

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-044

OCTOBER TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Franklin Circuit
	}	
Charles L. Waters	}	DOCKET NO. 136-11-09 Frcs

Trial Judge: A. Gregory Rainville

In the above-entitled cause, the Clerk will enter:

Defendant appeals the civil suspension of his driver’s license for operating his vehicle “on a highway” while under the influence of intoxicating liquor (DUI) in violation of 23 V.S.A. § 1201(a). On appeal, defendant argues that there was no violation of the law because he was operating his vehicle on a private road and not a public highway. We affirm.

The basic facts are as follows. Defendant called police, explaining that he had been in an argument with his wife and was intoxicated. He requested a ride to a detoxification center. In response, a deputy of the Franklin County Sheriff’s Office drove to defendant’s residence on West Shore Road in St. Albans. After realizing that he had passed the residence, the deputy turned around and witnessed a vehicle exit defendant’s driveway and travel down the road. The deputy followed the car and when it stopped, the deputy pulled behind and made contact with defendant. Based on the deputy’s ensuing observations and a breath test, defendant was charged with DUI.

Defendant requested a civil suspension hearing. The only dispute at the hearing was whether West Shore Road is a public highway within the meaning of the statute. There is a sign at the entrance to West Shore Road which states, “Private Way For Property Owners Only DO NOT ENTER.” A second smaller sign reads “ROAD GROOMED FOR COMFORT NOT SPEED SLOW DOWN.” Several camps are located on the road, and two other roads branch off West Shore Road. The deputy testified that other vehicles use the road and that he had driven on it “on numerous occasions.” The court issued a written decision, finding that West Shore Road is a public highway. Defendant appeals.

On appeal, defendant argues that the facts do not support the court’s finding that West Shore Road is a public highway. A public highway is defined as “includ[ing] all parts of any bridge, culvert, roadway, street, square, fairground or other place open temporarily or permanently to public or general circulation of vehicles, and shall include a way laid out under authority of law.” 23 V.S.A. § 4(13); see 23 V.S.A. § 1200(7) (incorporating general definition of highway into DUI statute). The meaning of “highway” is interpreted liberally. State v. Bailey, 149 Vt. 528, 528 (1988). “The key is not ownership of the highway but whether it is

open to the general circulation of the public.” State v. Paquette, 151 Vt. 631, 634 (1989) (quotation omitted).

Defendant argues that the road is not open to the general public, emphasizing the sign restricting access. A sign indicating that a road is private or that access is restricted is not determinative, however, because “[t]he ownership of the road and legal right of vehicle operators to be on it are not . . . the basis of the ‘highway’ element of the law.” Paquette, 151 Vt. at 633. In Paquette, we concluded that a road posted with private drive signs but open to the general circulation of vehicles, maintained by the town, and providing access to a store and grade school was a public highway. Id. at 634. Defendant contends that this case is distinguishable because West Shore Road is not maintained by the town. Defendant instead relies on State v. McNeil, 164 Vt. 129 (1995). In McNeil, we held that the parking lot of a cab company was not a public highway because it was posted, had a dirt surface, was used primarily by employees, and was surrounded by a chain link fence with a narrow opening. Id. at 130. We emphasized that the no-trespass message was enforced by the owners because they called the police when an unknown car was present in the lot. Id. at 133.

We conclude that the facts as testified to by the deputy were sufficient in this case to support the court’s finding of a public highway. Unlike McNeil, the road in this case is used by members of the general public, including the deputy himself on numerous occasions, and although there is a do-not-enter sign, it is not enforced to prevent access to the road. In addition, like Paquette it is used for ingress and egress for two other roads that branch off West Shore Road and it is open to the general circulation of vehicles.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice