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*policing with perspective*

## **AN “MDT” BULLETIN – Maximizing department training ...<sup>1</sup>**

### ***Resident or nonresident driver – that is the question!***

***In order to determine whether a motorist must have a Massachusetts license, officers must consider the residency factors outlined in G.L. c. 90, § 3½. Comm. v. Chown, SJC-10779 (May 20, 2011):***

- **Facts.** The defendant, Kristian Chown, worked as a bartender at a restaurant in Hyannis. One evening he was observed by Sergeant Tynan speeding in his pickup truck.

When Sergeant Tynan pulled the truck over, he noticed that it had license plates from New Brunswick, Canada. The sergeant, a frequent patron of the restaurant, immediately recognized the driver, who handed him a New Brunswick license.

Tynan had personal knowledge that Chown previously had a Massachusetts driver’s license. When asked why he no longer had one, Chown replied that he was planning to go to the registry the following morning. Tynan returned to his cruiser to run a registry record check, which revealed Chown’s lengthy history of Massachusetts motor vehicle violations.

Tynan arrested Chown for operating without a license, G.L. c. 90, § 10, based on his belief that the defendant was a Massachusetts resident without a Massachusetts license. His inventory of the defendant's truck revealed drugs, money, and other evidence.

- **Analysis.**
  - ***Appeals Court.*** Originally, the Appeals Court upheld the arrest and ensuing inventory.<sup>2</sup> The court reasoned that Sergeant Tynan made “a reasonable determination in the field that [this individual] crossed the line from nonresident to resident.” Since the roadside investigation showed that the defendant was a resident, he had to possess a Massachusetts license or suffer the Chapter 90 consequences.

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<sup>2</sup> *Comm. v. Chown*, 76 Mass. App. Ct. 684 (2010).

- **Supreme Judicial Court.** Upon further review, the Supreme Judicial Court (SJC) decided that the arrest was *invalid* because Tynan lacked more formal proof that the defendant was still a Massachusetts resident at the time of the stop.

According to the SJC, an officer must take into account the residency factors outlined in G.L. c. 90, § 3½ before deciding that a motorist is a Massachusetts resident and subject to arrest for failing to have a Massachusetts license. Since the sergeant did not engage in this analysis, his invalid arrest led to an invalid inventory. The drugs had to be suppressed.

### **Street smarts: How should cops apply the Chown case?**

- **Step 1: Valid Stop.** Always, the first issue that a court will assess is the validity of the underlying motor vehicle stop.
- **Step 2: Production of License.** Once the motorist provides an out-of-state or foreign license, the issues are: (1) whether the document is valid, and (2) whether the motorist is a resident.
- **Step 3: Residency Factors.** When officers develop a good faith belief that a motorist may be a Massachusetts resident, they should engage in a brief, roadside inquiry concerning the factors in G.L. c. 90, § 3½. We list these factors from most to least obvious. Under § 3½, any motorist “shall be deemed to be a resident of the Commonwealth during any period in which [he] . . .”

**Filed a Massachusetts resident income tax return** (especially if the person obtained a rental deduction).

**Is registered to vote in the Commonwealth.**

**Paid resident tuition rates or is receiving free public school tuition for a child** for whom he has custody.

**Applied for and received public assistance** from the Commonwealth.<sup>3</sup>

**Declared in a home mortgage settlement** that his principal residence is in Massachusetts.

**Obtained homeowner's liability insurance coverage** on property that was declared to be occupied as a principal residence in Massachusetts.

**Filed a certificate of residency** claiming Massachusetts as his home in order to get a government job (e.g., civil service application).

**Obtained a real estate exemption** under any provision of G.L. Chapter 59. [Learning this will take some research by the officer. City and town assessors will usually be willing to assist].

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<sup>3</sup> If someone who actually resides outside of the Commonwealth applies for or receives public assistance, this should be referred to the appropriate agency for investigation.

**Obtained any benefit**, exemption, deduction, entitlement, license, permit or privilege by claiming a principal residence in the Commonwealth.

- **Step 4: Arrest Decision.** If the discussion concerning these factors obviously indicates that the motorist is a Massachusetts resident, then officers may arrest him pursuant to G.L. c. 90, §§ 10 and 21 if there is evidence that he lacks a valid Massachusetts license. Information obtained from dispatch or via the cruiser MDT may provide probable cause to arrest. *Comm. v. Wilkerson*, 436 Mass. 137 (2002).

**However, if the roadside investigation is inconclusive, do not arrest!**

Instead, officers have a choice.

- **It's over.** They may allow the motorist to continue to operate on the valid nonresident/foreign license initially presented and end their investigation.
- **It's not over.** Or officers may record the biographical information of the motorist (home address, telephone number, etc.) and allow him to drive away. They may then conduct an investigation into this person's residency status.

G.L. c. 90, § 3½ specifically states that the "custodian of [agency] records . . . shall provide, upon request, to . . . a local or state police officer, access to certain information solely for purposes of enforcing chapter . . . 90 . . . ." This means, for example, that investigating officers could contact town officials and learn whether the motorist that they previously stopped is registered to vote. Or they could contact UMass and learn whether the motorist pays in-state tuition rates. Or they could contact the Mass Department of Revenue and learn whether the motorist filed an in-state tax return.

These agencies must cooperate, and their certified record "shall be prima facie evidence of the person's residency within the Commonwealth." G.L. c. 90, § 3 ½ (b).

Armed with certified proof, the officers could send or deliver a citation to the motorist for a violation of G.L. c. 90, § 10 and, depending on the facts, a violation of G.L. c. 90, § 3½, which carries its own \$500 civil motor infraction for improperly registering a vehicle in another state for the purpose of evading or reducing vehicle excise, sales or use taxes, or insurance premiums.

Note: Even a delay of several weeks in mailing this citation would be reasonable, since G.L. c. 90C, § 2 does not require immediate citation service when additional time is needed to investigate the nature of the violation.

Hope this helps you on the street!

*John Sofis Scheft*