

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

24-P-605

COMMONWEALTH

vs.

SHANE M. HALL.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant was charged on December 4, 2020, with negligent operation of a motor vehicle, G. L. c. 90, § 24 (2) (a), and operating under the influence of liquor (second offense), G. L. c. 90, § 24 (1) (a) (1). A District Court judge denied the defendant's motion to suppress a blood test result from the hospital where he was treated. The defendant then entered into a conditional plea agreement agreeing to plead guilty to negligent operation of a motor vehicle, G. L. c. 90, § 24 (2) (a), and operating under the influence of liquor, first offense, G. L. c. 90,

§ 24 (1) (a) (1), preserving the denial of the motion to suppress for appeal. We affirm.¹

Background. Following the nonconsensual drawing of his blood at the hospital and its subsequent testing at the hospital and at the State police crime laboratory, the defendant filed a motion to suppress both blood test results. The motion was stayed pending the Supreme Judicial Court decision in Commonwealth v. Moreau, 490 Mass. 387 (2022). After the issuance of the Moreau decision, the defendant filed a second motion to suppress with agreed stipulated facts and legal issues (for purposes of the motion only). The Commonwealth agreed it would seek to introduce only the blood test result from the hospital, and the defendant's motion sought suppression only of that test result.

According to the stipulated facts, on July 8, 2020, at around 2:45 A.M., North Attleboro police department officer Nicholas Hazard discovered and responded to the scene of a

¹ The Commonwealth has informed us that the conditional plea agreement was not in compliance with Mass. R. Crim. P. 12 (b) (6), as appearing in 482 Mass. 1501 (2019), since it failed to state whether the "reversal of the ruling or rulings would render the Commonwealth's case not viable on one or more specified charges." This does not appear to be a jurisdictional requirement. Prior to the adoption of the current version of rule 12, the Supreme Judicial Court had in exercise of its supervisory power allowed precisely this kind of conditional appeal. See Commonwealth v. Gomez, 480 Mass. 240, 252 (2018). As neither party has sought dismissal of the appeal, we proceed to the merits.

single-car accident involving the defendant's vehicle. The defendant was transferred to the hospital for treatment, where he arrived at 3:23 A.M. Hazard went to the police station and "obtained a medical records release form in the event that Hall would consent to releasing the results of any tests conducted by the Hospital."

After Hazard arrived at the hospital to speak with the defendant, he observed that the defendant refused to comply with staff and was threatening nurses and security staff with bodily harm. Hazard was informed that the defendant was being committed under G. L. c. 123, § 12, and that the defendant's blood would be drawn as part of the section 12 process.

Hazard spoke with the defendant and asked if he would "consent to releasing his medical records and [the defendant] refused." At 3:39 A.M., an assessment was performed as part of the section 12 process.

At 3:45 A.M., an alcohol test was ordered. At 4:10 A.M., lab technicians arrived to draw the defendant's blood, but the defendant attempted to "refuse" the blood draw. Hospital staff physically restrained the defendant through a four-point restraint, the use of a therapeutic hold, and the use of a "leather/plastic limb holder" in order to draw his blood, which was subsequently tested by the hospital.

At 10:55 A.M., a doctor determined that the defendant no longer met the criteria for commitment under G. L. c. 123, § 12.

The defendant did not consent to the drawing, testing, and analysis of his blood taken by the hospital on July 8, 2020. The defendant did not consent to the release to the police department of his medical records or any tests conducted by the hospital.

The stipulated facts do not say how the Commonwealth obtained the medical records containing the results of the hospital's test. They say only that a search warrant was obtained for the blood and that the blood itself was seized from the hospital pursuant to the warrant, and that the State lab also tested the blood, though this second blood test is not part of this case. The results of the State lab test are not at issue.

Discussion. The defendant argues first that the introduction of the hospital blood test results violates G. L. c. 90, § 24 (1) (e), because if the hospital blood draw was nonconsensual, under that provision no analysis of it can be admitted. He concedes that the blood draw was for medical purposes; he makes no argument under G. L. c. 90, § 24(1) (f) (1), stating that he was not under arrest;² he makes

² That section provides,

no argument about the admissibility of the medical records themselves on the basis of the Health Insurance Portability and Accountability Act (HIPAA) or any other law. We therefore express no opinion on those issues.

In pertinent part, G. L. c. 90, § 24 (1) (e) states,

"In any prosecution for a violation of paragraph (a) [under which the defendant was charged], evidence of the percentage, by weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by chemical test or analysis of his blood or as indicated by a chemical test or analysis of his breath, shall be admissible and deemed relevant to the determination of the question of whether such defendant was at such time under the influence of intoxicating liquor; provided, however, that if such test or analysis was made by or at the direction of a police officer, it was made with the consent of the defendant. . . ."

The defendant acknowledges that neither the blood draw nor the hospital testing was done by or at the direction of the police. He argues, however, that because the hospital blood draw was nonconsensual the statute bars its admission. But the

"Whoever operates a motor vehicle upon any way or in any place to which the public has right to access, or upon any way or in any place to which the public has access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath or blood in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor If the person arrested refuses to submit to such test or analysis, after having been informed that his license or permit to operate motor vehicles or right to operate motor vehicles in the commonwealth shall be suspended for a period of at least 180 days and up to a lifetime loss, for such refusal, no such test or analysis shall be made"

plain language of the statute does not say it is inadmissible, and there is no case so holding.

Moreau, 490 Mass. at 391-392, clarified that the § 24 (1) (e) prohibition on nonconsensual blood alcohol content (BAC) testing by the police also applies to instances where defendant's blood was drawn by hospital personnel during medical treatment and later obtained by the police. But it has no application here, where the testing at the hospital was not made by or at the direction of the police.³ The defendant asserts that Commonwealth v. Bohigian, 486 Mass. 209, 214 (2020), says that blood tests showing concentration of blood alcohol are inadmissible "regardless of who directs [them]." But what Bohigian, supra, actually says is "[q]uite apart from § 24 (1) (e), §24 (1) (f) (1) flatly and unambiguously prohibits blood draws without consent for the purposes of analyzing BAC, regardless of who directs it." Because Bohigian applies only to subsection (1) (f) (1), however, and the defendant disclaims any reliance on that subsection, Bohigian does not help the defendant's cause.

The defendant argues next in the alternative that the Commonwealth engaged in "testing" when it converted the hospital blood test result into BAC for use in evidence at trial, and

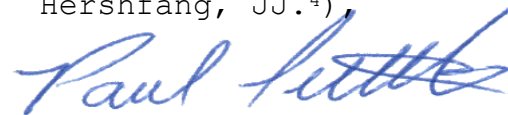
³ As the Commonwealth concedes, the results of the subsequent testing of the blood at the crime lab, if introduced, would be inadmissible pursuant to Moreau.

that this provides an independent reason the results may not be admitted under the statute. But this question is controlled by the recent decision in Commonwealth v. Gannett, 496 Mass. 97, 102 (2025), where the Supreme Judicial Court concluded that "the consent provision of G. L. c. 90, § 24 (1) (e), does not apply to or bar the admission of a mathematical conversion of a serum/plasma ethanol result reflected in medical records to a BAC percentage."

For the foregoing reasons, the order denying the defendant's motion to suppress is affirmed.

So ordered.

By the Court (Rubin, Walsh & Hershfang, JJ.⁴),

A handwritten signature in blue ink, appearing to read "Paul Little".

Clerk

Entered: September 17, 2026.

⁴ The panelists are listed in order of seniority.