Case Name:

R. v. Vlahos

IN THE MATTER OF The Highway Traffic Act, R.S.O. 1990, c. H.8

Between
Her Majesty the Queen, and
George T. Vlahos, moving party (defendant)

[2002] O.J. No. 266

Ontario Court of Justice
Provincial Offences Court - Toronto, Ontario
Quon J.P.

Heard: October 5, 2001.
Judgment: January 25, 2002.
(60 paras.)

Charge: Drive while under suspension - s. 53(1) Highway Traffic Act

Cases Considered or Referred To:

R. v. Aguilera, [2001] O.J. No. 2287 (O.C.J.) per Quon J.P. at Toronto.
R. v. Amankwaa, [1997] O.J. No. 6014 (Ont. Ct. (Prov. Div.)) per Quon J.P. at Etobicoke.
R. v. Vlajkovic, [1994] O.J. No. 2175 (Ont. C.A.) per Galligan, Arbour and Weiler JJ.A.

Statutes, Regulations and Rules Cited:

Highway Traffic Act, R.S.O. 1990, c. H.8, ss. 46(2), 46(3), 52(1), 52(2), 53(1), 210(7).
Provincial Offences Act, R.S.O. 1990, c. P.33, ss. 47(2) and 57(4).
Red Tape Reduction Act, 2000, S.O. 2000, c. 26, Sched. O, s. 4.
Demerit Point System Regulation (O.Reg. 339/94, as amended by O.Reg. 125/01 (Gaz. 12/5/01, p. 206)), s. 6.

Exhibits Entered:

Exhibit "1" -- Certified Ministry of Transportation document regarding notice to George T. Vlahos, born on June 30, 1950, whose latest address of 236 Green Lane, Thornhill, Ontario of suspension of driver's license for default of payment of fine effective on September 17, 1999. The document also certified that a notice of this suspension was forwarded by registered mail on September 21, 1999 to the defendant's then latest address of 1902 - 735 Don Mills Road, Don Mills, Ontario. The suspension number was 9132701.

Counsel:

M. Kierans, Provincial Prosecutor.
P. Tiller, for the moving party (defendant).

QUON J.P.: —

1. INTRODUCTION

¶ 1 In this driving while under suspension case, the defendant argues that the prosecution has failed to tender evidence that the requirements of giving notice to the defendant under the Highway Traffic Act of the suspension of his driver's license have been complied with. For the two methods of giving notice dictated under s. 52, the defendant submits that there is no proof that the defendant had been notified by registered mail nor is there evidence that the defendant had been personally served with the proper document of suspension.

¶ 2 The prosecution, on the other hand, submits that it has provided by certificate evidence under the seal of the Registrar of Motor Vehicles that the defendant had been sent the notice of suspension by registered mail. In addition, the prosecution submits, even if the defendant never received the notice by registered mail, the defendant was personally and verbally notified of the suspension by a police officer who stopped him for a traffic infraction, prior to the date the defendant was charged for driving while under suspension.

¶ 3 The trial was completed on October 5, 2001. My judgment was reserved and the matter was adjourned until January 25, 2002 for my decision.

2. FACTUAL BACKGROUND

¶ 4 The defendant was charged for committing the offence of driving while under suspension at northbound Avenue Road and Eglinton Avenue West in the City of Toronto on January 7, 2000, at 1:00 a.m. contrary to s. 53(1) under the Highway Traffic Act, R.S.O. 1990, c. H.8.

¶ 5 Officer Sean Davey testified that he observed the defendant driving a black Pontiac Grand Am motor vehicle, with license plate number 930KNY on January 7, 2000 at 1:00 a.m. westbound on Eglinton Avenue West near Avenue Road.

¶ 6 Officer Davey stopped the defendant for contravening a posted sign prohibiting left turns. The defendant was unable to produce a driver's license upon Davey's request for one. It then came to Officer Davey's attention after investigating the defendant that George T. Vlahos, the defendant, born on June 30, 1950, residing at 735 Don Mills Road, apartment 1902, with a driver's license number of V50382788500630, was under suspension for unpaid fines.

¶ 7 The suspension number was 9132701.

¶ 8 Officer Davey then issued summonses to the defendant for committing the offences of driving while under suspension and for disobeying a sign.

¶ 9 Officer Davey then verified the defendant's suspension with the Ministry of Transportation and applied for the documents that he had turned over to the prosecutor. These certified Ministry of Transportation documents under seal were entered as Exhibit #1.

¶ 10 Inadvertently, attached as the third page of Exhibit #1 was a Notice of Suspension numbered 1002081 and dated October 12, 1999. This document had not been identified or qualified by Officer Davey or Officer Pogson.

¶ 11 On cross-examination, Officer Davey testified that the Ministry of Transportation did not provide him with a registered slip that a registered letter had been sent by the Ministry of Transportation to the defendant.

¶ 12 Officer Craig Pogson then testified that he had stopped the defendant, who he identified as the defendant before the court, on October 12, 1999, while the defendant was in his car on Finch Avenue West near Bathurst Street and personally served the defendant with a document notifying the defendant of a suspension that was existing at the time.

¶ 13 Pogson testified that he had given the defendant a document numbered 1002081 which looks like a summons. He also testified that the number of the suspension is written on the document, as well as the reason for the suspension, and the subject's name. Also a request is made of the subject to sign the document.

¶ 14 Pogson also testified that the document contains three copies, one for the subject and two others that go in department mail. The originals of this summons-like document must be sent to the Ministry of Transportation.

¶ 15 After the prosecution rested its case, the defence brought a motion for directed verdict arguing that the prosecution had failed to provide evidence that the defendant had been notified of the suspension. In addition the defence argued there was no evidence that such a mailing by registered mail ever took place because if the notice had been sent by registered mail then it has to be signed for or it is returned to the Ministry. Therefore, the defence argued, a post office receipt was required to prove that it had been sent and signed for, otherwise it can be inferred that the registered letter had been returned to the Ministry as undelivered.

¶ 16 On the issue of personal delivery of the notice of suspension given by Officer Pogson, the defence argued that a photocopy of that notice issued by Pogson was not admissible, as it was not an original document. Therefore, the defence argues, without the original document admitted into evidence there is no documentary evidence of the notice of suspension issued by Pogson to the defendant. On rebuttal, the prosecution argued that the court could accept the vive vice evidence of Officer Pogson that he gave notice of the suspension in a document personally served on the defendant as proof of notice by personal delivery.

¶ 17 After arguments on the motion for a directed verdict, I ruled there was evidence that notice was given and therefore the motion was dismissed. I will however, augment my ruling on the motion for directed verdict with these reasons for judgment.

3. ISSUES

¶ 18 In order to prove compliance with the requirement of giving notice by registered mail, is the prosecution required to enter a post office receipt as proof, or can it rely on certified documents from the Registrar of Motor Vehicles as evidence of such compliance?

¶ 19 Is the prosecution required to enter the actual or original notice of suspension document personally served on the defendant by a police officer, to prove the defendant had been given actual notice?

¶ 20 Can the Court consider documentary evidence that had not been identified or qualified by the officer who issued it, inadvertently entered with another documentary exhibit?

4. ANALYSIS OF FACTS AND LAW

MOTION FOR DIRECTED VERDICT

¶ 21 To begin, I previously summarized the test for determining whether a motion for non-suit or directed verdict should be granted in my decision in R. v. Amankwaa, [1997] O.J. No. 6014 (Ont. Ct.(Prov. Div.)) at paras. 24-26:

> The test to determine whether the motion for non-suit should be granted or dismissed is found in R. v. Paul (1976), 27 C.C.C. (2d) 1, 33 C.R.N.S. 328 (S.C.C.). The majority in R. v. Paul referred to R. v. Morabito (1949), 93 C.C.C. 251, [1949] 1 D.L.R. 609, [1949] S.C.R. 172 at page 4 in Ritchie J.'s opinion and at page 9 in De Grandpere J.'s opinion. The principle adopted by the Supreme Court of Canada is that the court has only to consider whether there is evidence upon which a properly instructed jury acting reasonably might have convicted the defendant.
> In Mezzo v. R., [1986] 1 S.C.R. 802, 27 C.C.C. (3d) 97 (S.C.C.) it was decided that the issue on a motion for non-suit is whether there is evidence on all essential points of a charge which, if believed by a properly charged trier of fact acting reasonably, and unanswered, would

> warrant a conviction. The court may not consider the credibility of the witness or the quality or weight of the evidence that the witness has given.
> In Monteleone v. R., [1987] 2 S.C.R. 154, 35 C.C.C. (3d) 193 (S.C.C.), at page 198 of 35 C.C.C., it was decided that while there must be evidence on all essential elements of the charge, there need not be direct evidence on all essential elements. It is sufficient if the evidence on some or all essential points is entirely circumstantial.

¶ 22 In a previous motion for a directed verdict case, I wrote in R. v. Aguilera, [2001] O.J. No. 2287 (O.C.J.), at para. 21 that:

> Normally, in a motion for directed verdict the defense moves for a dismissal on the basis that the prosecution has not presented a prima facie case. Specifically, the prosecution has not presented a case containing evidence on all essential points of a charge that if believed by the trier of fact, and unanswered, would warrant a conviction.

¶ 23 I also made reference to the meaning of a "prime facie case" in R. v. Amankwaa, supra, at paras. 28-29:

> When the courts refer to prime facie case, there are two usages of the term, and depending on the context used, the court may be referring to a "permissive" sense or to a "presumptive sense". When prime facie is used by the courts in the permissive sense, it means that the Crown is not required to meet any onus beyond adducing "some" evidence, and the evidential or persuasive burden is not shifted to the accused. When the prosecution establishes a prime facie case in the permissive sense it simply allows the prosecution with the burden of persuasion to proceed or continue with the proceeding. In this sense, the trier of fact to is permitted to draw the inference sought by the party alleging the prime facie case.
> On the other hand, when the courts use prime facie case in the presumptive sense, the courts presume the truth of the facts alleged by the prosecution unless it has been rebutted by the defence. In the presumptive sense there is at least a shift of the evidential burden to the other party once a prime facie case is established.

¶ 24 The defendant was charged under s. 53(1) of the Highway Traffic Act, R.S.O. 1990, c. H.8, for driving under suspension:

> 53(1) Every person who drives a motor vehicle or street car on a highway while his or her driver's licence is suspended under an Act of the Legislature or a regulation made thereunder is guilty of an offence and on conviction is liable,
>
> (a) for a first offence, to a fine of not less than $1,000 and not more than $5,000; and
> (b) for each subsequent offence, to a fine of not less than $2,000 and not more than $5,000,
> (c) or to imprisonment for a term of not more than six months, or to both.

¶ 25 The power to suspend a person' driver's license for a defaulted fine is contained in ss. 46(2) and(3) of the Highway Traffic Act. Those sections provide:

> 46(2) If the payment of a fine imposed on conviction for an offence is in default, an order or direction may be made under section 69 of the Provincial Offences Act directing that the convicted person's driver's licence be suspended and that no driver's licence be issued to him or her until the fine is paid.
> 46(3) On being informed of an outstanding order or direction referred to in subsection (2), the Registrar shall suspend the person's driver's licence if it has not already been suspended under another order or direction referred to in subsection (2).

¶ 26 The first consideration is to determine what was the relevant law regarding serving notice of the suspension on the defendant at the time the defendant's license had been suspended for an unpaid fine. The reason for this concern is that certain sections of the Highway Traffic Act with regards to the notice requirements of license suspensions have been repealed or amended.

¶ 27 From Exhibit #1, on behalf of the Deputy Registrar of Motor Vehicles a Notice of Suspension of Driver's License dated September 21, 1999 was sent to the defendant's then latest address by registered mail of 1902 - 735 Don Mills Road, Don Mills, Ontario. The Notice indicated that the defendant's driver's license had been suspended under s. 46 of the Highway Traffic Act for not paying a fine or fines effective September 17, 1999. Also in Exhibit #1, a certificate issued under seal by the Registrar of Motor Vehicles dated September 24, 2001, certified that the notice of suspension had been forwarded by registered mail on September 21, 1999.

¶ 28 The applicable law for giving notice of suspension to the defendant would be the law on September 17, 1999.

¶ 29 The service of notice of suspension provision is contained in s. 52 of the Highway Traffic Act, R.S.O. 1990, c. H.8, as in force on September 17, 1999:

> 52.(1) Notice to a person of the suspension of his or her driver's license is sufficiently given if delivered personally or sent by registered mail addressed to the person to whom the license was issued at the latest current address of the person appearing on the records of the Ministry and where notice is given by registered mail it shall be deemed to have been given on the fifth day after the mailing unless the person to whom notice is given establishes that he or she did not, acting in good faith, through absence, accident, illness or other cause beyond his or her own control, receive the notice.
>
> (2) On a day to be named by proclamation of the Lieutenant Governor, "registered" is struck out in subsection (1) wherever it appears.

¶ 30 Exhibit #1 certifies that a registered letter was sent to the defendant on September 21, 1999. Under s. 52(1), notice of the suspension is deemed to be given on the fifth day after the mailing, which would mean that the defendant was deemed to have received notice on September 26, 1999.

¶ 31 The defence argues that there is no evidence that s. 52(1) had been complied with, as there is no evidence that the defendant had been sent the notice of suspension by registered mail. Further, the defence submits that physical or documentary proof is required, such as a post office receipt or proof that the defendant had signed for a registered letter. The defence argues that I cannot take notice of Exhibit #1 as proof of compliance with s. 52(1).

¶ 32 However, notice by registered mail may not have been required if s. 52(2) were ever proclaimed into force. If proclaimed before September 17, 1999 then the notice of suspension would not have to be sent by registered mail. Ordinary mail would then suffice. After perusing the Statutes of Ontario for 1999 and the Ontario Gazettes for that year I have not been able to find any proclamation that would have revoked the requirement of using registered mail to notify the defendant of the suspension.

¶ 33 It should be noted that s. 52 had been amended subsequent to both the defendant's effective date of suspension on September 17, 1999 and the date he had been charged for the offence of driving while under suspension on January 7, 2000. Section 4 of Schedule O of the Red Tape Reduction Act, 2000, S.O. 2000, c. 26, amended s. 52 with provisions that allowed notice to be given by regular mail for suspensions unrelated to Criminal Code offences and to allow for other prescribed methods of service. The new s. 52 came into force on December 6, 2000. Under the new s. 52(1)(b) a notice of suspension for unpaid fines is allowed to be sent by regular mail:

> 52.(1) Where a person's driver's licence is suspended, notice of the suspension is sufficiently given if delivered personally or,

in the case of a suspension under section 41 or 42, sent by registered mail addressed to the person to whom the licence was issued at the latest current address of the person appearing on the records of the Ministry;

in the case of all other suspensions, sent by mail addressed to the person to whom the licence was issued at the latest current address of the person appearing on the records of the Ministry.

(2) Notice sent by registered mail under clause (1)(a) or by mail under clause (1)(b) shall be deemed to have been given on the seventh day after the mailing unless the person to whom the notice is sent establishes that he or she did not, acting in good faith, through absence, accident, illness or other cause beyond his or her control, receive the notice.

(3) The Lieutenant Governor in Council may make regulations,

prescribing other methods of service that may be used in the case of a suspension described in clause (1)(a) or a suspension described in clause (1)(b) and prescribing the day on which the notice sent or delivered by such other means shall be deemed to have been given;

prescribing means of proving that a notice was given by a method permitted by subsection (1) or by a method permitted by regulation.

¶ 34 In returning to the defence's argument that the prosecution had to produce a post office receipt in order to prove that the defendant had the notice of suspension sent to him by registered mail, I have to decide whether the certificate from the Registrar of Motor Vehicles in Exhibit #1 is prime facie proof that the notice had been sent by registered mail and that a post office receipt is not required or an essential element to prove the defendant had committed the offence of driving while under suspension. It seems to me that question has already been decided by the Court of Appeal of Ontario.

¶ 35 In R. v. Vlajkovic, [1994] O.J. No. 2175 (Ont. C.A.) per Galligan, Arbour and Weiler JJ.A., it was decided that the tendering into evidence of a certified document from the Ministry of Transportation specifying that the defendant Vlajkovic was suspended from driving for demerit points or unpaid fines constituted prime facie proof that he was driving while under suspension at the time of the offence. The Court of Appeal also found that under s. 210(7) of the Highway Traffic Act and ss. 47(2) and 57(4) of the Provincial Offences Act, R.S.O. 1990, c. P.33, there is a statutory scheme in place that provides for the reception into evidence of certified documents. At paras. 3-5, Galligan J.A. for the Court of Appeal held [emphasis is mine below]:

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,
>
> the person who made the adjudication; or the clerk of the court where the adjudication was made,
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> 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.
>
> 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.
>
> 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.

¶ 36 Therefore, the decision of the Court of Appeal of Ontario in R. v. Vlajkovic governs the issue raised by the defendant. By virtue of Exhibit #1 being a certified document under seal from the Ministry of Transportation, s. 210(7) of the Highway Traffic Act provides a statutory scheme for this Court to receive into evidence this certified document as proof of the facts contained therein, subject to evidence to the contrary. The certificate of the Registrar of Motor Vehicles indicated that the defendant was sent a notice of the suspension of his driver's license by registered mail on September 21, 1999 to his latest address on the records of the Ministry of Transportation. Hence, a post office receipt is not an essential element for the prosecution to provide to make a prime facie case.

¶ 37 Moreover, the Court of Appeal in R. v. Vlajkovic held that a certified document from the Ministry specifying that a particular person was suspended from driving for obtaining a certain number of demerit points or for unpaid fines constituted prima facie proof that he or she was driving while under suspension at the time of the alleged offence. Therefore, in the case at bar, Exhibit #1 is likewise prime facie proof that the defendant was driving while under suspension for unpaid fines on January 7, 2000.

¶ 38 As an alternative to notice by registered mail, s. 52(1) also allowed the notice of suspension to be personally delivered to the defendant to give sufficient notification of the suspension. For this method of service, Officer Pogson testified that on October 12, 1999 he personally served a singular document similar to a traffic summons on the defendant notifying the defendant of a suspension that was in existence at the time he had stopped the defendant and had a conversation with him. This personally delivered notice preceded the defendant being charged on January 7, 2000 for driving while under suspension. Pogson also testified that the singular document advises the person being issued the notice that at the time of issuance he or she is presently under suspension. It appeared during this particular exchange between the prosecutor and Officer Pogson that the

prosecutor was confused about what document Pogson had been referring to. Pogson referred to the fact that this singular notice document may have already been presented to the court.

¶ 39 The defence argues that there is no proof of the existence of that document referred to by Officer Pogson, nor evidence of what was contained in that document allegedly delivered to the defendant on October 12, 1999. A copy or original of that October 12 notice document had not been identified or qualified by Officer Pogson and entered as an exhibit. The Court later found that document of October 12, after the prosecution had closed its case, stapled to Exhibit #1.

¶ 40 Although Officer Pogson did not identify or qualify that document to be the same document he had issued to the defendant on October 12, 1999 while he was testifying, it did accidentally make its way before the court as part of Exhibit #1 and may have some weight further on in the proceeding if the motion for directed verdict is not granted. However, I wish to comment at this point that if the defendant's motion for a directed verdict fails, the fact that Officer Pogson's notice of suspension document is before the Court may affect the fairness of the trial, depending of course on the defendant's actions in putting up a defence and whether any prejudice would result. As a consequence, a declaration for a mistrial may be warranted under particular circumstances. However, at this juncture, I place no value nor weight on the existence of the notice document of October 12, since the document had not been identified or qualified by Officer Pogson. Therefore, its existence or its contents will have no bearing on my decision for this motion for a directed verdict.

¶ 41 Although the question of a prime facie case, in the presumptive sense, has already been made out based on Exhibit #1 and R. v. Vlajkovic, that the notice of suspension had been sent by registered mail to the defendant's address, I do wish to comment on whether the prosecution needs to proffer Officer Pogson's notice document as evidence of the notice of suspension being delivered personally on October 12, 1999. The prosecution contends that the court can consider Officer Pogson's vive voce evidence that he tendered a document on the defendant of the existing suspension without documentary proof of the actual document served.

¶ 42 Upon a search for the required information to be given in the notice, I found no reference in s. 52 nor in other sections of the Highway Traffic Act, nor under the Regulations, that specifically set out what is required to be given in a notice of suspension. Additionally, I found no requirement or direction as to the form the notice of suspension has to take when it is delivered personally to the defendant under s. 52(1). Therefore, this personally delivered notice of suspension could be fulfilled by giving it in documentary or verbal form to the defendant.

¶ 43 Even under s. 6 of the Demerit Point System Regulation, O.Reg. 339/94, recently amended by O.Reg. 125/01 (Gaz. 12/5/01, p. 206) the only mandatory requirement to be stated in the notice of suspension for the accumulation of too many demerit points is that the person be informed of the effective date of the suspension. That section provides: "The notice of suspension sent to a person in respect of a suspension under the Regulation shall state the effective date of the suspension."

¶ 44 Officer Pogson testified that he gave notice of the existing suspension to the defendant on October 12, 1999. Even without documentary evidence to substantiate Pogson's testimony that the defendant was made aware of his existing suspension, I would be satisfied that verbal notice of the suspension is enough to show there had been sufficient service of the notice of suspension on the defendant for a prime facie case.

¶ 45 Therefore, it would not be unreasonable to rely on a police officer's testimony that verbal notice of the existing suspension of a driver's license had been given to a person for a prime facie case. Actual documentary notice does not appear to be an essential element of giving notice of suspension when delivered personally. The wording in the old s. 52 of "Notice to a person of the suspension of his or her driver's license is sufficiently given if delivered personally" is broad enough to include both documentary and verbal notice.

PROOF OF DRIVING WHILE UNDER SUSPENSION BEYOND A REASONABLE DOUBT

¶ 46 After argument on the motion for directed verdict and argument on whether I could consider the misplaced document of October 12 as part of Exhibit #1, I concluded there was some evidence before me that notice had been given to the defendant, dismissed the motion for directed verdict and asked the defendant if he

wished to call evidence in his defence. The defendant replied that he would not be putting forth any witnesses or statements.

¶ 47 Once more, I place no weight on the misplaced document attached to Exhibit #1. It had no value in this proceeding as it was not identified or qualified.

¶ 48 On the issue of notice by registered mail, there is no evidence to the contrary established by the defendant that he did not, acting in good faith, through absence, accident, illness or other cause beyond his or her own control, receive the notice. As the Court of Appeal of Ontario held in R. v. Vlajkovic, a certified document under seal from the Ministry of Transportation is, absent proof to the contrary, prime facie proof that the defendant was sent the notice of suspension by registered mail. A post office receipt, as a result of the Vlajkovic decision, is not required to be submitted by the prosecution to show that notice had been actually sent by registered mail or that the defendant actually signed for or received the actual notice of suspension. In fact, s. 52(2) contains a deeming provision that deems the defendant to have been given notice of the suspension on the fifth day after the registered mail is sent out to the defendant. Under the new s. 52, it is deemed to be received on the seventh day.

¶ 49 Therefore, at this point, there is proof beyond a reasonable doubt that the defendant had received by registered mail notice of the suspension of his driver's license on September 26, 1999, the deemed reception date. Along with Officer Davey's evidence that the defendant was observed driving a motor vehicle on January 7, 2000 at 1:00 a.m. westbound on Eglinton Avenue West near Avenue Road, in Toronto, the prosecution has provided evidence to prove beyond a reasonable doubt that the defendant had been driving while under suspension.

¶ 50 Consequently, the personal delivery of the notice suspension on October 12, 1999 by Officer Pogson is not determinative of the notice requirement, as the registered mail notification already fulfilled that onus. It does however, add further credence to the prosecution's case. As I determined earlier, verbal notice is sufficient, as s. 52 of the Highway Traffic Act does not specify what is required to be contained in the notice of suspension nor does it speak to whether notice by personal delivery must be given in documentary form or whether it can be made verbally. That Pogson document, if it existed, would no doubt support the prosecution's case, especially if a signature from the defendant is on that notice document. Nevertheless, there is no evidence before the court that would contradict Officer Pogson's testimony that he had personally notified the defendant of the license suspension.

¶ 51 As to the argument from the defence that an original document must be submitted instead of a photocopy of Officer Pogson's alleged document under the best evidence rule, I do not wish to comment on that issue, since there is no photocopied document sought to be entered by the prosecution as an exhibit. The misplaced document attached to Exhibit #1, was not properly qualified or identified and therefore has no weight or bearing on my decision.

¶ 52 On the other hand, I do wish to comment on one other fact that came up in Officer Davey's testimony. Officer Davey is the officer who issued the summons to the defendant for the drive while under suspension charge on January 7, 2000. Davey testified that the defendant was unable to provide him with a driver's license when the request for it was made. In prosecutions of the same ilk, the usual reason that a person does not have the license to show the requesting police officer is because it had already been seized earlier by another officer issuing a notice of suspension to that person. In the present case, Officer Pogson who personally delivered a notice of suspension to the defendant on October 12, 1999, however did not testify that he did seize the defendant's license. Therefore, the defendant in not producing a license to Officer Davey does not have any effect on the outcome of this case.

5. CONCLUSION

¶ 53 At the time the defendant's driver's license had been suspended for an unpaid fine, s. 52 of the Highway Traffic Act, R.S.O. 1990, c. H.8, still allowed service of this notice of suspension on the defendant by being

personally delivered or by being sent by registered mail. An amendment to s. 52 allowing notice by ordinary mail was not enacted until after the defendant had been charged with the offence.

¶ 54 The Court of Appeal of Ontario in R. v. Vlajkovic, [1994] O.J. No. 2175 (Ont. C.A.) held that s. 210(7) of the Highway Traffic Act provides a statutory scheme for the court to receive into evidence a certified Ministry document as proof of the facts contained therein, subject to evidence to the contrary. Therefore, in the case at bar, the certified document under seal from the Ministry of Transportation specifying that a notice of the suspension had been sent by registered mail on September 21, 1999 to the defendant's latest address as shown in the Ministry's records, is prime facie proof the notice had been sent by registered mail.

¶ 55 In making a prime facie case, proof that the defendant was sent the notification of the suspension of his driver's license by registered mail, does not require the prosecution provide a post office receipt indicating the use of registered mail. It is suffice if the prosecution enters a certified document from the Ministry of Transportation under seal that the defendant had been sent a notice of suspension by registered mail. Hence, producing a post office receipt for registered mail as proof of notice is not an essential element of the offence of drive while under suspension.

¶ 56 Furthermore, the Court of Appeal in R. v. Vlajkovic held that a certified document specifying that a particular person was suspended from driving for obtaining a certain number of demerit points or for unpaid fines, and had been notified of this by registered mail, constituted prima facie proof that he or she was driving while under suspension at the time of the alleged offence. Therefore, the prosecution had made a prime facie case, in the presumptive sense, for the offence of driving while under suspension based upon Exhibit #1, a certified document from the Registrar of Motor Vehicles.

¶ 57 In the situation where the defendant receives personal delivery of the notice of suspension under s. 52, the wording of that section is broad enough that notice of suspension may be given verbally to the defendant by a police officer or by documentary notice delivered by a police officer. Neither s. 52 nor any other provision in the Highway Traffic Act nor Regulations made thereunder specify what is required to be contained in the notice of suspension, or that the notice has to be given in document form only.

¶ 58 The document of October 12, which inadvertently was attached to Exhibit #1, had not been qualified nor identified by the police officer that issued the document, and therefore had no bearing on the outcome or carried any weight in this trial.

¶ 59 In conclusion, since there is no evidence to the contrary, the prosecution has established beyond a reasonable doubt that the defendant had been driving a motor vehicle on January 7, 2000 while under suspension according to s. 53(1) of the Highway Traffic Act.

6. DISPOSITION

¶ 60 Therefore, the prosecution has proven beyond a reasonable doubt that the defendant is guilty of driving while under suspension as charged under s. 53(1) of the Highway Traffic Act.

QUON J.P.

QL Update: 20020130
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