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VERMONT SUPREME COURT  
UNPUBLISHED ENTRY ORDER.

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

**STATE** of Vermont

v.

Charles L. **WATERS**.

No. 2010-044. | Oct.

Term, **2011**. | Oct. 21, **2011**.

**Synopsis**

**Background:** Motorist appealed order of the District Court, Unit No. 3, Franklin Circuit, A. Gregory Rainville, J., civilly suspending his driver's license based on finding that motorist had operated his vehicle on a highway while under the influence of intoxicating liquor (DUI).

**Holding:** The Supreme Court held that road on which motorist had driven while intoxicated was a "public highway".

Affirmed.

West Headnotes (1)

[1] **Automobiles**

 **Intoxication and Implied Consent in General**

Evidence was sufficient to show that road on which motorist had driven while intoxicated was a "public highway," as required to support civil suspension of motorist's driver's license for driving under the influence (DUI); although road was privately owned and a "do not enter" sign was posted at entrance to road, sheriff's deputy who arrested motorist testified that other vehicles used the road and that he had driven

on it on numerous occasions, and road was used for ingress and egress for two other roads that branched off of it and was open to the general circulation of vehicles.

[Cases that cite this headnote](#)

Appealed from District Court of Vermont, Unit No. 3, Franklin Circuit, Docket No. 136-11-09 Frcs, A. Gregory Rainville, Trial Judge.

Present: **DOOLEY**, **JOHNSON** and **BURGESS**, JJ.

**ENTRY ORDER**

\*1 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, 546 A.2d 786 (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, 563 A.2d 632 (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, 563 A.2d 632. 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, 563 A.2d 632. 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, 665 A.2d 51 (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, 665 A.2d 51. 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, 665 A.2d 51.

\*2 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.*