

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Nos. 2009-0202, -0203, -0204, -0205

The State Of New Hampshire

v.

Sharon Ankrom

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

STATEMENT OF THE CASE AND FACTS

These four consolidated appeals are the result of two similar incidents, the first on November 17, 2007, and the second on February 16, 2008. T1 27, 49.¹ On both occasions, the defendant, Sharon Ankrom, was stopped by a Manchester police officer while driving on a street in Manchester in a Mazda pickup truck with no inspection sticker. T1 27-31, 49-50. On both occasions, she admitted to the officer that her Rhode Island driver's license was suspended. T1 33, 51. On both occasions, the officer called headquarters and confirmed that she had no New Hampshire license and that her Rhode Island license had been suspended. T1 35, 55.

¹ References to the record are as follows: "NOA" is the notice of appeal in 2009-0202; "DB" is the defendant's brief; "DBA" is the appendix to the defendant's brief; "App." is the appendix to this memorandum; "TA" is the transcript of arraignment on September 29, 2008; "T1" is the transcript of the first day of trial on December 9, 2008; "TS" is the transcript of sentencing on February 11, 2009; "T2" is the transcript of the trial on March 10, 2009.

The defendant was charged with two counts of operating after suspension and two counts of failure to have a vehicle inspected, all violation-level offenses. App. 1-4. *See* RSA 263:64 (Supp. 2009); RSA 266:5 (Supp. 2009). Three of the counts were tried on December 9, 2008 (trial on three related charges also began on that date, and continued on December 18, 2008, and January 5, 2009, but those charges are not involved in these appeals). T1 3-78. The February 2008 inspection violation was tried on March 10, 2009. T2 3-30.

At the first trial in Manchester District Court (*Emery, J.*), the State introduced evidence of the facts recited above, as well as evidence that the pickup was registered on September 14, 2007, but was never inspected. T1 35. The defendant argued that the motor vehicle statutes and regulations were invalid as an impermissible infringement of her constitutional right to travel. T1 37-45. With the court's permission, she subsequently filed a *pro se* memorandum of law in which she reiterated these arguments at length. DBA 1-25. The court found her guilty on all three counts. NOA 5. She then filed motions to vacate judgment on each count, raising additional arguments that are discussed below. DBA 26-53. The court denied the motions. TS 19. It sentenced her to suspended fines on each of the three offenses. TS 16.

At the trial on the February 2008 inspection violation, the State again introduced evidence that the pickup was registered in September 2007 but was never inspected. T2 12-13. The defendant argued that the pickup was not subject to the inspection statute because it was not a "truck" as that term is defined in RSA 259:115-b (2004). T2 18-19. She also argued that trying her for the February 2008

offense after her conviction of the November 2007 offense was a violation of double jeopardy. T2 19-25. Finally, she argued that the charge should be dismissed because the State had failed to send her a witness list before trial. T2 3-9, 26-27. The court denied the motion, found her guilty and sentenced her to a suspended fine of \$50. T2 28-30.

These appeals followed.

ARGUMENT

THE TRIAL COURT CORRECTLY DENIED THE DEFENDANT'S MOTIONS TO VACATE AND DISMISS.

1. Although the defendant's brief is not organized in accordance with Supreme Court Rule 16(3), this memorandum will address its arguments in roughly the order presented. The defendant's principal claim appears to be that the New Hampshire statutes and regulations governing the licensing of drivers are invalid as an infringement on her constitutional right to travel. DB 1-14. This argument was considered and rejected by the United States Supreme Court over ninety years ago, in *Hendrick v. Maryland*, 235 U.S. 610, 624 (1914), and *Kane v. New Jersey*, 242 U.S. 160, 166-69 (1916). It remains invalid today. See, e.g., *Snavely v. City of Huntsville*, 85 So. 2d 1162, 1166 (Ala. Crim. App. 2000) (citing *Hendrick*); *State v. Sullivan*, No. COA09-705, 2009 WL 5067454, at *2-*3 (N.C. Ct. App. Dec. 22, 2009) ("the right to travel is not synonymous with the right to operate a motor vehicle on the highways of this State"). Moreover:

[B]urdens on a single mode of transportation do not implicate the right to interstate travel. A rich man can choose to drive a limousine; a poor man may have to walk. The poor man's lack of choice in his mode of travel may be unfortunate, but it is not unconstitutional. ...

The ... argument that the right to operate a motor vehicle is fundamental because of its relation to the fundamental right of interstate travel is utterly frivolous. The [defendant] is not being prevented from traveling interstate by public transportation, by common carrier, or in a motor vehicle driven by someone with a license to drive it. What is at issue here is not his right to travel interstate, but his right to operate a motor vehicle on the public highways, and we have no hesitation in holding that this is not a fundamental right.

[The defendant] does not have a fundamental “right to drive.” In *Dixon v. Love*, 431 U.S. 105, 112-16 (1977), the Supreme Court held that a state could summarily suspend or revoke the license of a motorist who had been repeatedly convicted of traffic offenses with due process satisfied by a full administrative hearing available only after the suspension or revocation had taken place. The Court conspicuously did not afford the possession of a driver’s license the weight of a fundamental right.

Miller v. Reed, 176 F.3d 1202, 1205-06 (9th Cir. 1999) (citations and quotations omitted). It follows that the defendant’s constitutional claims (*see* DB 14-15) are without merit.

2. The defendant argues that her Rhode Island license could not be considered “suspended” because she alleges that the maximum term of suspension had passed. DB 15-16. This argument fails for two reasons. First, the appellate record contains nothing indicating the date on which her license was suspended. Second, the provision she cites, R.I. Gen. Laws § 31-11-7(a)(2) (2009), refers only to the one-year maximum term of a suspension imposed “without preliminary hearing.” R.I. Gen. Laws § 31-11-7(a)(1). After a hearing has been held, the statute permits the division of motor vehicles to “extend the suspension of the license” without limit. R.I. Gen. Laws § 31-11-7(f). Because the evidence in this case, including the defendant’s own testimony on cross-examination, demonstrated that the suspension was in force at least until the fall of 2008, T1 62, the court’s verdict was supported by the evidence.

3. The defendant’s argument that “there is no evidence on the record to support any agreement between the states for New Hampshire to honor or enforce

Rhode Island law,” DB 16, must fail in view of RSA 263:77 (2004)—the interstate Driver License Compact.

4. The argument that the defendant was not given sufficient notice of the charge in complaint No. 08-CR-11338, DB 16, is not supported by the record. The transcript indicates that she was arraigned on the amended complaint on September 29, 2008, at which time the charging officer informed the court and the defendant that a previous operating without a valid license charge was being nol prossed and replaced by the charge of operating after suspension. TA 5. *See* App. 3 (indicating that complaint was served in hand by Officer Steven Reardon).

5. The defendant’s argument that her pickup does not fall under the statutory definitions of vehicles requiring inspection, DB 17-18, is without merit. A Mazda pickup is a motor vehicle because it is a “self-propelled vehicle not operated exclusively on stationary tracks.” RSA 259:60 (Supp. 2009). RSA 259:115-b (2004) defines “truck” as referring to “every motor vehicle designed, used or maintained primarily for the transportation of property.” The defendant argues that her pickup does not qualify because she uses it for personal travel. DB 18. The use of the word “or” in the statute, however, means that it is sufficient that a pickup is *designed* primarily for the transportation of property; since this is manifestly the case, the defendant’s argument must fail.

6. The argument that RSA 266:5 (Supp. 2009) is unconstitutionally vague, DB 18, was never raised below and never included in any of the

defendant's notices of appeal. It is therefore not preserved for appeal and is not properly before this Court. *State v. O'Connell*, 131 N.H. 92, 95 (1988).

7. The argument that the two charges for failure to inspect violate double jeopardy must fail because the two charges were discrete offenses, separated by three months. "When reviewing two separate indictments, it does not matter how overlapping, reciprocal, or similar the evidence used to sustain the indictments was if a difference in evidence is actually required to prove the crime charged." *State v. Sanchez*, 152 N.H. 625, 630 (2003) (quotation and brackets omitted). RSA 266:1 (2004) says that inspection is necessary to ensure that a vehicle is "fit to be driven." Thus, contrary to the defendant's suggestion, DB 18, no violation could occur unless the vehicle was driven on a way. Because the defendant drove her vehicle on a way on two different dates without an inspection sticker, different evidence was needed to convict her of the two charges; there was no violation of double jeopardy.

8. The defendant's arguments on civil disobedience based on part I, articles 4 and 10 of the New Hampshire Constitution, DB 19-20, are unsupported by any decisions of this Court. They must also fail because they rest on the meritless constitutional arguments concerning the right to travel discussed in paragraph 1 above.

9. The argument that an issue cannot be preserved for appeal if the court does not issue findings and rulings, or rules summarily, DB 21, is without merit. "[A] superior court justice sitting without a jury is generally under no obligation to make findings and rulings in support of a decree unless a party asks for them..." *Howard*

v. Howard, 129 N.H. 657, 659 (1987). The defendant never submitted a formal request for findings or rulings. Further, whether issues are preserved for appeal does not depend on what the trial court says; it depends entirely on whether the appealing party brought those issues to the attention of the trial court. *State v. McMillan*, 158 N.H. 753, 755 (2009).

10. District Court Rule 2.7(C) provides that, “where a defendant proves an inability to pay a fine, the Court may allow the defendant to perform community service....” It is accordingly permissive, not mandatory. The defendant’s argument that the court should have been obliged to sentence her to community service, DB 21-22, is unsupported by the language of the rule. In addition, the court made it clear that it could sentence the defendant to community service if the State consented. TS 15. The sentence was well within the court’s discretion.

11. The trial court considered the defendant’s request for sanctions due to the prosecutor’s failure to provide a witness list prior to trial. T2 3-9. The court offered to continue the trial if the defendant indicated she was unprepared to proceed with the witness called by the State. T2 9. When she indicated otherwise, the court proceeded with the trial, implicitly ruling that no sanction was appropriate because no prejudice had resulted from the alleged violation. *Id.* “In cases of prosecutorial negligence, the defendant must show that he was actually prejudiced by the prosecutor’s discovery violation.” *State v. Stickney*, 148 N.H. 232, 236 (2002). The defendant’s argument for a more severe sanction, DB 22, is therefore without merit.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the decision of the Manchester District Court.

The State waives oral argument.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

Michael A. Delaney
Attorney General



Nicholas Cort, NH Bar No. 236
Assistant Attorney General
Criminal Justice Bureau
33 Capitol Street
Concord, N.H. 03301-6397
(603) 271-3671

January 14, 2010

I hereby certify that two copies of the foregoing were mailed this day, postage prepaid, to Sharon Ankrom, pro se.



Nicholas Cort

STATE'S APPENDIX

Docket # 107 11851

COMPLAINT (VIOLATIONS ONLY)

- You do NOT have to come to court but must answer this complaint to the Department of Safety within 30 (thirty) days from issuance. Date of Issuance: _____
- OR
- You do NOT have to come to court but must answer this complaint to Court listed below within 30 (thirty) days from issuance. Date of Issuance: _____
- OR
- You MUST come to court at 0815 o'clock AM/PM on 12-1 yr. 2007 to answer this complaint.

STATE OF NEW HAMPSHIRE, HILLSBOROUGH COUNTY

MANCHESTER DISTRICT COURT

35 AMHERST STREET

07 1105 PO BOX 456

MANCHESTER, NH 03105-0456 07-0851

THE UNDERSIGNED COMPLAINS THAT THE DEFENDANT: (Please Print)

ANKROM Sharon L
 LAST NAME FIRST NAME
416 Amherst Street Manchester NH 03105
 ADDRESS CITY STATE ZIP
0708 77 9521118 RH RI RI
 DOB MO DAY YR OP. LIC. # STATE CLA

M W 5'4 151 Blue Black
 Sex Race Height Weight Color Eyes Color Hair

ON THE 17 DAY OF NOVEMBER YR. 2007 AT 213

DID OPERATE M.V. REG. NO. 2531311 PLATE TYPE Pass STATE RI

MAKE Buick YEAR 1991 TYPE Pickup COMM. VEHICLE HA

AT W. 1

Upon a certain public highway, to wit - W. 1 (Location)

- at a speed greater than was reasonable and prudent under the conditions prevailing, to wit rate of _____ m.p.h., the prima facie lawful speed limit at the time and place of violation being _____ m.p.h. Contrary to RSA 265:60. Radar Aircraft Ck
- Traveling at a rate of _____ m.p.h., the same being in excess of the maximum lawful limit of 65 m.p.h.
- did fail and neglect to stop the said vehicle for a certain
 - stop sign (contrary to RSA 265:31)
 - traffic light (contrary to RSA 265:9) before entering the intersection of _____
- did fail and neglect to have the said vehicle inspected in accordance with the regulations Director of Motor Vehicles. Contrary to RSA 266:5.
- did fail and neglect to have said vehicle registered in accordance with law. Contrary to RSA 266:1
- Other: See 265:69

CONTRARY TO RSA 265:69 Against the peace and dignity of the State

PAVEMENT: Dry Wet Ice Snow
 TRAFFIC: Light Medium Heavy Accident Resulting
 WEATHER: Rain Snow Ice Fog Clear C

Dep. Sharon L. Ankrom Complainant

SERVED IN HAND 11-17-07 FINE \$ 100

Personally appeared the above named complainant and made oath that the above complaint subscribed is, in his/her belief, true.

DATE 11-17-07 Justice of the Peace [Signature]

POLICE OFFICER 1631791 DS 009031

Docket # 07 11852

COMPLAINT (VIOLATIONS ONLY)

- You do NOT have to come to court but must answer this complaint to the Department of Safety within 30 (thirty) days from issuance. Date of Issuance: _____
- OR
- You do NOT have to come to court but must answer this complaint to Court listed below within 30 (thirty) days from issuance. Date of Issuance: _____
- OR
- You MUST come to court at 8:15 o'clock AM on 12-1-7 yr. 2007 to answer this complaint.

STATE OF NEW HAMPSHIRE, HILLSBOROUGH COUNTY

MANCHESTER DISTRICT COURT

35 AMHERST STREET

PO BOX 456

MANCHESTER, NH 03105-0456 07-05511

*07
25113*

THE UNDERSIGNED COMPLAINS THAT THE DEFENDANT: (Please Print)

LAST NAME ANKROM FIRST NAME Sharon MI L
 ADDRESS 416 Ambrose St CITY Manchester STATE NH ZIP 03104
042871 SUBURBAN RFD 9521443 R¹ P¹
 DOB MO 1 DAY 24 YR 1975 OP. LIC. # _____ STATE _____ CLASS _____

Sex M Race Sp Height 175 Weight 140 Color Eyes Blue Color Hair Black

ON THE 17 DAY OF Nov YR. 2007 AT 7:30 AM

DID OPERATE M.V. REG. NO. 25313 PLATE TYPE P-11 STATE NH

MAKE Dodge YEAR 1994 TYPE Van COMM. VEHICLE HAZMAT

AT Inter

Upon a certain public highway, to wit _____ (Location) _____

- at a speed greater than was reasonable and prudent under the conditions prevailing, to wit, at a rate of _____ m.p.h., the prima facie lawful speed limit at the time and place of violation being _____ m.p.h. Contrary to RSA 265:60. Radar Aircraft Clocked
- Traveling at a rate of _____ m.p.h., the same being in excess of the maximum lawful speed limit of 65 m.p.h.
- did fail and neglect to stop the said vehicle for a certain
 - stop sign (contrary to RSA 265:31)
 - traffic light (contrary to RSA 265:9) before entering the intersection of _____
- did fail and neglect to have the said vehicle inspected in accordance with the regulations of the Director of Motor Vehicles. Contrary to RSA 266:5. 9-11-77
- did fail and neglect to have said vehicle registered in accordance with law. Contrary to RSA 261:40
- Other _____

CONTRARY TO RSA _____ Against the peace and dignity of the State.

PAVEMENT: Dry Wet Ice Snow
 TRAFFIC: Light Medium Heavy Accident Resulting
 WEATHER: Rain Snow Ice Fog Clear Cloudy

Dept. _____ Complainant _____ Badge No. _____

SERVED IN HAND Oben... FINE \$ _____

Personally appeared the above named complainant and made oath that the above complaint by him/her subscribed is, in his/her belief, true.

DATE 11-17-07 Justice of the Peace [Signature]

POLICE OFFICER 1638791 DS 00527

Docket # 08 14377

DEC 16 2008

Docket #

COMPLAINT (VIOLATIONS ONLY)

- You do NOT have to come to court but must answer this complaint to the Department of Safety within 30 (thirty) days from Issuance: Date of Issuance: 2/16/08
- OR You do NOT have to come to court but must answer this complaint to Court listed below within 30 (thirty) days from issuance: Date of Issuance: _____
- OR You MUST come to court at _____ o'clock AM/PM on _____ yr. to answer this complaint. 3-17-08

STATE OF NEW HAMPSHIRE, HILLSBOROUGH COUNTY
MANCHESTER DISTRICT COURT **WES A/F**
 35 AMHERST STREET
 PO BOX 456 E 08-13885
 MANCHESTER, NH 03105-0456

THE UNDERSIGNED COMPLAINS THAT THE DEFENDANT: (Please Print)
Ankrom Sharon L
 LAST NAME FIRST NAME MI
459 Wilson St Manchester NH
 ADDRESS CITY STATE ZIP
042877 042877287 NH
 DOB MO DAY YR OP. LIC. # STATE CLASS

E W 5109 140 Bike Bike
 Sex Race Height Weight Color Eyes Color Hair
 ON THE 16 DAY OF February YR. 08 AT 1615 A.M.
 DID OPERATE M.V. REG. NO. 253 1311 PLATE TYPE PASS STATE NH
 MAKE Mazd B4000 YEAR 1994 TYPE PKUP COMM. HAZMAT
 VEHICLE
 AT Manchester, NH

- Upon a certain public highway, to wit - Wilson Lake (Location)
- at a speed greater than was reasonable and prudent under the conditions prevailing, to wit, at a rate of _____ m.p.h., the prima facie lawful speed limit at the time and place of violation being _____ m.p.h. Contrary to RSA 265:60. Radar Aircraft Clocked
 - Traveling at a rate of _____ m.p.h., the same being in excess of the maximum lawful speed limit of 65 m.p.h.
 - did fail and neglect to stop the said vehicle for a certain
 - stop sign (contrary to RSA 265:31)
 - traffic light (contrary to RSA 265:9) before entering the intersection of _____
 - did fail and neglect to have the said vehicle inspected in accordance with the regulations of the Director of Motor Vehicles. Contrary to RSA 266:5.
 - did fail and neglect to have said vehicle registered in accordance with law. Contrary to RSA 261:40
 - Other _____

CONTRARY TO RSA _____ Against the peace and dignity of the State.

PAVEMENT: Dry Wet Ice Snow
 TRAFFIC: Light Medium Heavy Accident Resulting
 WEATHER: Rain Snow Ice Fog Clear Cloudy

Dept. Manchester Complainant B. O'Leary Badge No. 60

SERVED IN HAND B. O'Leary FINE \$ 60
 Personally appeared the above named complainant and made oath that the above complaint by him/her subscribed is, in his/her belief, true.
 DATE 2/18/08 Justice of the Peace [Signature]
 DOS/COURT 1638791 DS 0126
 DSMV/28 (REV 08/05)