

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss

DISTRICT COURT DEPARTMENT
ATTELBORO DIVISION
COMPLAINT NO.

COMMONWEALTH OF MASSACHUSETTS

v.

DEFENDANT’S MOTION TO DISMISS COUNT I (OUI-PRESCRIPTION DRUGS)

Pursuant to Mass. R. Crim. P. 13(c), the defendant, ***** , respectfully moves for a dismissal of Count I (OUI-Prescription Drugs).

On the current state of discovery (please see Affidavit of Defendant’s Counsel filed herewith), the defendant contends that the Commonwealth will not be able to make out a case against him, for the following reason: the Commonwealth cannot identify the prescription drug(s) under the influence of which the defendant was allegedly operating her vehicle.

The “operating under” element of G.L.c. 90, s. 24 requires that the defendant be shown to have operated her motor vehicle “while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in G.L.c. 94C, s. 1.”

Medications not listed or described under section 1 definitions (and thus, “non-scheduled”) cannot be the basis for an operating under count; rather, it must be shown that a “*listed* substance impaired a defendant’s ability to safely operate a motor vehicle. Commonwealth v. Reynolds, Mass. Super. 2003 (Billings, J.) (emphasis supplied).

The Commonwealth, to make its case, is required to prove beyond a reasonable doubt, that one or more scheduled medications, through its or their effect on the defendant’s “judgment, alertness, and ability to respond promptly and effectively to unexpected emergencies,” diminished her “ability to operate a motor vehicle safely.” Commonwealth v. Connolly, 394 Mass. 169, 174 (1985).

The Commonwealth cannot identify the prescription medication(s) it alleges adversely affected the defendant’s ability to safely operate his motor vehicle, let alone identify same as falling within the ambit of G.L.c. 94c, s. 1.

WHEREFORE, the defendant, ***** , respectfully moves for the dismissal of the OUI-Prescription Drugs count against him.

Respectfully submitted,
the defendant,
***** *****
by his attorney:

Gregory R. Barison
Weston Patrick, P.A.
84 State Street / 11th Floor
Boston, MA 02109-2209
(617) 742-9310
BBO # 029340

date: