRANTED.**

2. The Administrative Office of the District Court Department of the Trial Court is directed to reimburse the Defendant the $993 spent on the Driver Alcohol Education Program.

Dated: This __ day of ________, ____

____

Honorable Judge of the Lowell District Court

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

LOWELL DISTRICT COURT
Docket No: 1211CR004764

COMMONWEALTH

v.

RYAN VIBBER

<u>PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR REIMBURSEMENT OF LICENSE REINSTATEMENT FEE</u>

Having considered the Defendant's Motion for Reimbursement of License Reinstatement Fee and the accompanying memorandum it is **HEREBY ORDERED** that:

1. Plaintiff's Motion for Reimbursement of Driver Alcohol Education Fee is **GRANTED**.

2. The Registry of Motor Vehicles is directed to reimburse the Defendant the $500 license reinstatement fee paid.

Dated: This __ day of ________, ____

____

Honorable Judge of the Lowell District Court

0k
3/25/25
9ar
(Attn.
J. Coffey

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

LOWELL DISTRICT COURT
Docket No: 1211CR004764

DENIED
FAMA, J
3/26/25

COMMONWEALTH

v.

RYAN VIBBER

MOTION FOR REIMBURSEMENT OF DRIVER ALCOHOL EDUCATION FEE AND LICENSE REINSTATEMENT FEE

PROCEDURAL POSTURE AND INTRODUCTION

Mr. Vibber tendered a plea to the charge of operating a motor vehicle while under the influence of alcohol (hereinafter "OUI") in the above matter, and his case was continued without a finding (Exhibit A). Mr. Vibber's license was accordingly suspended for 210 days, and he was ordered to attend a Driver Alcohol Education Program (hereinafter "DAEP") (Exhibit B). In the wake of the District Court matter of Commonwealth v. Ananias, 1248CR1075,[1] Mr. Vibber filed a Motion for New Trial. The motion was allowed, and Mr. Vibber's CWOF was vacated after the Commonwealth answered not ready for trial and requested a dismissal on the charge (Exhibit C). The Court entered a dismissal for lack of prosecution on the record (Exhibit C).

Subsequently, Mr. Vibber filed a pro se motion seeking reimbursement of fees and costs (Exhibit D). Court records indicate that Mr. Vibber had been assessed $1,530.00 (for probation fees, a head injury fee, a victim witness fee, a victim of OUI fee, and a s.24D fee), that Mr. Vibber paid $1,530.00, and that this amount was refunded to him (Exhibit D).

Additionally, however, as recited in an affidavit signed by Mr. Vibber, he had paid at least $993 to attend the DAEP, and had tendered $500.00 to the Registry of Motor Vehicles (hereinafter, "RMV"), to reinstate his license after the suspension (Exhibit E). These fees were never refunded, despite requests, and Mr. Vibber now seeks reimbursement, from the government, pursuant to the Due Process provision of the Fifth and Fourteenth Amendments of the Federal Constitution, and the Due Process protections

[1] In Ananias, a consolidated group of OUI defendants challenged the admissibility of their breath test results on grounds that they were not shown to be reliable, and the Court ruled that certain breath test results were presumptively inadmissible because they were obtained in the absence of formal protocols governing the calibration of breath test devices. Memorandum of Decision issued February 16, 2017. And when it was later discovered that the Office of Alcohol Testing had withheld important discovery from the consolidated defendants, the Court formally endorsed a stipulation reached by the parties, expanding the number of breath test results which would be deemed presumptively inadmissible. Memorandum of Decision issued January 9, 2019.

OK
4/11/25
9am
attn:
J. Fama

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

LOWELL DISTRICT COURT
Docket No: 1211CR004764

COMMONWEALTH

v.

RYAN VIBBER

MOTION FOR RULINGS

NOW COMES, the Defendant, Mr. Ryan Vibber, by and through the undersigned counsel, pursuant to Rule 52(c) of the Massachusetts Rules of Civil Procedure, and hereby respectfully moves this Court to issue rulings on the previously filed "Motion for Reimbursement of Driver Alcohol Education Fee and License Reinstatement Fee". ALM R. Civ. P. Rule 52.

DENIED Fama, J 4/4/25

1. Mr. Vibber received a continuation without a finding on February 25, 2013, and as a result of that sentence, was required to pay fees and fines totaling $1,493[1].

2. On July 20, 2023, the Court allowed Defendant's motion for new trial, pursuant to Commonwealth v. Ananias, 1248CR1075.

3. On December 19, 2023, the continuation without a finding was officially vacated as the Commonwealth answered not ready for trial in this matter.

4. The fees and fines paid by Mr. Vibber were exacted as a direct consequence of the now-invalidated conviction. Under the principles of due process, as articulated in Commonwealth v. Martinez, the invalidation of a conviction erases the state's claim to any payments made as a result of that conviction, and such payments must be refunded. Commonwealth v. Martinez, 480 Mass. 777, 785 (2018).

5. Mr. Vibber filed a pro se "Motion for Refund After Invalidated Conviction" on December 21, 2023. On December 21, 2023, the Court ordered reimbursement in the amount of $1,530, which included the costs for victim witness fee, monthly probation supervision fees, counsel fee, OUI 24D state fee, OUI victim assessment fee, and head injury assessment fee.

6. The Court's reimbursement order did not include, however, the $993 that Defendant paid to attend the Driver Alcohol Education Program ("DAEP") or the $500 that Mr. Vibber paid the RMV to reinstate his license after the suspension.

7. On March 19, 2025, Mr. Vibber, represented by counsel, filed the aforementioned "Motion for Reimbursement of Driver Alcohol Education Fee and License Reinstatement Fee" seeking

[1] License reinstatement fee of $500 and Driver Alcohol Education Program fee of $993

compensation for costs associated with DAEP attendance and RMV license reinstatement, totaling $1,493.

8. Mr. Vibber intends to appeal this Court's denial of his "Motion for Reimbursement of Driver Alcohol Education Fee and License Reinstatement Fee".

9. Written rulings will assist the appellate courts in assessing this court's interpretation of the relevant law. See, Commonwealth v. K.W., 490 Mass. 619 (2022) (In ordering the trial court to issue written findings, SJC observed, "[t]here must be some mechanism by which an appellate court can meaningfully assess whether a judge acted appropriately in granting or denying relief, because such a mechanism allows the appellate court to test the judge's reasoning for abuse of discretion").

WHEREFORE, The Defendant respectfully requests that this Court issue rulings regarding the denial of the "Motion for Reimbursement of Driver Alcohol Education Fee and License Reinstatement Fee".

Respectfully Submitted,
RYAN VIBBER,
By his attorney,

/s/ Lindsey Kelly

Lindsey Kelly
BBO# 704510
Committee for Public Counsel Services
40-44 Church Street, 4TH Floor
Lowell, MA 01852
(978) 446-3912

Date: April 4, 2025

CERTIFICATE OF SERVICE

I, Lindsey Kelly, do hereby certify that on this 4th Day of April, 2025, I caused the above motion to be served upon:

Middlesex County District Attorney's Office; 151 Warren St, Lowell, MA 01852;

/s/ Lindsey Kelly

Lindsey Kelly

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

LOWELL DISTRICT COURT
Docket No: 1211CR004764

COMMONWEALTH

v.

RYAN VIBBER

NOTICE OF APPEAL

The defendant in the above-entitled matter hereby gives notice that, being aggrieved by certain rulings and judgments of the Court in his motion for reimbursement of driver alcohol education fee and license reinstatement fee, which was denied by the Court on March 26, 2025, hereby appeals pursuant to Rule 3 of the Massachusetts Rules of Appellate Procedure.

Respectfully Submitted,
RYAN VIBBER,
By his attorney,

/s/ Lindsey Kelly

Lindsey Kelly
BBO# 704510
Committee for Public Counsel Services
40-44 Church Street, 4TH Floor
Lowell, MA 01852
(978) 446-3912

Date: April 22, 2025

CERTIFICATE OF SERVICE

I, Lindsey Kelly, do hereby certify that on this 22nd Day of April, 2025, I caused the above motion to be served upon:

Middlesex County District Attorney's Office; 151 Warren St, Lowell, MA 01852;

/s/ Lindsey Kelly

Lindsey Kelly