

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

25-P-1013

COMMONWEALTH

vs.

DIEGO TENEZACA PAGUAY.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Following a jury trial in the District Court, the defendant was found guilty of operating a motor vehicle under the influence of intoxicating liquor (OUI), G. L. c. 90, § 24 (1) (a) (1). On appeal, the defendant contends that (1) the motion judge erred by denying his motion to suppress all evidence derived from the alleged seizure of the defendant, including statements he made to the police at the scene, and (2) the trial judge erred by denying his motions for a required finding of not guilty of OUI. We affirm.

¹ As is our custom, we set forth the defendant's name as it appears in the complaint.

Background.² On June 11, 2023, at around 4:37 A.M., Framingham police officer Jose Diaz was on patrol in downtown Framingham when he saw a disabled vehicle in the middle of the intersection of Arlington and Irving Streets. The car had sustained significant damage to the front right side, the airbags were deployed, and a person, later identified as the defendant, was in the driver's seat. The officer also saw that, a few feet from the intersection, a fire hydrant was knocked over and across the road. The officer testified that the damage to the vehicle was consistent with hitting the fire hydrant.

When the officer approached the car, he immediately smelled an odor of alcohol coming from the vehicle and noticed that the defendant had glossy eyes and slurred speech. Realizing that the defendant's primary language was Spanish, the officer asked the defendant in Spanish what happened.³ The defendant indicated that he understood the officer and explained in Spanish that another car had collided with him while he was driving on Arlington Street, leaving his car stopped in the intersection.

² At oral argument, the parties agreed that the facts elicited at trial did not materially differ from those at the motion to suppress hearing.

³ The officer explained at the hearing that both of his parents were bilingual, so he grew up speaking Spanish at home. He also testified that, while he was not fluent and his proficiency had never been tested or certified, he knew "enough to get the basic information."

The officer then asked the defendant if he had anything to drink, to which the defendant responded that he had consumed seven beers.

At this point, the officer asked the defendant to get out of the car, and he read the defendant his Miranda rights in English. The officer asked the defendant in Spanish if understood, to which the defendant answered in the affirmative. The officer subsequently asked the defendant to perform field sobriety tests, providing instructions primarily in English. Again, the defendant indicated he understood the English instructions and was able to get into the appropriate starting position for every test.

On the walk-and-turn test, the defendant took the wrong number of steps, did not walk heel-to-toe, and took a wider turn than was demonstrated by the officer. On the one-leg-stand test, the officer instructed the defendant to raise one leg for thirty seconds, but the defendant could not maintain balance for more than four seconds. Based on the defendant's performance on these two tests and the other observations the officer made at the scene, the officer placed the defendant under arrest.

At the police station, the defendant received his Miranda rights again, this time in Spanish, and agreed to waive them. In the questioning that ensued thereafter, the defendant again admitted that he had consumed about seven beers.]

Before trial, the defendant moved to suppress the field sobriety tests and statements he had made to the officer during their roadside interaction. The motion judge denied the motion, finding that (1) the officer conducted a noninvestigatory inquiry to ascertain whether the defendant needed assistance in the proper exercise of part of his community caretaking responsibilities, and (2) Miranda warnings were not necessary because the officer's interaction with the defendant was noncustodial.

At trial, the defendant moved for a required finding of not guilty at the close of the Commonwealth's case, which was allowed only as to the theory that the defendant had a blood alcohol content of 0.08 percent or greater. The defendant moved for a required finding again at the close of all evidence, which was denied.

Discussion. 1. Motion to suppress. The defendant argues that (a) the officer unlawfully seized him, and (b) the Miranda warnings the defendant received from the officer were defective because the defendant could not understand them. "In reviewing a ruling on a motion to suppress evidence, we accept the judge's subsidiary findings of fact unless they are clearly erroneous. . . . However, we independently review the correctness of the judge's application of constitutional principles to the facts as

found" (citations omitted). Commonwealth v. Fisher, 86 Mass. App. Ct. 48, 50 (2014).

a. Community caretaking. "Local police officers are charged with 'community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.'" Commonwealth v. Evans, 436 Mass. 369, 372 (2002), quoting Cady v. Dombrowski, 413 U.S. 433 (1973). The community caretaking function applies "to a range of police activities involving motor vehicles, . . . in which there are objective facts indicating that a person may be in need of medical assistance or some other circumstance exists apart from the investigation of criminal activity that supports police intervention to protect an individual or the public." Fisher, 86 Mass. App. Ct. at 51. "An officer may take steps that are reasonable and consistent with the purpose of his inquiry, even if those steps include actions that might otherwise be constitutionally intrusive" (citation omitted). Commonwealth v. Knowles, 451 Mass. 91, 95 (2008). "Not all personal intercourse between police [officers] and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." Commonwealth v. Leonard, 422 Mass.

504, 508, cert. denied, 519 U.S. 877 (1996), quoting Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968).

Here, the officer's conduct fell squarely within the community caretaking exception. He was patrolling a downtown area at night and saw (1) an immobilized vehicle in the middle of an intersection with significant damage and deployed airbags, (2) the defendant in the driver's seat, and (3) a dislodged fire hydrant across the road. It was plainly reasonable for the officer to believe that the safety of the defendant and any nearby members of the public was jeopardized. See Evans, 436 Mass. at 373 (officer approaching car with flashing blinker in breakdown lane on highway fell under community caretaking exception). Moreover, the officer was permitted to ask the defendant if he had been drinking. See Fisher, 86 Mass. App. Ct. at 52 (officer's "effort to confirm whether emergency medical assistance is required or to determine the nature of the individual's apparent illness or impairment is not invalid because the acts taken by the officer also serve to uncover evidence of criminal activity"). Once the officer detected the odor of alcohol, and observed the defendant's glossy eyes, and his slurred speech, and then learned that the defendant had consumed seven beers, it was reasonable and proportional to the circumstances presented to issue an exit order. Id. at 53.

Therefore, the officer approaching the defendant's vehicle and his subsequent interactions did not constitute a seizure.

b. Miranda warnings. "Miranda warnings are only necessary where one is subject to 'custodial interrogation'" (citation omitted). Commonwealth v. Morse, 427 Mass. 117, 122 (1998). It is settled that "a motorist who is temporarily detained after being stopped on suspicion of operating a motor vehicle while under the influence of intoxicating liquor is not held in custody" for purposes of Miranda. Vanhouton v. Commonwealth, 424 Mass. 327, 331 (1997).

Here, the defendant was not in custody and the officer's inquiries at the accident scene did not change that fact. Nor did the officer asking the defendant how much he had to drink and to perform field sobriety tests convert the interaction to a custodial interrogation necessitating Miranda warnings. See Commonwealth v. Downs, 31 Mass. App. Ct. 467, 468, 471 (1991) (officers asking defendant at scene of motor vehicle accident where he was coming from and how much he had to drink did not require Miranda warnings). Moreover, because the officer was not required to furnish Miranda warnings to the defendant, whether the defendant understood the Miranda warning he received at the accident scene is of no consequence.⁴

⁴ We note that the defendant's reliance in his brief on his affidavit in support of his motion to suppress is misplaced.

2. Sufficiency of the evidence. When reviewing the denial of a motion for a required finding of not guilty, we review the evidence in the light most favorable to the Commonwealth to determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Commonwealth v. Latimore, 378 Mass. 671, 677 (1978), quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979). "The Commonwealth's evidence may be entirely circumstantial, and . . . the inferences a jury may draw from the evidence need only be reasonable and possible and need not be necessary or inescapable" (quotations and citation omitted). Commonwealth v. Mejia, 461 Mass. 384, 392 (2012).⁵

To support a conviction for operating under the influence, the Commonwealth must prove that the defendant (1) operated a vehicle, (2) on a public way, (3) while under the influence of an intoxicating substance. G. L. c. 90, § 24 (1) (a) (1). See Commonwealth v. Palacios, 90 Mass. App. Ct. 722, 728 (2016).

Affidavits submitted in support of motions to suppress are "not evidence and may not be considered by the judge for purposes of deciding [a] motion to suppress." Commonwealth v. Lawson, 79 Mass. App. Ct. 322, 326 n.4 (2011), overruled on other grounds by Commonwealth v. Campbell, 475 Mass. 611, 617 n.9 (2016).

⁵ The defendant rested without presenting any evidence, so we need not consider whether the Commonwealth's case deteriorated after the close of its case. Cf. Commonwealth v. Wurtzberger, 104 Mass. App. Ct. 558, 565-566 (2024), S.C., 496 Mass. 203 (2025).

Here, the defendant only contests the operation and impairment elements.

a. Operation. To prove operation, the Commonwealth must show that the defendant, while in a vehicle, "intentionally d[id] any act or ma[de] use of any mechanical or electrical agency which alone or in sequence will set in motion the motive power of the vehicle." Commonwealth v. Wurtzberger, 496 Mass. 203, 206 (2025), quoting Commonwealth v. Uski, 263 Mass. 22, 24 (1928). "Proof of operation of a motor vehicle may 'rest entirely on circumstantial evidence.'" Commonwealth v. Petersen, 67 Mass. App. Ct. 49, 52 (2006), quoting Commonwealth v. Cromwell, 56 Mass. App. Ct. 436, 438 (2002).

Here, taken in the light most favorable to the Commonwealth, the evidence demonstrated that the defendant was found in the driver's seat of a damaged vehicle, which was disabled in the middle of an intersection of two streets. There were no other individuals at the scene nor evidence that any other person had access to the vehicle. See Cromwell, 56 Mass. App. Ct. at 439 ("absence of evidence tending to suggest that someone other than the defendant was operating" vehicle provides relevant circumstantial evidence of operation). The airbags had been deployed, and the sunroof was open, further suggesting the vehicle had recently been driven. Compare Wurtzberger, 496 Mass. at 209 (operation established where defendant was in

driver's seat and car radio was on even without evidence of vehicle moving). Furthermore, when the officer asked the defendant what happened, the defendant explained that he had been driving on Arlington Street when another car struck his.⁶ From this evidence, particularly the defendant's admission, a jury could reasonably find beyond a reasonable doubt that the defendant operated the vehicle in which the officer found him.

b. Impairment. To show impairment the Commonwealth must prove that "that the defendant's consumption of alcohol diminished the defendant's ability to operate a motor vehicle safely" (emphasis omitted). Commonwealth v. Connolly, 394 Mass. 169, 173 (1985). The Commonwealth need not prove that the defendant was intoxicated. See Commonwealth v. Stathopoulos, 401 Mass. 453, 458 (1988).

Here, the defendant "exhibited classic symptoms of alcohol intoxication" -- his eyes were glassy and red, the smell of alcohol emanated from his person, his speech was slurred, he admitted to drinking seven beers, and he performed poorly on the field sobriety tests. Commonwealth v. Gallagher, 91 Mass. App.

⁶ Even if the defendant's statements made during the interaction were erroneously admitted, we would still consider the statements in our sufficiency analysis because they were ultimately admitted at trial. See Commonwealth v. Davis, 487 Mass. 448, 462 (2021), S.C., 491 Mass. 1011 (2023) ("Ordinarily, in determining the sufficiency of the evidence, we include evidence improperly admitted" [citation omitted]).

Ct. 385, 392 (2017). Additionally, the jury could infer from the damage to the defendant's vehicle and the dislodged fire hydrant that the defendant was involved in a single-car crash. See Commonwealth v. Marley, 396 Mass. 433, 442 (1985) (car accident is corroborative of other evidence of driving while intoxicated). This evidence was sufficient for a jury to reasonably conclude that the defendant's capacity to operate a motor vehicle was impaired by intoxicating liquor.

Judgment affirmed.

By the Court (Vuono, Henry &
Singh, JJ.⁷),

A handwritten signature in blue ink, appearing to read "Paul Little", with a stylized flourish at the end.

Clerk

Entered: August 6, 2026.

⁷ The panelists are listed in order of seniority.