

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2017-0692

The State of New Hampshire

v.

Jeffrey R. Keenan

**STATE'S MEMORANDUM IN LIEU OF BRIEF
PURSUANT TO SUPREME COURT RULE 16(4)(b)**

STATEMENT OF THE CASE AND THE FACTS

On January 25, 2017, the Department of Safety (“DOS”) suspended the driver’s license and operating privileges of Jeffrey R. Keenan, the defendant. DApp.: 32.¹ Following the suspension of his driving privileges, DOS also suspended the defendant’s registration privileges because he lacked insurance. DApp.: 30. The notice provided that the defendant’s registration privileges may be restored if he obtained an SR-22 insurance policy. *Id.* On February 1, 2017, DOS notified the defendant that his license privileges were restored, while his registration privileges remained suspended.² DApp.: 34.

¹ “DApp.” refers to the defendant’s appendix.
“DBr.” refers to the defendant’s brief.
“NOA” refers to notice of appeal.

² The defendant contends the restoration of driving but not registration privileges was due to defendant’s purchase of an “Operator-type” of SR-22 insurance rather than an “Owner/Operator

Salem Police officers arrested the defendant, on August 31, 2017, on Lowell Road in Salem for driving while his registration privileges remained suspended. DApp.: 38. At the time of the stop, the defendant was driving a 2003 Chevrolet Trailblazer that was registered to his son Jake Keenan. DApp.: 36, 38. Although registered under Jake's name, the address listed for the vehicle was the defendant's address. DApp.: 36, 38. Accordingly, the arresting officer charged the defendant with violating RSA 261:178 (2014). DApp.: 38.

At trial, the defendant argued he did not violate RSA 261:178 on the grounds that he was not driving a vehicle "owned or controlled by him." DApp.: 14; *see* RSA 261:178. The defendant argued that although "it is plausible that control could be understood to [mean] drive," such an interpretation would render the statute "confus[ing] and redundant." DApp.: 14–15. The defendant thus maintained the term "control" referred to the driver's relationship and access to the vehicle. DApp.: 15.

By contrast, the State argued that the term "control" included the physical control exercised by someone who drives a vehicle. DApp.: 16. The State maintained that this interpretation of the term "control" was necessary to "keep people from ... hopping in someone else's car and driving it around." DApp.: 16–17. The trial court agreed with the State's interpretation of the statutory language at issue. DApp.: 24. Accordingly, the court found the defendant guilty,

type" of SR-22 insurance. Yet, the defendant has not provided any documentation to indicate the type of insurance purchased to support this claim.

and fined him \$500 plus a \$120 statutory penalty assessment, which the court held in abeyance. DApp.: 40. Additionally, the court immediately suspended the defendant's license for 30 days. DApp.: 41. This appeal followed.

ARGUMENT

RSA 261:178 (2014) applied to the defendant where he was convicted of driving a vehicle upon a way while his registration privileges were still suspended.

On appeal, the defendant argues that the circuit court's guilty verdict rested upon an erroneous interpretation of the language of RSA 261:178 (2014). That statute provides that after the director of the division of motor vehicle has suspended the registration of a person's vehicle, "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." RSA 261:178. The defendant does not contest that he was driving a vehicle on a way at a time when his registration was suspended or revoked. DBr: 5. Rather, he contests only the element that the vehicle was "owned or controlled by him." *Id.* The defendant does not frame the argument as a claim of insufficient evidence; rather, he contests the State's, and the circuit court's, interpretation and application of that statutory language. DBr.: 6–7.

The interpretation of a statute is a question of law, which [this Court will] review *de novo*. In matters of statutory interpretation, [this Court is] the final arbiter[] of the intent of the legislature as

expressed in the words of the statute considered as a whole. When examining the language of the statute, [this Court will] construe that language according to its plain and ordinary meaning. [This Court will] interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.

State v. Hanes, No. 2017-0170, slip op. at 4 (N.H. July 18, 2018) (citations omitted). “Furthermore, [this Court will] construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” *State v. Fogg*, 170 N.H. 234, 236 (2017) (quotation omitted). “Finally, [this Court will] interpret a statute in the context of the overall statutory scheme and not in isolation.” *Id.* (quotation omitted).

This Court must affirm the circuit court’s decision because that court correctly interpreted RSA 261:178. At trial, the parties disputed the meaning of the term “control” as it relates to the vehicle being driven and the person whose registration is suspended. However, the ambiguity of the term “control” is secondary to the larger issue of what part of the statute is modified by the phrase “a vehicle owned or controlled by him.” By the defendant’s argument, the phrase should be understood to modify both “shall drive” and “permit to be driven.” Under this construction, there are two possible ways to violate the statute.

First, it would violate the statute for any person to drive a vehicle owned or controlled by him upon any way, after his registration has been suspended or revoked. Second, it would violate the statute for any person to permit another

person to drive a vehicle owned or controlled by the person whose registration is suspended or revoked. If this Court were to interpret the statute in this way, it would need to determine the meaning of the term “control” as it applies to the driver’s relationship to the vehicle.

However, the phrase “a vehicle owned or controlled by him” is more easily understood to refer only to the “permit to be driven” language. This interpretation would also provide for two possible violations. First, it would violate the statute for any person to drive upon any way after his registration has been suspended or revoked. Second, it would violate the statute for any person to permit another person to drive a vehicle owned or controlled by the person whose registration is suspended. Under this construction of the statute, anyone whose registration is currently suspended is forbidden to drive until his registration privileges have been restored. This is exactly the scenario presented in this case.

In short, the defendant would have this Court read the statute thus: “any person who shall drive ... a vehicle owned or controlled by him upon any way after his registration has been suspended or revoked shall be guilty of a misdemeanor,” where the phrase “a vehicle owned or controlled by him” is necessarily the direct object of “drive.” However, the statute can also be read thus: “any person who shall drive[, and any person who shall] 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,” where the phrase “a

vehicle owned or controlled by him” is the direct object only of the verb phrase “permit to be driven.” In that case, anyone who drives, regardless of whose car the person is driving, commits a misdemeanor if the person’s registration has been suspended or revoked. Reading it in this fashion is reasonable, and it avoids the need to determine whether “control” is synonymous with “drive.”

If this Court should determine that both these interpretations are sustainable, however, then it must conclude that the statute is ambiguous. In that case, this Court will “consider legislative history to aid [its] analysis.” *State v. Matton*, 163 N.H. 411, 412 (2012).

In 2012, Representative Stephen Malone introduced House Bill 1578 to the House Committee on Transportation. The bill sought to clarify the prohibition against driving a vehicle while an individual’s registration privileges were suspended under RSA 261:178. HB 1578 proposed to change the relevant language of RSA 261:178 to: “any person who shall drive or permit to be driven a vehicle upon any way after *the registration of the vehicle* has been suspended shall be guilty of a misdemeanor.” HB 1578 (2012) (emphasis added). This amendment would thus have limited the reach of the statute to the use of only the specific vehicle with the suspended registration. Yet, following the primary sponsor’s call to vote the bill “inexpedient to legislate,” this amended version of the statute was not adopted. *N.H.H.R. Jour.* 1216 (2012).

The legislature's decision not to adopt this amendment demonstrates that the current statute is not limited just to the *vehicle* with the suspended registration, but rather that it applies generally to the *person* who has the suspended registration. Therefore, under the current statute, a person will be criminally liable for driving whenever his registration privileges have been suspended, regardless of whose car he is driving.

In addition to the legislative history of the statute, this Court should also examine the statute's general purpose. As a rule, New Hampshire does not require every motor vehicle to be insured in order for it to be driven. *Coltey v. N.E. Telephone*, 135 N.H. 223, 224 (1991). Yet, under certain circumstances enumerated by RSA 264:3 (2014), proof of financial responsibility may be required. In these instances, RSA 264:3 "requires that the 'driver or owner or both' furnish 'sufficient security to satisfy any judgment for damages resulting from such accident as may be recovered against such owner or driver.'" *Progressive Northern Ins. Co. v. Enter. Rent-A-Car Co. of Bos., Inc.*, 149 N.H. 489, 490 (2003) (ellipsis and emphasis omitted) (quoting RSA 264:3, I). "Failure to comply with the statute results in the suspension of the driver's license and registration certificate and the surrender of registration plates and suspension of the owner's registration certificates, plates and license." *Id.*

Drivers may restore their operating and registration privileges by providing the state with proof of financial responsibility in the form of SR-22 insurance.

RSA 264:2 (2014). An SR-22 insurance certificate is “a uniform document filed by an insurance company pursuant to RSA 264:21 and RSA 259:9 that certifies the policyholder is insured for New Hampshire’s minimum liability requirements under RSA 264.” *N.H. Admin. R. Saf-C 202.01(ah)* (2018). The restoration of a driver’s operating or registration privileges “shall be based on the type of filing made. In cases where non-owner’s coverage is filed, registration of a vehicle shall not be permitted and active registration shall be suspended until evidence of owner coverage on any such vehicle is filed with the director.” *N.H. Admin. R. Saf-C 207.08* (2018). Although the defendant never provided the trial court with evidence he purchased such insurance, the subsequent restoration of his operating privileges implies such a purchase.

This Court has found that “[t]he purpose of the Financial Responsibility Act is to provide compensation for persons harmed by the negligent operation of motor vehicles in this State.” *Progressive Northern Ins. Co.*, 149 N.H. at 490. The Act is not meant “to protect the tort-feasor, but to provide compensation to persons harmed by the negligent operation of motor vehicles.” *Peerless Ins. Co. v. Vigue*, 115 N.H. 492, 494 (1975). Instead, “[t]he law is intended to induce, but not to compel, motor vehicle operators to provide security to persons injured by their negligence.” *Progressive Northern Ins. Co.*, 149 N.H. at 491 (quoting *American Mut. & Ins. Co. v. Ocean Accident Guar. Corp.*, 87 N.H. 374, 376 (1935)). Thus,

the trial court's interpretation should be affirmed as it is in accordance with the public policy interests the law seeks to protect.

To allow risky drivers who purchase "Operator" rather than "Owner" SR-22 insurance to drive any vehicle, so long as they do not own or control it, would effectively allow these drivers to circumvent the vehicle registration requirement. In New Hampshire, a vehicle must be registered unless "specifically exempt by statute or rule from the requirement of registration ..." RSA 261:40 (2014). This Court has held that the purpose of this requirement is to protect the public in case of accidents. *American Mut. Liabl. Ins. Co. v. Chaput*, 95 N.H. 200, 204 (1948) (decided under prior law). Additionally, the registration requirement allows for the "efficient collection of revenue and to facilitate identification in case of accident or violation of the law." *Bosen v. Larrabee*, 91 N.H. 492, 493 (1941) (decided under prior law). Allowing car owners with suspended registration privileges to purchase the less expensive "Operator" insurance policy, and thereby operate any vehicle they do not "own or control," would effectively circumvent this requirement. *Cf.* RSA 264:24-b (2014) (prohibiting the transfer of a registration in order to circumvent the requirements of the Financial Responsibility Act).

The interests of public policy and the overall objectives of the statutory scheme indicate that individuals with suspended registration privileges should not be allowed to operate any vehicle without showing the proof of financial

responsibility required to have their registration privileges restored. Thus, the statute still prohibits drivers who restore their operating, but not registration, privileges through the purchase of SR-22 "Operator" insurance from driving any vehicle upon a way. The trial court's construction of the statutory language as prohibiting the defendant from operating any vehicle was therefore correct, and this Court must affirm.

CONCLUSION

For the foregoing reasons, the State of New Hampshire respectfully requests that this Honorable Court affirm the decision below.


The State waives oral argument under Supreme Court Rule 16(4)(b).

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

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August 3, 2018


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CERTIFICATE OF SERVICE

I hereby certify that I have sent two copies of the State's memorandum of law to Randall Baldwin Clark, attorney for the defendant, Jeffrey R. Keenan, by first-class mail postage prepaid, at the following address:

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August 3, 2018


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