

**STATE OF NEW HAMPSHIRE
SUPREME COURT**

No. 2017-0692

State of New Hampshire

v.

Jeffrey R. Keenan

OPENING BRIEF OF APPELLANT JEFFREY R. KEENAN

**APPEAL BY PETITION PURSUANT TO RSA 541:6
FROM THE FINAL ORDER OF THE
SALEM DISTRICT DIVISION OF THE TENTH CIRCUIT COURT
DOCKET NO. 473-2017-CR-02585
NOVEMBER 30, 2017
ROBERT STEPHEN, J.**

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A. TABLE OF STATUTES AND OTHER AUTHORITIES

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B. QUESTION PRESENTED FOR REVIEW

Whether a motorist who possesses vehicle operating privileges but no vehicle registration privileges may be convicted under R.S.A. 261:178 for driving a vehicle registered to another, absent a finding that he “controlled” the vehicle.

This question was the Appellant’s core argument at trial. Transcript at 12–15 (Appendix Exhibit A at 13–16). Appellant objected to the court’s rejection of this argument at trial. Transcript at 24–25 (Appendix Exhibit A at 25–26).

C. STATUTES AND RULES

N.H. R.S.A. 261:178

Suspension of Registration of Vehicle. – The director, upon evidence satisfactory to him that the owner of a vehicle is permitting or has permitted the same to be driven in violation of any of the provisions of this title, or has made any false statement in the application for registration, may suspend the registration of such vehicle until he is satisfied that the offense will not be repeated or the owner has been acquitted, and any person who shall drive or permit to be driven a vehicle owned or controlled by him upon any way after his registration has been suspended or revoked shall be guilty of a misdemeanor.

R.S.A. 264:2

Proof Required Upon Conviction for Motor Vehicle Law Violations. –

I. Upon receipt of an abstract of the record in case of conviction of any person for

one of the following offenses, the director may suspend the license of the person so convicted and the registration certificates of any motor vehicle, trailer, or semi-trailer registered in the name of such person and require the surrender of the registration plates of any such vehicle, unless and until such person gives and thereafter maintains proof of his financial responsibility in the future:

- (a) Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;
- (b) Failing to stop and report when involved in an accident;
- (c) Homicide or assault arising out of the driving of a motor vehicle;
- (d) The second time for driving a vehicle at an excessive rate of speed;
- (e) The second time for driving a vehicle in a reckless manner and a violation of such other of the provisions of any state law relative to vehicles as the director shall determine.

D. STATEMENT OF THE CASE

On October 31, 2017 Jeffrey R. Keenan was arrested while driving his son's car and charged by the Salem Police with a violation of R.S.A. 261:178. Complaint (Appendix Exhibit F at 38). This statute prohibits, *inter alia*, one who has lost the privilege of registering a vehicle from driving a vehicle "owned or controlled by him." On November 30, 2017, at a bench trial before Judge Robert Stephen of the Salem District Division of the Tenth Circuit Court, there was no dispute regarding the material facts. The only question was one of law: whether Keenan's act of driving his son's car constituted "control" under the statute. Keenan was found guilty. He objected and appealed. On January 9, 2018 this Court accepted this case. As the sole question is one of law, this Court reviews the trial court's holding *de novo*.

E. STATEMENT OF MATERIAL FACTS

On January 25, 2017 the Department of Safety suspended Keenan's driver's license and operating privileges (permission to drive a car). Driver Record Report, dated September 2, 2017 (Appendix Exhibit C at 32). On or about January 31, 2017 the Department of Safety suspended

Keenan's registration privileges (permission to register a car that one personally owns). *Id.*; Notice of Action by the Director, dated February 1, 2017 (Appendix Exhibit B at 30).

At some point between January 25, 2017 and January 31, 2017 Keenan purchased an operator-type SR-22 Insurance Policy and presented evidence of such to the Department of Safety. Upon presentation, the Department of Safety restored Keenan's license/operating privileges. Notification or Rescind Notice, dated January 31, 2017 (Appendix Exhibit D at 34). Because Keenan chose not to purchase an owner/operator type policy, his registration privileges remained suspended. *Id.* As of August 31, 2017 this situation — namely, Keenan could drive but not register — persisted.

On the morning of August 31, 2017 an officer of the Salem Police Department stopped Keenan while he was driving a 2003 Chevrolet Trailblazer on Lowell Road in Salem. Complaint (Appendix Exhibit F at 38). One of his sons, Alex Tisbert was a passenger in the vehicle. The car was owned by one of his other sons, Jake Keenan. The car was registered in Jake Keenan's name. Registration Certificate (Appendix Exhibit E at 36).

The arresting officer charged (Jeffrey) Keenan with a violation of R.S.A. 261:178. The pertinent text of the Complaint reads as follows:

the defendant did knowingly drive a motor vehicle controlled by him, to wit, a 2003 Chevrolet Trailblazer, upon Lowell Road, a way in the State of New Hampshire, after his registration privileges had been suspended by the Director of Motor Vehicles on January 25, 2017.

Complaint (Appendix Exhibit F at 38).

F. SUMMARY OF ARGUMENT

In finding Keenan guilty, the trial court erred in two ways.

First, it gave to R.S.A. 261:178 a construction that the logic of the statute cannot bear.

Second, it gave to R.S.A. 261:178 a construction that would lead to absurd results.

G. ARGUMENT

1. The trial court erred in treating “driving” and “controlling” as synonyms

By finding Keenan in violation of R.S.A. 261:178 the trial court gave to the statute a construction that neither the language nor logic of the statute can bear.

Let us note first the language of the statute. It reads, in pertinent part, as follows:

[A]ny person who shall drive or permit to be driven a vehicle owned or controlled by him upon any way after his registration has been suspended or revoked shall be guilty of a misdemeanor.

To obtain a conviction under this statute, the State would need to prove several things.

First, that Keenan was driving a vehicle . . . or permitting one to be driven. That Keenan was driving is not in dispute. (Permitting is irrelevant, because driving was established.)

Second, that Keenan’s driving took place on a way. That he was driving on a way is not in dispute.

Third, that Keenan’s registration had been suspended or revoked. This, once again, is not in dispute.

Finally, that the vehicle Keenan was driving was “owned or controlled by him.” As the vehicle was owned by Keenan’s son, the State could not show that Keenan “owned” it. It needed to prove, instead, that Keenan “controlled” the vehicle.

How, then, could the State do this?

Two paths appear in this forest.

One was is to argue that the General Court, when it followed the phrase “a vehicle owned” with the words “or controlled,” meant to block efforts by besotten cheapskates to deviously circumvent the “registration” prohibition. Such a motorist might think: “Hmm. I can’t drive a car I ‘own’ so I will sell it to my son, I will instruct him to register it in his name, I will have him park it at my house, I will pay for all the gas, I will expect him to let me use it whenever I want. After all, I’m his dad. And I’m also still stronger than him.”

The State conspicuously failed to introduce evidence upon which such an argument against Keenan could be built. Only one such factoid found its way into evidence — that Keenan drove the car out of his driveway at 8:00am. But everything else that the State would need to build a case of this sort was missing: that Jake Keenan’s car was, in practice though not in title, Jeffrey Keenan’s.

The State chose to walk down another path in view, namely, to argue that “controlling” means “driving.” Keenan should be convicted because he drove a vehicle he drove, the prosecution argued. The trial court accepted this argument and convicted Keenan.

Keenan respectfully submits that this interpretation is a gross perversion of the logic of the statute.

Let us first note that the statute creates four possible offending acts. It does so by initially dividing perpetrators into two classes: drivers (“any person who shall drive”) and permitters (“any person who shall permit to be driven”). Next the statute divides vehicles into two classes: those that are “owned” and those that are “controlled.” The resulting offenses are thus these:

1. “any person who shall drive . . . a vehicle owned by him”
2. “any person who shall drive . . . a vehicle controlled by him”
3. “any person who shall permit to be driven . . . a vehicle owned by him”
4. “any person who shall permit to be driven . . . a vehicle controlled by him”

Legislating against any one of these acts makes perfect sense. All of these are things that we don't want people without registration privileges to do . . . as long as we give to the word “controlled” a meaning similar to “dominate.”

25. But once one uses “control” as a synonym for “drive,” the perfect logical order of the statute falls apart. Then we have these two mongrel crimes:

2. “any person who shall drive . . . a vehicle he drives”
4. “any person who shall permit to be driven . . . a vehicle he drives”

A statute notable for its clarity is thus transformed into a model of legislative gobbledygook. For this reason alone, this Court should reverse the trial court's conviction.

2. The trial court's holding is at odds with N.H. regulatory practice and common sense

Aside from the trial court's derogation of the language and logic of the statute, the trial court's conclusion is at odds with New Hampshire's well-established rules governing the purchase of insurance for risky drivers.

It is well known that New Hampshire does not require motorists to purchase liability insurance. But for some people, those who have lost licensing or registration privileges for certain reasons, recovery of these privileges is made contingent upon the purchase of insurance. R.S.A. 264:2. This insurance is known, both in New Hampshire and nationally, as SR-22 insurance. New Hampshire' rules for purchase and proof of SR-22 coverage are found in Saf-C 207. Guidance from the Department of Safety, Division of Motor Vehicles, regarding this rule

can be found on the Department's website, in a publication titled "Insurance Requirements/SR-22,"

<https://www.nh.gov/safety/divisions/dmv/financial-responsibility/insurance.htm> (Appendix Exhibit H at 44).

This Guidance explains that insurance comes in two forms and is used for two purposes. The more expansive — and expensive — one is an "owner-operator" type; this covers the insured when he drives any vehicle, whether owned by him or another. The less capacious type is known as "operator" insurance; this covers the insured when he drives a vehicle owned by another. As the Department of Safety explains: "An 'Owner SR-22' allows the person filing to own and register a vehicle as well as operate a motor vehicle." *Id.*

New Hampshire law thus specifically contemplates and allows for a bifurcation. Those, like Keenan, who have lost either their operating or registration privileges may restore either their operating or registration privileges. One may choose to own and drive; one can also choose merely to drive.

For reasons of financial economy, Keenan chose in January 2017 to purchase the latter type of insurance ("operator") and reinstate only his license and operating privileges. He did not request reinstatement of his registration privileges. On January 31, 2017 his license and operating privileges were restored.

This presents quite a puzzle: The Department of Safety allowed Keenan to choose between a owner/operator policy, on one hand, and an operator policy, on the other. The insurance marketplace offered him the same choice. And Keenan then chose to buy the cheaper one. Why did all of these parties do what they did? For a simple reason: In the State of New

Hampshire it is a common-place practice for those who cannot register a car to nonetheless operate one.

At Keenan's trial, the State nonetheless argued that a person who possesses a driver's license but does not possess registration privileges simply cannot drive.

Judge Stephen appeared briefly to grasp the import of the State's argument, asking whether such would, in fact, categorically prohibit motorists like Keenan — possessing one privilege but not the other — from driving. The State conceded that it would. Transcript at 21 (Appendix Exhibit A at 22).

The States' concession proves too much.

For this statute to bear the interpretation the State forces upon it, the entire regulatory structure of R.S.A. 262 and Saf-C 207 would collapse.

H. CONCLUSION

The State, acting through the Salem Police Department, committed an injustice against Jeffrey Keenan when it chose to prosecute him for driving his son's automobile after the State, acting through the Department of Safety, Division of Motor Vehicles, had granted him the right to do so.

This injustice was compounded when the State, acting through the Salem District Court, tortured the text and logic of R.S.A. 261 to convict him for doing what many other risky New Hampshire motorists do: recover driving privileges by purchasing expensive insurance policies.

Jeffrey Keenan now comes to this Court to plea that it right these wrongs, that it reverse his conviction and remind all officers of the law and the court that a criminal conviction is not a

trifling matter, that a man should not be deprived of his freedom for farcically spurious reasons, and that the legitimacy of the State rests upon the decency and intellectual honesty of its officers.

I. STATEMENT REGARDING ARGUMENT

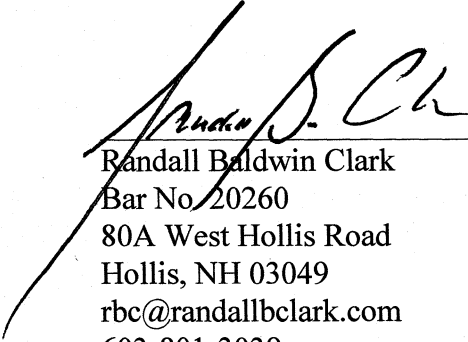
This case comes to this Court as a matter of first impression, not because the question is complex, but, rather, because it is exceedingly simple. Both the State and the trial court managed to find complexity that had eluded all other observers. Keenan accordingly believes that oral argument is not necessary for disposition of this appeal, but would be happy to participate should this Court desire such.

J. RULE 16(b)(3)(ii) CERTIFICATION

The decision being appealed is not in writing. A transcript of the trial can be found in the Appendix as Exhibit A. A copy of the Disposition and Sentencing form can be found in the Appendix as Exhibit G.

Respectfully submitted,
JEFFREY R. KEENAN,
By his attorney,

Date: June 4, 2018

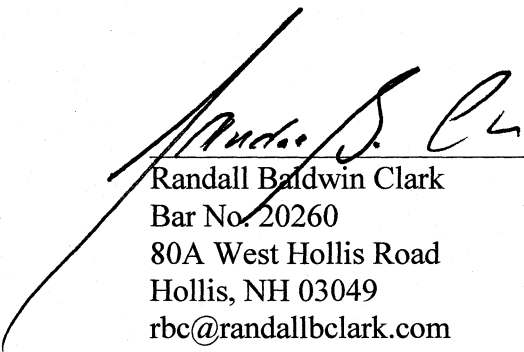


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K. CERTIFICATE OF SERVICE

I, Randall B. Clark, do hereby certify that I have served this day two copies of this "Opening Brief of Appellant Jeffrey R. Keenan" upon the Attorney General of the State of New Hampshire via U.S.P.S. First-Class Mail at the following address: Department of Justice, 33 Capitol Street, Concord, NH 03301.

Date: June 4, 2018



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