



# LEGAL UPDATE

## Operation

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Commonwealth v. Sean Lagotic, Appeals Court (March 15, 2023).

### RELEVANT FACTS

At 1:42AM on December 13, 2019, Acton police responded to the intersection of Route 2 and Main Street. The reporting officer noticed tire marks leading from the Route 2 on-ramp to a wooded area. A Toyota Camry was located at the end of the tracks approximately 100 feet off the road.

The reporting officer approached the defendant who was talking to another officer at the side of the road. The reporting officer smelled an “overwhelming odor of an alcoholic beverage,” noticed the defendant’s eyes were red and glassy and that his speech was slightly slurred.

When asked how he crashed, the defendant said he was getting on the on-ramp when he hit snow, lost traction and ended up in the woods. The officer observed the road to be clear and dry at the time. When asked, the defendant said he was coming from Belmont where he worked as a barber. He said he had stopped for dinner and admitted to having two margaritas.

The defendant agreed to take some field sobriety tests. After he failed both the walk and turn and the one-legged stand he was placed under arrest. At booking the defendant said he thought he had a concussion and “I might need to see someone.” Paramedics were called to the station. When paramedics asked him how fast he was going, he reported going 60 – 70 miles per hour.

**For specific guidance on the application of this case or any law, please consult your supervisor or your department’s legal advisor.**

The reporting officer was the only witness at trial. At the close of all of the evidence, the defendant filed a motion for required finding of not guilty. The judge ultimately allowed the motion and entered a finding of “not guilty” stating that “there was no evidence as to this gentleman operating the vehicle.” The Commonwealth appealed.

#### DISCUSSION

The only issue on appeal was whether the defendant was the operator of the vehicle. The court found that the defendant’s statements were strong evidence of operation. He told officers he lost control on the ramp after hitting some snow and went into the woods. He also told officers he was coming from Belmont and had drinks with dinner. At booking, the defendant said he “might need to see someone” because he thought he might have a concussion. He also told a paramedic that he was going 60-70 miles per hour.

“The defendant’s repeated confessions to driving the vehicle constituted powerful evidence of operation.”

A defendant cannot be convicted on their own confession alone. There must be some corroboration of the confession.

“All that is requires is merely that there be some evidence, besides the confession, that the criminal act was committed by someone, that is that the crime was real and not imaginary.” (internal quotations omitted.)

In this case, the defendant was found in the early morning hours on the side of the road close to where the vehicle had left the road and crashed in the woods. The airbags had deployed and the defendant received medical care for a potential concussion. There was also no evidence that tended to suggest that anyone other than the defendant was driving the vehicle.

“In short, there was evidence that the crime of operating under the influence was real and not imaginary.” (internal quotations omitted.)

The order allowing the motion for a required finding of not guilty was vacated. The case was remanded for the defendant to be sentenced.

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