

## Massachusetts Conviction Overturned Because Right To Confront Document Preparer Violated

Peter L. Parenteau's conviction in 2009 for driving with a revoked driver's license was [set-aside](#) by Massachusetts' Supreme Judicial Court on June 10, 2011. The SJC ruled Parenteau had been denied his Sixth Amendment right to confront and cross-examine the person who prepared the document the prosecution relied on to prove he had been informed his license was revoked.

Parenteau pled guilty in April 2007 to driving under the influence of intoxicating liquor in Massachusetts. In sentencing Parenteau the judge told him his driver's license would be revoked for two years.

More than two years later, in May 2009 Parenteau was parked at a Gulf service station in Boxborough when a police officer ran his license plate. The officer learned that Parenteau was the registered owner of the vehicle and that he had a revoked driver's license. The officer confronted Parenteau, and even though he produced a valid driver's license the officer arrested him for driving with a revoked license.

Prior to Parenteau's trial the prosecution provided his lawyer with a certification from the Registry of Motor Vehicles dated July 24, 2009, that showed he had been mailed a notice on May 2, 2007 that his driver's license had been revoked for ten years. Parenteau's lawyer filed a *motion in limine* to exclude the certification on the ground that it violated his right to confront the witness against him — namely whoever allegedly prepared and mailed the notice in May 2007. The judge denied the motion and Parenteau was subsequently convicted.

Parenteau appealed and on June 10, 2011 Massachusetts' Supreme Judicial Court overturned Parenteau's conviction, ruling that a certificate issued by the Registry of Motor Vehicles cannot be used as evidence that a person has been notified their driver's license



Gulf gas station in Boxborough, MA where Peter L. Parenteau was arrested (Google streetview)

has been revoked. Based on the U.S. Supreme Court's 2009 ruling in [Melendez-Diaz v. Massachusetts](#), 129 S.Ct. 2527 (2009), in which the Court ruled that the expert conducting a drug-test is required to testify — and must be available for cross-examination — about their findings in court, the SJC ruled that introduction of the certificate violated Parenteau's Sixth Amendment right to confront the witness testifying against him, which would be the person who allegedly mailed the certificate. The SJC stated in [Commonwealth vs. Peter L. Parenteau](#), SJC-10763 (6-10-2011):

We conclude that the registry certificate, like a certificate of drug analysis, is testimonial in nature. It is a solemn declaration made by the registrar for the purpose of establishing the fact that a notice of license revocation was mailed to the defendant on May 2, 2007, and, by inference, was received by him. The registry certificate was dated July 24, 2009, nearly two months after the criminal complaint for operating a motor vehicle after license revocation had issued against the defendant. As such, it plainly was made for use at the defendant's trial as prima facie evidence that he was notified of his license revocation, an essential element of the charged crime that the Commonwealth was required to prove. The certificate did not simply attest to the existence and authenticity of records kept by the registry but made a factual representation based on those records that a particular action had been performed—notice had been mailed on a specified date. The mere existence of a copy of the notice of license revocation in the registrar's files did not, in and of itself, constitute proof that it was mailed to the defendant. Because the certificate is a testimonial statement, its admission at trial in the absence of testimony from a registry witness violated the defendant's Sixth Amendment right to confrontation.

Since there is no evidence Parenteau was notified his license was revoked for ten years instead of the two years the judge told him during his sentencing hearing, his conviction for driving with a revoked driver's license was set-aside by the SJC.

The principles set forth in [Melendez-Diaz v. Massachusetts](#), and in the USSC's earlier decision in [Crawford v. Washington](#), 541 U.S. 36, 59 (2004) about a defendant's Sixth Amendment right to confront and cross-examine witnesses are applicable to many wrongful conviction cases.

Sources:  
[SJC overturns '09 conviction](#), *Boston Globe*, June 11, 2011

## Vladek Filler Acquitted After Retrial Of Sexually Assaulting His Estranged Wife

Vladek Filler was acquitted by a jury in Hancock County, Maine on May 27, 2011 of sexually assaulting his estranged wife Ligia. Filler was retried after the Maine Supreme Court overturned his January 2009 sexual assault conviction and ordered a retrial.

Filler and his wife lived in Gouldsboro, Maine when they separated in 2007 with the intention to divorce. Filler told his estranged wife that he was planning to move from Maine to Georgia where his relatives lived, and that he wanted the couples two young children to move with him. She then filed a criminal complaint that on one occasion Filler anally raped her and on two other occasions physically abused her. After doing that she filed for a protection order and an order granting her full custody of their children. She also included the allegations in a subsequent divorce petition.



Vladek Filler during May 2011 trial (John Clarke Russ, BDN)

Filler was charged with rape, gross sexual assault, and two misdemeanor counts of assault. There was no evidence of that Ligia had been raped because she refused to have a medical examination even though the police encouraged her to do so.

During Filler's trial his defense was that after learning he wanted to move to Georgia his wife fabricated the rape allegation and grossly exaggerated arguments they had by claiming they were assaults in order to obtain custody of the couple's children. The prosecution objected when Filler's lawyer attempted during his cross-examination of Filler's wife to impeach her credibility by questioning her about the custody dispute and the timing of her making criminal accusations against her husband. The judge sustained the prosecution's objection based on his opinion that her testimony would amount to litigation of the still unresolved "custody issues and that's not what this case is about."

Then during its rebuttal argument the prosecution argued that Filler had not presented any evidence supporting his claim that it wasn't until after his wife realized they

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