COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1728

COMMONWEALTH

vs.

ROBERT MIRANDA.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

After a jury trial, the defendant, Robert Miranda, was convicted of operating a vehicle under the influence of intoxicating liquor (third offense) in violation of G. L. c. 90, § 24 (1) (a) (1), negligent operation of a motor vehicle in violation of G. L. c. 90, § 24 (2) (a), and driving with a suspended license (second offense) in violation of G. L. c. 90, § 23. On appeal he argues that the trial judge erred in denying his motion for required findings of not guilty. We affirm.

Discussion. The defendant argues that to prove each of the crimes with which he was charged the Commonwealth must prove that the defendant operated a motor vehicle on a public way or place. This is correct as to the crimes of operating under the influence and negligent operation. See Commonwealth v. Ross, 92 Mass. App. Ct. 377, 379 (2017); Commonwealth v. Belliveau, 76

Mass. App. Ct. 830, 832 (2010). It is not, however, correct as to operating a motor vehicle after one's license has been suspended. Commonwealth v. Murphy, 409 Mass. 665 (1991).

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." G. L. c. 90, § 24 (1) (a) (1); G. L. c. 90, § 24 (2) (a). We have repeatedly held that "[w]hether a particular way is accessible to the public as invitees or licensees, within the meaning of the statute, is a legal conclusion that we consider independently." Commonwealth v. Virgilio, 79 Mass. App. Ct. 570, 573 (2011). "[I]t is for the trier of fact to determine the facts, but it is our role to determine whether the facts, viewed in the light most favorable to the Commonwealth, sufficiently support a finding that the defendant was operating a vehicle on a way or place accessible to the public as invitees or licensees." Commonwealth v. Tsonis, 96 Mass. App. Ct. 214, 217 (2019). "The inferences that support a conviction 'need only be reasonable and possible; [they] need not be necessary or inescapable.'" Commonwealth v. Waller, 90 Mass. App. Ct. 295, 303 (2016), quoting Commonwealth v. Woods, 466 Mass. 707, 713 (2014).

Here, the facts viewed in the light most favorable to the Commonwealth support operation on a public way on at least two

theories. First, the facts supported an inference of the defendant's operation of the vehicle on Pleasant Street, which the evidence showed was a public way. The defendant admitted he was "driving" the truck, which suggests more than moving a vehicle within a parking lot. Based on the fact that the fence for the lot was under the truck, that the front of the truck was damaged, and the truck ended up in the lot, the jury could infer that the defendant drove on Pleasant Street to access the lot, hit the fence and came to rest in the lot.

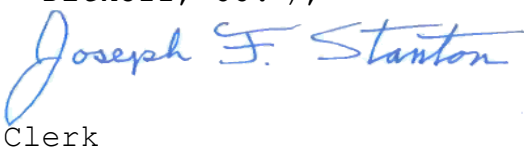
Alternatively, the evidence viewed in the light most favorable to the Commonwealth established that the parking lot where the truck was immobilized was a public way or place accessible to the public as invitees or licensees. "[A] parking lot that members of the public may use to visit a restaurant, bar, shop, and beach, all open to the public, is a public way or place." Tsonis, 96 Mass. App. Ct. at 214. Here, the parking lot was for a privately-owned building with a dentist's office and several apartments. Although the parking lot was originally conceived as a locked and private lot for patients and tenants, and was posted as such, its gate has not been locked in over twenty years. Since the 1990s, patrons of a local bar parked in this lot, as did the guests of the tenants, and a caretaker for the building. Despite over two decades of nontenant and nonpatient parking in the lot, the owner of the building it

serves has never towed anyone from the lot. Compare Commonwealth v. Brown, 51 Mass. App. Ct. 702 (2001) (roadways through grounds of Air National Guard base located on Massachusetts military reservation were public ways despite signs restricting access to "authorized personnel only").

Accordingly, the jury heard sufficient evidence to find that the defendant was operating a vehicle on a way or place accessible to the public as invitees or licensees.

Judgments affirmed.

By the Court (Kinder, Henry & Ditkoff, JJ.[1]),



Clerk

Entered: February 10, 2020.

[1] The panelists are listed in order of seniority.