Legal Update

October 2019

The Appeals Court affirms a conviction for OUI and negligent operation after determining that a hotel parking lot where the public had access to the hotel's restaurant, bar, retail shop, and beach qualified as a public way!

Commonwealth vs. Konstantinos Tsonis, 96 Mass. App. Ct. 214 (2019): On August 3, 2017, the defendant drove his truck into the parking lot of the Sea Crest Motel. The Sea Crest Beach Hotel is a resort in North Falmouth that includes a hotel, a restaurant, a bar, a retail shop, and a public beach. The restaurant, bar, shop, and beach are open to the public. Anyone accessing the parking lot, must pass by a gatehouse with a sign that says, "GUEST CHECK IN." There is only one entrance and one exit. For guests not checking into the hotel, they usually can drive past the gatehouse with stopping and park in the lot. The gatehouse has an attendant primarily on the weekends and only during the day.

On the date of the incident, an employee, noticed a truck enter the parking lot and continue to drive slowly. The defendant was driving the vehicle and appeared aggressive when the

employee asked if needed assistance. After the encounter with the employee, the defendant drove away, driving over a curb. The employee was concerned that the truck was disturbing guests because it was extremely noisy and appeared to be shining its high beam lights into one of the hotel buildings where guests were staying. The employee also expressed concern for the safety of the guests. The defendant continued to drive around the parking lot at a very slow speed. The employee attempted to speak to the defendant for a second time. This time, the defendant stopped the truck, threw open the door to the truck, and "lunged" towards the employee with "clenched fists," screaming and making incoherent threats. The employee retreated to the hotel lobby and called the police.

When police arrived, the defendant was still driving around the parking lot, and he nearly struck parked vehicles. The officer turned on his emergency blue lights to stop the vehicle. When the officer approached the driver's side of the car on foot, the defendant, through the open driver's side window, said, "Really?" When the officer requested the defendant's license and registration and asked what the defendant was doing there, the defendant continued to repeat, "Really? Really?" The defendant had difficulty stepping out of the vehicle and was unsteady on his feet. He struggled to maintain his balance and he swayed back and forth while speaking. The defendant smelled of alcohol and his eyes were glassy and bloodshot. The defendant denied having consumed alcohol that night. The defendant's response to the officer's questions about why he was in the parking lot was, "Really?" The defendant was not a hotel guest and he could not explain why he was there. The officer arrested the defendant and placed him in his cruiser. At the Falmouth Police station, the officer helped the defendant to get out of the cruiser and the defendant leaned on the officer for balance while in the booking room. During booking, the defendant stated that he believed that he was at the Bourne Police station, where he said his sister worked. The defendant continued to sway back and forth and lean on the officer for balance throughout the booking process.

The defendant was convicted after a jury-waived trial for operating under the influence of liquor G. L. c. 90, § 24 (1) (a) (1), and negligent operation of a motor vehicle, G. L. c. 90, § 24 (2) (a).

Conclusion: The Appeals Court held that the hotel parking lot qualified as a public way because the public had access to the parking lot to visit the restaurant, bar retail shop, and beach, and the presence of the gatehouse did not negate the public's access.

First Issue: Was the Parking Lot a Public Way or Place?

A public way or place is defined as "any way or any place to which the public has a right of access, or any place to which members of the public have access as invitees or licensees."

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.

G. L. c. 90, § 24 (1) (a) (1). G. L. c. 90, § 24 (2) (a). Here the evidence demonstrated that the public had access to the parking lot of the Sea Crest Hotel even if they were not guests of the hotel. Although there was a gatehouse at the entrance of the parking lot, its presence did not negate the public nature of the parking lot. Members of the public routinely were permitted to drive by the gatehouse and park in the parking lot even when there was an attendant working at the gatehouse. Often there are signs restricting parking to hotel guests and beach club members but there were none on display the evening of the incident. A public place is not solely a place the public is allowed to park, but rather a place that the public is allowed to travel.

This case is similar to ***Commonwealth vs. Brown***, 51 Mass. App. Ct. 702 (2001), where the Appeals Court determined that the roadways through the grounds of an Air Force base located on the Massachusetts Military Reservation were public ways because "a considerable number of persons [were] authorized to, and routinely [did]," travel on the roadways. Such travelers included military personnel and their families, visitors to a national cemetery located on the property, attendees and staff of a public school located on the reservation, and those using a little league field located there. ***Id***. at 707, 711. In ***Brown***, the unattended gatehouses at the entrance to the Air Force base had signs indicating that the area was restricted to "authorized personnel only." ***Id***. at 709. However, the signs restricting access did not change the outcome because the roads in the Air Force base remained public ways since a number of persons were authorized to travel on the roads. ***Id.*** at 712. In the present case, members of the public wishing to visit the restaurant, bar, shop, or beach located at the Sea Crest Hotel had similar access to the parking lot. Moreover, the signs placed during the day on busy weekends restricted only parking, not access. There was sufficient evidence to establish that the parking lot in which the defendant drove was a public place.

Second Issue: Sufficiency of Evidence of Impairment.

The Appeals Court found that the facts establish the defendant was impaired. The defendant exhibited physical signs of intoxication and behaved erratically. The employee described the encounter he had with the defendant where he was aggressive defendant's driving slowly around the parking lot in a suspicious manner. When the employee confronted the defendant, he observed that the defendant had a glazed look on his face and appeared aggressive. The defendant lunged towards the employee with clenched fists, screaming and making incoherent threats. See ***Commonwealth v. Jewett***, 471 Mass. 624, 636 (2015) (defendant's belligerent behavior such as fighting with police officer was evidence of intoxication).

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The officer also observed the defendant driving around the parking lot over marked parking rows, and nearly striking a couple of parked vehicles. The defendant was unresponsive to the police officer's questions and "kept repeating, 'Really? Really?'" The officer observed that the defendant's eyes were glassy and bloodshot and smelled an odor of alcohol emanating from the defendant. See ***Commonwealth v. Rarick***, 87 Mass. App. Ct. 349, 350 (2015) (officers' observations that defendant's eyes were glassy and bloodshot and that defendant had strong odor of alcohol was evidence of impairment). Moreover, the defendant appeared to be unsteady on his feet and struggled to maintain his balance. At various times during the booking process, the defendant was swaying and held onto the officer for balance. See ***Commonwealth v. Lavendier,*** 79 Mass. App. Ct. 501, 506-507 (2011) (defendant's "slurred speech, belligerent demeanor, strong odor of alcohol, poor balance, and glassy, bloodshot eyes" were all evidence of intoxication). This evidence was sufficient to establish evidence of impairment.

Third Issue: Sufficiency of Evidence of Negligent Operation.

Lastly, the Appeals Court upheld the conviction for negligent operation. To prove negligent operation, "the Commonwealth must prove that the defendant (1) operated a motor vehicle (2) upon a public way (3) negligently so that the lives or safety of the public might be endangered." ***Commonwealth v. Ross,*** 92 Mass. App. Ct. 377, 379 (2017). Here, the defendant's erratic driving and near collision with parked vehicles suggest that the lives or safety of the public might be endangered. See ***Commonwealth v. Daley***, 66 Mass. App. Ct. 254, 256 (2006) (driving over fog line multiple times, straddling breakdown lane, and narrowly missing hitting road work sign was evidence of negligent operation). The defendant travelled slowly around the parking lot and drove over a curb, nearly hitting parked cars. The defendant failed to produce his license and registration and did not respond to the officer's questions about why he was in the parking lot. See ***Commonwealth v. Sousa***, 88 Mass. App. Ct. 47, 51 (2015) (sufficient evidence that defendant's conduct might have endangered public where defendant's vehicle rolled through stop sign, abruptly stopped and started, and defendant appeared asleep behind wheel and did not comply with police officer's commands). All of these factors establish that the defendant was negligently operating a motor vehicle.

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