

Westlaw Delivery Summary Report for PARSONS,BRUCE

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1994 CarswellOnt 36, 5 M.V.R. (3d) 219, 74 O.A.C. 340

R. v. Vlajkovic

R. v. JOHN VLAJKOVIC

Ontario Court of Appeal

Galligan, Arbour and Weiler JJ.A.

Judgment: September 9, 1994
Docket: Doc. CA C16921

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Counsel: *Rick Libman*, for the Crown.

John Vlajkovic, in person.

Subject: Public; Evidence

Motor Vehicles --- Offences and penalties — Prosecutions.

Motor Vehicles --- Evidence — Prosecutions.

Prosecutions — Defendant charged with speeding and **driving** while **suspended** — Offences alleged to have occurred at same time and arising out of same transaction — Justice of the peace not erring in dismissing motion by defendant for severance of charges.

Driving while disqualified or **suspended** — **Certificates** of suspension being prima facie proof of their contents — Such **certified documents** not having to be placed before court during testimony of officer who ordered them from Ministry so as to identify them.

The defendant was charged in a single information with speeding and **driving** while under suspension. The justice of the peace rejected a defence motion to sever the charges. On the **driving** while **suspended** charge, the Crown tendered **certificates** of suspension to prove that the defendant was under suspension at the time he was stopped by the police. The **certificates** were made exhibits, but the justice of the peace held that there was no evidence of suspension because the police officer who testified for the Crown had not identified the **certificates** as those which he had ordered. The defendant was acquitted of **driving** while under suspension. The Provincial Offences Appeal Court judge upheld the justice of the peace's ruling with respect of the **certificates**, and also held that the justice of the peace erred in rejecting the defendant's motion for severance. The Crown appealed.

Held:

The appeal was allowed.

The tendering into evidence of the **certified documents** from the Ministry of Transportation constituted prima facie proof that the defendant was **driving** while under suspension at the time of the alleged offence. Therefore, there was prima facie evidence of the contents of the **certificates** before the justice of the peace. Such **certified documents** do not have to be placed before the court during the testimony of the officer who ordered them from the Ministry so as to identify them.

The justice of the peace did not err in rejecting the motion for severance. Section 38(2) of the *Provincial Offences Act* (Ont.) gives the court discretion to direct that separate counts, informations or certificates be tried separately where the ends of justice so require. The burden is obviously upon the person who seeks severance to make out a case for it. In this case, both offences were alleged to have occurred at the same time and were related to the same transaction. No articulable reason was given on behalf of the defendant for seeking separate trials.

Statutes considered:

Highway Traffic Act, R.S.O. 1990, c. H.8 —

s. 210(7)

Provincial Offences Act, R.S.O. 1990, c. P. 33 —

s. 38(2)

s. 47(2)

s. 57(4)

Appeal from judgment affirming acquittal on charge of driving while under suspension.

The judgment of the court was delivered by Galligan J.A. (orally):

1 The Crown appeals the acquittal of the respondent on a charge of driving while under suspension pursuant to the

provisions of the *Highway Traffic Act*. Leave to appeal was granted under the provisions of the *Provincial Offences Act*. There were errors both at the trial level and at the Provincial Offences Appeal Court level.

2 The respondent was charged with both speeding and **driving while suspended**. On the **driving while suspended** charge, the Crown tendered **certificates** of suspension to prove that the respondent was under suspension at the time he was stopped by the police. The **certificates** were made exhibits. The justice of the peace held, however, that there was no evidence of suspension because the police officer who testified for the Crown had not identified the **certificates** as those which he had ordered. She held that it was the "custom" of the court to **require** such identification and, because that custom was not followed, the **certificates** were not proof that the respondent was under suspension at the relevant time. That ruling was wrong. Moreover, it was upheld on appeal.

3 The **certificates** are prima facie proof of their contents. The relevant statutory provisions are s. 210(7) of the *Highway Traffic Act* and ss. 47(2) and 57(4) of the *Provincial Offences Act*. Those provisions respectively are as follows:

210(7) A copy of any writing, paper or document filed in the Ministry under this Act, or any statement containing information from the records required to be kept under this Act, purporting to be certified by the Registrar under the seal of the Ministry, shall be received in evidence in all courts without proof of the seal or signature and is proof, in the absence of evidence to the contrary, of the facts contained therein.

.....

47(2) Where a certificate as to the content of an official record is, by any Act, made admissible in evidence as proof, in the absence of evidence to the contrary, the court may, for the purpose of deciding whether the defendant is the person referred to in the certificate, receive and base its decision upon information it considers credible or trustworthy in the circumstances of each case.

.....

57(4) A certificate setting out with reasonable particularity the finding of guilt or acquittal or conviction and sentence in Canada of a person signed by,

(a) the person who made the adjudication; or

(b) the clerk of the court where the adjudication was made,

is, upon the court being satisfied that the defendant is the person referred to in the **certificate**, admissible in evidence and is proof, in the absence of evidence to the contrary, of the facts stated therein without proof of the signature or the official character of the person appearing to have signed the **certificate**.

4 The tendering into evidence of the **certified documents** from the Ministry of Transportation specifying that the respondent was **suspended** from **driving** on account of the accumulation of demerit points and unpaid fines constituted prima facie proof that he was **driving** while under suspension at the time of the alleged offence. There was, therefore, prima facie evidence of the contents of the **certificates** before the justice of the peace. It would have been open to the respondent to challenge their accuracy or authenticity. However, in this case there was no such challenge.

5 There is a statutory scheme in place which provides for the reception into evidence of such certified documents. **Nothing more is required, nothing less will suffice.** The Provincial Offences Appeal Court judge therefore erred in holding that such certified documents must be placed before the court during the testimony of the officer who ordered them from the

Ministry so as to identify them. To require such an identification process neither adds to nor detracts from the accuracy or authenticity in issue. Moreover, it constitutes an unnecessary and overly technical interpretation of s. 210(7) of the *Highway Traffic Act* which results in the attendance at court of a witness for a purely administrative purpose while defeating the intent of the legislation which is to provide a statutory short cut and expedite the conduct of judicial proceedings.

6 The second error arises from a motion, made by defence counsel at trial, for severance of the speeding and **driving** while **suspended** charges. The justice of the peace properly rejected that motion. The Provincial Offences Appeal Court judge, however, held that the justice of the peace was in error in doing so. Section 38(2) of the *Provincial Offences Act* provides the court with a discretion, before or during the trial, to direct, inter alia, that separate counts, informations or certificates be tried separately where the "*ends of justice so require*." That provision reads as follows:

38(2) The court may, before or during the trial, where it is satisfied that the ends of justice so require, direct that separate counts, informations or certificates be tried separately or that persons who are charged jointly or being tried together be tried separately.

7 The learned justice of the peace properly directed that the two counts be tried together. Both offences were alleged to have occurred at the same time and were related to the same transaction. Both charges were laid under the provisions of the *Highway Traffic Act*. No articulable reason was given on behalf of the respondent for seeking separate trials. The learned Provincial Offences Appeal Court judge erred in law in holding that the learned justice of the peace erred when she dismissed the severance application. He appears to have taken the view that the respondent's consent was required in order for the two offences to be tried together, notwithstanding that they were contained in the same information. The provision does not require any such consent. Such an interpretation of s. 38(2) of the Act would result in a multiplicity of proceedings and is contrary to the spirit of the legislation which imposes a test of "ends of justice."

8 The burden is obviously upon the person who seeks severance to make out a case for it. Section 38(2) requires a determination that the "ends of justice" require severance before severance can be ordered. No basis for any such finding is apparent in the record in this case. Indeed, the rule should be that, except where the "ends of justice" require severance, offences under the *Highway Traffic Act* arising out of the same circumstances ought to be tried together.

9 The Provincial Offences Appeal Court judge erred in upholding the justice of the peace's ruling on the evidentiary issue and in saying that these charges should not have been tried together. This appeal therefore must be allowed and the acquittal on the charge of **driving** while **suspended** must be set aside. This appeal was brought in order to allow this court to give guidance to the Provincial Offences Courts upon the two issues which we have discussed. This respondent has now been through four levels of judicial proceedings, trial, appeal to the Summary Conviction Appeal Court, the application for leave to appeal to this court and this appeal. It seems to us that he has had enough.

10 While we are required to set aside the acquittal it is our strong recommendation that the interests of justice do not require that the Crown proceed with a new trial. The appeal is allowed and the acquittal is set aside.

Appeal allowed.

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[R. v. Vlajkovic](#), 5 M.V.R. (3d) 219, 74 O.A.C. 340, 1994 CarswellOnt 36, [1994] O.J. No. 2175 (Ont. C.A., Sep 09, 1994)

History	
Direct History	
=>	1 R. v. Vlajkovic , 5 M.V.R. (3d) 219, 74 O.A.C. 340, 1994 CarswellOnt 36, [1994] O.J. No. 2175 (Ont. C.A. Sep 09, 1994) (Judicially considered 2 times)

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Citing References
Positive & Neutral Cases (Canada)

Followed in

	<u>1</u> R. v Finnie Distributing (1997) Inc., 2004 CarswellOnt 4529, 2004 ONCJ 256, 11 M.V.R. (5th) 179 (Ont. C.J. Nov 01, 2004)
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Considered in

	<u>2</u> R. v Vlahos, 2002 CarswellOnt 5841 (Ont. C.J. Jan 25, 2002)
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