

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher David Mattiuz :
 :
 v. : No. 1161 C.D. 2009
 : SUBMITTED: December 18, 2009
 Commonwealth of Pennsylvania, :
 Department of Transportation, :
 Bureau of Driver Licensing, :
 Appellant :

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: January 28, 2010

The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (Department) appeals from an order of the Court of Common Pleas of Berks County, which sustained the statutory appeal of Christopher D. Mattiuz from a three-month suspension of Mattiuz’s driving privilege stemming from Mattiuz’s failure to provide proof of financial responsibility (insurance) covering the operation of Mattiuz’s vehicle. We reverse.

The Department informed Mattiuz by a letter dated February 16, 2009 that his operating privilege would be suspended “because you failed to produce proof of financial responsibility on 01/31/2009, the date of your traffic offense.” Reproduced Record at 5a. On February 27, 2009, Mattiuz filed a timely statutory

appeal in the Court of Common Pleas of Berks County. That court held a hearing on the matter on May 27, 2009. At the hearing, the Department offered into evidence a certified record of Mattiuz’s conviction for violating 75 Pa. C.S. § 1786(f), which bans the operation of a motor vehicle without required financial responsibility. In response, Mattiuz testified “that citation was withdrawn last week in this courtroom.” *Id.* at 11a. He did not, however, provide any documentation of the dismissal of the conviction. The Court of Common Pleas ruled for Mattiuz, and the Department appealed to this court.¹

Subsection 1786(f) of the Pennsylvania Motor Vehicle Financial Responsibility Law provides that anyone who operates or permits the operation of a motor vehicle without required financial responsibility is subject to the penalties of 75 Pa. C.S. § 1786(d). Section 1786(d) requires a three-month suspension of the operating privilege, and gives a framework for appeals to the Court of Common Pleas. In relevant part, 75 Pa. C.S. § 1786(d), states:

(d) Suspension of registration and operating privilege.

(1) The [Department] . . . shall suspend the operating privilege of the owner or registrant for a period of three months if the department determines that the owner or registrant has operated or permitted the operation of the vehicle without the required financial responsibility.

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(4) Where an owner or registrant's operating privilege has been suspended under this subsection, the owner or registrant shall have the same right of appeal under section 1550 (relating to judicial review) as provided for in cases of suspension for other reason. The court's scope of review in an appeal from an operating privilege suspension shall be limited to determining whether:

¹ In this appeal, Mattiuz, who was *pro se* in the Court of Common Pleas, was precluded from filing a brief with this court for failure to file in a timely manner.

- (i) the vehicle was registered or of a type required to be registered under this title; and
- (ii) the owner or registrant operated or permitted the operation of the same vehicle when it was not covered by financial responsibility. The fact that an owner, registrant or operator of the motor vehicle failed to provide competent evidence of insurance . . . shall create a presumption that the vehicle lacked the requisite financial responsibility. This presumption may be overcome by producing clear and convincing evidence that the vehicle was insured at the time it was driven.

In this case, the Department offered a certified copy of the record of conviction as prima facie evidence of a violation of 75 Pa. C.S. § 1786(f). Ordinarily, a record of conviction is sufficient to shift the burden of proof to the licensee to show, by clear and convincing evidence, that the vehicle was in fact insured at the time in question. *Capone v. Dep't of Transp., Bureau of Driver Licensing*, 853 A.2d 1141, 1145 (Pa. Cmwlth. 2004); *Fine v. Dep't of Transp., Bureau of Driver Licensing*, 694 A.2d 364, 367 (Pa. Cmwlth. 1997); *Wible v Dep't of Transp., Bureau of Driver Licensing*, 670 A.2d 744, 746 (Pa. Cmwlth. 1996). However, in this case, Mattiuz testified that the citation had been “withdrawn,” an assertion that was accepted as fact by the Court of Common Pleas without any supporting evidence or documentation on the record. The Court of Common Pleas ruled for Mattiuz, finding that the Department had failed to meet its burden of proof.

This was an error on the part of the Court of Common Pleas, because, while documentary evidence that a conviction has been overturned may preclude the Department from establishing a prima facie case, *Fine*, 694 A.2d 367, the uncorroborated testimony of the licensee does not suffice to do so. *Fagan v. Dep't of Transp., Bureau of Motor Vehicles*, 875 A.2d 1195, 1199 (Pa. Cmwlth. 2005);

Fell v. Dep't of Transp., Bureau of Motor Vehicles, 925 A.2d 232, 239 (Pa. Cmwlth. 2007) (*en banc*).

In *Mateskovich v. Dep't of Transp., Bureau of Driver Licensing*, 755 A.2d 100 (Pa. Cmwlth. 2000), a licensee challenged a suspension for truancy, imposed under Section 1338.1 of the Public School Code of 1949,² 24 P.S. § 13-1338.1. The Department introduced certified copies of the truancy conviction, and the licensee testified that he had not, in fact, been convicted. *Id.* at 102. This court held that:

Licensee's testimony that the district justice did not find him guilty of the November 13, 1998 citation is not clear and convincing evidence that the certified record is erroneous. To meet this burden, Licensee would have to challenge the regularity of the record or provide other direct evidence as to why the court record was incorrect, i.e., testimony of court personnel that the records were incorrect and that the conviction was never entered by the district justice.

Id. In this case, as in *Mateskovich*, the licensee's testimony was insufficient to overcome the Department's prima facie case. Additionally, the testimony does nothing to meet the licensee's burden of proving that the car was in fact insured. The record of conviction creates a presumption, not that the conviction took place, but that the vehicle was uninsured, and to overcome that presumption, the burden is on the licensee to produce proof of insurance. *Capone*, 853 A.2d at 1141; 75 Pa. C.S. § 1786(d)(4)(ii). Merely stating that the conviction was voided does not come close to meeting that burden.

² Act of March 10, 1949, P.L. 30, added by the Act of November 17, 1995, P.L. 1110 (Spec. Sess. No. 1).

Because the Department offered prima facie evidence that the vehicle was uninsured, and Mattiuz failed to show by clear and convincing evidence that the vehicle was insured, the Court of Common Pleas erred in ruling for Mattiuz. The Department raises other objections to the Court of Common Pleas' handling of this case, but there is no need to address them here, because the resolution of the above issue is sufficient to warrant a reversal.

BONNIE BRIGANCE LEADBETTER,
President Judge

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Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing,	:	
Appellant	:	

ORDER

AND NOW, this 28th day of January, 2010, the order of the Court of Common Pleas of Berks County in the above-captioned matter is hereby REVERSED.

BONNIE BRIGANCE LEADBETTER,
President Judge