

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| James Brian Bartley, | : | |
| Appellant | : | |
| | : | |
| v. | : | |
| | : | |
| Commonwealth of Pennsylvania, | : | |
| Department of Transportation, | : | No. 932 C.D. 2008 |
| Bureau of Motor Vehicles | : | |
| | : | |
| Pep Boys – Manny, Moe and Jack, | : | |
| Appellant | : | |
| | : | |
| v. | : | |
| | : | |
| Commonwealth of Pennsylvania, | : | |
| Department of Transportation, | : | No. 933 C.D. 2008 |
| Bureau of Motor Vehicles | : | Submitted: October 10, 2008 |

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE BUTLER**

FILED: November 13, 2008

James Brian Bartley (Inspector) and Pep Boys, Manny, Moe and Jack (Inspection Station) appeal from the orders of the Court of Common Pleas of Centre County (trial court) dismissing the appeals of their four month suspensions of their certifications as official safety inspectors.¹ The Inspector and Inspection

¹ These suspensions are commonly referred to as inspection certification suspensions.

Station essentially present one issue for this Court's review: whether the findings of the trial court are supported by substantial evidence. For reasons that follow, we affirm the trial court.

On January 30, 2008, the Commonwealth of Pennsylvania, Department of Transportation (PennDOT) mailed notices to the Inspector and Inspection Station advising them that their certifications as official safety inspectors were suspended for four months, effective March 5, 2008, for performing or indicating unnecessary repairs for the purpose of passing an inspection on a 1998 Ford. On February 28, 2008, the Inspector and Inspection Station appealed to the trial court and the trial court dismissed their appeals. The Inspector and Inspection Station timely appealed to this Court.²

The Inspector and Inspection Station argue that the trial court erred in concluding the evidence presented established the violation of performing or indicating unnecessary repairs to pass inspection. Specifically, they argue that the testimony of Tracy Conn (Conn), the owner of the 1998 Ford, was suspect, and the testimony of Jeremy Horner (Horner), a quality assurance officer, was insufficient to rebut the testimony of the Inspector and Tyler Muchmore (Muchmore), the service manager at the Inspection Station.

“Questions of witness credibility are solely within the province of the trial court. In cases involving alleged violations of the [Vehicle] Code^[3] and the regulations interpreting the same, [PennDOT] has the burden of proving such violations by a preponderance of the evidence.” *Firestone Tire & Serv. Ctr. v.*

² This Court's scope of review in an inspection certification suspension case is limited to determining whether an error of law was committed or whether the findings of the trial court are supported by substantial evidence. *Dep't of Transp., Bureau of Motor Vehicles v. Mazzarini*, 919 A.2d 295 (Pa. Cmwlth. 2007).

³ 75 Pa.C.S. §§101-9805.

Dep't of Transp., 871 A.2d 863, 867 (Pa. Cmwlth. 2005) (citations omitted). In the instant case, the certifications were suspended pursuant to Section 4726 of the Vehicle Code, *as amended*, 75 Pa.C.S. §4726 (permitting suspension of certification for improperly conducting inspections or failing to comply with departmental regulations).

At trial, Conn testified that on April 12, 2007, she took her truck to the Inspection Station for a state inspection, and she was advised the truck failed because it needed new rotors. Notes of Testimony, April 21, 2008 (N.T.) at 6-7; Reproduced Record (R.R.) at 28a-29a. She declined to have the Inspector replace her rotors. Instead, she took her truck to a Ford dealer the following day, where the truck passed inspection without the purchase of new rotors. N.T. at 10; R.R. at 32a. Horner testified that on April 16, 2007, he measured the brake pads on the truck and they should have passed inspection on April 12, 2007. N.T. at 19-20; R.R. at 41a-42a. Horner also examined the rotors on April 16 and determined that they looked “shiny” and “new.” N.T. at 26; R.R. at 48a. Horner further testified he spoke to the Inspector who said that he did not measure the brake pads, he merely estimated the measurement, and that he observed that the rotors were rusted and pitted. N.T. at 25-26; R.R. at 47a-48a.

The Inspector testified that he failed the truck because the brake pads pulled away from the backing. N.T. at 42-43; R.R. at 64a-65a. He said he only suggested new rotors because it would be easier to perform a good quality brake job with new rotors. N.T. at 44; R.R. at 66a. Muchmore testified he showed Conn the brake pads and explained to her the reason the truck failed inspection. N.T. at 49; R.R. at 71a.

The trial court found Conn to be a credible witness whose testimony was corroborated by the invoices, repair estimates and vehicle specifications submitted by PennDOT. The trial court also found Horner, the Inspector and Muchmore to be credible witnesses, but, in light of the fact that Horner testified to actually measuring the brake pads, his testimony was sufficient to rebut the testimony of the Inspector and Muchmore.

PennDOT did not need to present “concrete” evidence that the Inspector and the Inspection Station had indicated unnecessary repairs for purposes of passing an inspection. *Tropeck v. Dep’t of Transp., Bureau of Motor Vehicles*, 847 A.2d 208 (Pa. Cmwlth. 2004). Rather, PennDOT only had to prove by a preponderance of the evidence, i.e., that it is more likely than not, that the Inspector and the Inspection Station had indicated unnecessary repairs for purposes of passing an inspection. *Id.*

Based on the above, there is substantial evidence to support the trial court’s finding that PennDOT met its burden of proving the Inspector and the Inspection Station had indicated unnecessary repairs for purposes of passing an inspection. Specifically, the testimony offered and supporting documents are sufficient to support the finding that the Inspector and Inspection Station told Conn that her vehicle needed new brake pads and rotors in order to pass inspection when in fact it did not.

For these reasons, the orders of the trial court are affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 13th day of November, 2008, the orders of the Court of Common Pleas of Centre County, dated April 21, 2008, are hereby affirmed.

JOHNNY J. BUTLER, Judge