

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-839

COMMONWEALTH

vs.

AIRTON MONTEIRO.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

After a jury trial, the defendant was convicted of operating a motor vehicle with a suspended license due to his prior conviction of operating under the influence of alcohol (OUI). The defendant claims, and the Commonwealth concedes, that the conviction must be vacated because the trial judge improperly allowed irrelevant and prejudicial evidence. We agree and reverse.

Specifically, the defendant claims that the admission of a certified docket and his entire certified records from the Registry of Motor Vehicles was improper because they contained information, such as additional arrests and charges, which were irrelevant and prejudicial. Because defense counsel timely objected, we review for prejudice. See Commonwealth v. Deramo, 436 Mass. 40, 49 (2002).

A portion of the defendant's certified records, i.e., the notices of the suspension and the defendant's prior OUI conviction, were relevant and admissible to prove the elements of the offense for which he was charged.¹ However, the records also included irrelevant charges, such as negligent operation and alcohol and drug offenses, despite these charges having been dismissed. The records also included the defendant's complete driving history, almost entirely unredacted, spanning back to 2012. Despite the evidence of the defendant's guilt,² when considering the impact and prejudice these inadmissible documents had on the fairness of the defendant's trial, the judgment must be reversed and the case remanded for a new

¹ "To prove the crime of operating a motor vehicle after revocation or suspension of license for operating while under the influence of alcohol," the Commonwealth must prove "(1) that the defendant operated a motor vehicle; (2) that at the time of that operation the defendant's license was revoked or suspended; (3) that the license suspension or revocation was pursuant to a violation of one of the specified statutory sections (including operating a motor vehicle while under the influence of alcohol in violation of G. L. c. 90, § 24 [1] [a]); and (4) that the defendant was notified that his license had been suspended or revoked." Deramo, 436 Mass. at 50.

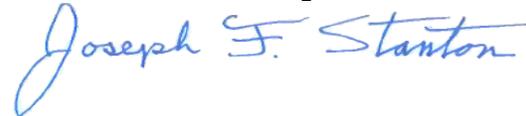
² After the defendant was stopped for speeding, he told the officer that his license "may be revoked due to a recent OUI charge." The Commonwealth entered in evidence documents showing notices mailed to the defendant informing him of his license suspension, as well as a certified docket of the defendant's prior OUI conviction.

trial. See Commonwealth v. Hanson, 79 Mass. App. Ct. 233, 234 (2011).

Judgment reversed.

Verdict set aside.

By the Court (Meade,
Sullivan & Neyman, JJ.³),



Clerk

Entered: February 11, 2020.

³ The panelists are listed in order of seniority.