

23/08; [2008] VSC 125

SUPREME COURT OF VICTORIA

MARIJANCEVIC v RIDSDALE

Williams J

17, 18, 23 April 2008 — 183 A Crim R 574

EVIDENCE – ADMISSIBILITY OF CERTIFICATE FROM THE ROADS CORPORATION – CERTIFICATE STATING THAT DRIVER'S LICENCE SUSPENDED FROM A CERTAIN DATE – CERTIFICATE EMAILED TO INFORMANT UPON REQUEST – CERTIFICATE NOT SIGNED BY AUTHORISED PERSON – WHETHER CERTIFICATE ADMISSIBLE IN EVIDENCE – BEST EVIDENCE RULE – WHETHER CERTIFICATE AN ORIGINAL DOCUMENT – WHETHER MAGISTRATE IN ERROR IN RELYING UPON CERTIFICATE AS PROOF OF ITS CONTENTS: ROAD SAFETY ACT 1986, S84; EVIDENCE ACT 1958 S55A.

1. There is nothing in s84 of the *Road Safety Act 1986* ('Act') which requires that a certificate issued as proof of the status of a driver's licence needs to be signed or stamped.

2. Primary evidence of the contents of a document is the original. Section 84 of the Act should be construed as permitting evidence of the contents of Roads Corporation's records to be given in the form of a printed document, notwithstanding that the document is printed for the first time after being transmitted by email to the person by whom it is obtained. In so far as the "best evidence" rule survives, given the purpose for which the certificate was admissible under s84 of the Act, it was properly to be regarded as an original document.

3. Accordingly, a magistrate was not in error in relying upon an emailed certificate from the Roads Corporation as proof of its contents and finding that the defendant drove a motor vehicle whilst his authorisation to drive was suspended.

WILLIAMS J:

1. By a notice of appeal filed on 20 December 2006 Mr Marijancevic appeals the whole of the judgment given and orders made by the Magistrates' Court at Sunshine on 26 November 2006. On that day, the learned magistrate concluded that Mr Marijancevic had committed a breach of s30(1) of the *Road Safety Act 1986* on 6 February 2005 by driving whilst his authorisation was suspended. He ordered that Mr Marijancevic be disqualified from driving for a period of three months and imposed a fine of \$500. Mr Marijancevic appeals against the whole of the judgment given and the orders made.

2. The respondent in the appeal is the Informant in relation to the subject charge.

The Magistrates' Court hearing

3. Mr Marijancevic's defence to the charge in the Magistrates' Court was one of honest and reasonable mistaken belief that his licence was not suspended on 6 February 2005, the date upon which he was apprehended driving. The transcript of proceedings in the Magistrates' Court was tendered in evidence in the appeal.

4. The Informant gave unchallenged evidence in the Magistrates' Court to the effect that he and his corroborator, Senior Constable Riddle, intercepted Mr Marijancevic on 6 February 2005 and issued him with a penalty notice for speeding.

5. The prosecution sought to tender through the Informant a certificate stating that Mr Marijancevic's licence had been suspended for three months from 15 December 2004 ("the certificate"). The certificate was purportedly issued by Mr Peter Donelly as a person authorised under s84 of the *Road Safety Act 1986*.

6. Section 84(1) was in the following terms:

84. General evidentiary provisions

1. A certificate containing the prescribed particulars purporting to be issued by the [Roads Corporation] ... or an authorised person certifying as to each matter which appears in or can be calculated from the records kept by the [Roads Corporation] ... or a delegate of the [Roads Corporation] ... is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

7. The certificate was relevantly in the following terms:

State of Victoria

Road Safety Act 1986

Road Safety (General) Regulations 1999

Certificate Under Section 84

MATTERS WHICH APPEAR IN OR CAN BE CALCULATED FROM THE RECORDS KEPT BY THE ROADS CORPORATION

I CERTIFY THAT ON **6 February 2005**

Mr Joseph Marijancevic

OF 47 Spring St HASTINGS VIC 3915

DATE OF BIRTH 5 February 1950

was the holder of a Victorian Motor Vehicle Driver Licence, which was suspended under Section 25(3) of the Road Safety Act 1986 (Demerit Points)

Suspended Licence Number: [blacked out]

Date of Expiry if Suspended Licence: **9 January 2005**

Start Date of Suspension: **15 December 2004**

End Date of Suspension: **14 March 2005**

Peter Donelly

Manager

Records Services Division Victoria Police

An authorised person for the purposes of s84 of the *Road Safety Act 1986* ...

Dated: 20 May 2005

8. Mr Marijancevic objected to the tender, submitting that the certificate appeared to him to be a photostat copy. The prosecutor then informed the court that the document was an original, having been emailed to the Informant and printed out in hard copy by him in accordance with a practice of many years standing. Mr Marijancevic did not seek to contradict or object to the prosecutor's statement or challenge the Informant under cross-examination as to its veracity.

9. The Informant gave evidence as to the circumstances in which he had obtained the certificate in re-examination. He stated that Mr Marijancevic had lodged an objection to the penalty notice. The Informant had then (about three weeks after 6 February 2005) made enquiries which revealed that Mr Marijancevic's licence had been suspended on 6 February 2005 and that he had then been disqualified from driving for three months.

10. The Informant's corroborator, Senior Constable Riddle, gave evidence that on 6 February 2005 he had recognised Mr Marijancevic as a driver he had intercepted on 26 December 2004 for an offence of driving through a red light. He told the court that his enquiries on 26 December 2004 had indicated that Mr Marijancevic's licence had been suspended and that he had been disqualified from driving for three months from 15 December 2004. Senior Constable Riddle stated that he had informed Mr Marijancevic about the disqualification which Mr Marijancevic had denied.

11. Mr Marijancevic cross-examined Mr Riddle without challenging his evidence about the results of his enquiries as to the status of his licence or that Senior Constable Riddle had told him about the suspension. Rather, he put it to the corroborator that he had said to him on 26 December 2004 that his "record keeping system was wrong". Mr Riddle responded that he could not recall that exchange.

12. Mr Marijancevic himself gave evidence. He said that he had told Mr Riddle on 26 December 2004 that the records were wrong. He stated that he subsequently had made enquiries he characterised as "unsuccessful" (without elaboration) and that he had subsequently received a licence renewal notice. He said that he had stopped driving after having been pulled over on 26 December 2004 but that he had gone to a post office on 29 December 2004 and had paid the fee for the renewal of his licence.

13. Mr Marijancevic said that he had subsequently made an FOI request which had produced

several documents which he claimed not to have received earlier. The first was a VicRoads letter dated 11 January 2005 stating that he could not renew his licence until the suspension period was over and enclosing a cheque refunding the amount paid on 29 December 2004. The second was a letter to the effect that the cheque had not been cashed and enclosing another. His evidence was that he had received neither. The VicRoads' letters had been addressed to 47 Spring Street Hastings which was one of two addresses he had given to VicRoads. Mr Marijancevic said that he still went to the 47 Spring Street address and did receive mail there. He also conceded that it was the address to which his licence renewal notice had been sent and the place at which he had also been served with the summons in relation to the charge which had brought him to the Magistrates' Court. He said that he had been living at that address when served with the summons.

14. In a short final submission, Mr Marijancevic claimed to have had an honest and reasonable belief that he was licensed at the time of the alleged offence.

15. In his reasons, the learned Magistrate referred to the contents of the certificate and the evidence of the corroborator to the effect that he had checked on 26 December 2004 and had found that Mr Marijancevic's licence had been suspended for three months from 15 December 2005 and had informed him of that fact. His Honour referred to a VicRoads' letter advising Mr Marijancevic of the suspension and noted his denial that he had received what the Magistrate characterised as a "number of crucial documents". He went on to state:

The essential thing here is ... that on Boxing Day when you were pulled up for driving through the red light, and Senior Constable Riddle did a check and found you were off the road .. were disqualified. ... that is the time you should have stopped driving, but you continued to drive because you say you tendered ... your licence fee on the 29th. .. in my opinion, you had been given notice of your inability to drive and the defence of honest and reasonable mistake in those circumstances is not open to you. I find the charge proven.

The grounds of appeal

16. Mr Marijancevic has abandoned grounds 1 and 4 in the Notice of Appeal and persists with grounds 2 and 3 which challenge the admission by the magistrate of the certificate.

17. The remaining grounds in the Notice of Appeal are stated as follows:

2. The learned Magistrate erred by accepting into evidence against defence objection a facsimile or emailed document that does not bear the original signature and purports to be a certified extract pursuant to s84 of the *Road Safety Act 1986* as proof of that document's contents.

3. The learned Magistrate erred in failing to apply the "best evidence rule" when judging whether or not a facsimile or emailed document that does not bear the original signature and purports to be a certified extract pursuant to s84 of the *Road Safety Act 1986* is admissible evidence.

18. Mr Marijancevic thus challenges an interlocutory ruling, as opposed to a final order of the Magistrate. Section 92 of the *Magistrates' Court Act 1989* only allows for appeals in relation to a final order.

19. Nevertheless, it would appear from the learned Magistrate's statement of reasons for his decision that he relied upon the admitted document as part of the evidence as to the suspension of Mr Marijancevic's licence which was an element of the charged offence.^[1] In those circumstances, it is common ground that the Court should consider an additional ground of appeal expressed in this way:

The learned magistrate erred by accepting into evidence a document purporting to be issued under s84 of the *Road Safety Act 1986* and using that document as part of the evidence in finding the charge proven.

I consider it just and convenient to allow the addition of the further question for consideration^{n[2]}.

20. Mr Marijancevic appears unrepresented before the Court but he has acknowledged that he has had access to legal advice. He sought and was afforded time during the hearing to obtain legal advice as to the suggested restatement of the grounds of appeal.

Submissions

21. Mr Marijancevic challenges the characterisation of the tendered document as a “certificate” under s84 of the *Road Safety Act* 1986. He argues that:

(1) section 84(1) of the *Road Safety Act* 1986 refers to a certificate which is signed by or stamped with a necessary signature of the “authorised person” certifying as to its contents; and

(2) as the document was a photocopy of an original, s55A of the *Evidence Act* 1958 required that it be certified as a copy.

22. Mr Marijancevic refers to the Court of Criminal Appeal’s decision in *Joseph Marijancevic*.^[3] There it was held that a document recording prior convictions and required to be signed in order to be admissible under s395(4) of the *Crimes Act* 1958 was admissible if signed or impressed with a facsimile signature by means of a stamp.^[4]

23. Mr Marijancevic also cites the *Oxford Dictionary* definition of “certificate” in support of his contention that such a document must bear a signature or stamp. More generally, he refers to the best evidence rule in so far as the document was a copy, as opposed to an original certificate. He cites the criminal nature of the proceeding brought against him and says that he was unrepresented and should have been “given some leeway” by the Magistrate.

24. Counsel for the Informant responds that there is nothing in the s84 of the *Road Safety Act* 1986 requiring that the document issued as proof of the status of Mr Marijancevic’s licence needed to be signed or stamped.

25. As far as the challenge based upon s55A of the *Evidence Act* 1958 is concerned, he contends that the section is inapplicable because the document admitted into evidence was not tendered as a copy document. It was tendered as an original certificate. It had been emailed to the Informant as a consequence of his enquiry of VicRoads as to Mr Marijancevic’s licence status.^[5] (The prosecutor informed the Magistrate that the certificate was a printout of an emailed document transmitted that way in accordance with what was then a longstanding practice. Mr Marijancevic did not take issue with the truth of that statement or the Magistrate’s receipt of that information.)

26. Counsel for the Informant contends that the document produced was an original which satisfied the vestiges of the best evidence rule and argues that it meets the description of a document admissible under s84.

27. Counsel also argues that it is, in any event, open to the respondent in an appeal under s92 of the *Magistrates’ Court Act* 1989 to support the verdict on any other basis open in the court below. He argues that Mr Marijancevic made an implied admission that his licence was suspended by taking the defence of reasonable and honest mistake as to the status of his licence when he was caught driving. He also refers to the evidence from each of the Informant and the corroborator that they ascertained that fact as a result of making the appropriate enquiries.

Conclusions

28. I say at the outset that the learned Magistrate appears from the transcript to have assisted Mr Marijancevic in the presentation of his case as a litigant in person.

29. I agree with counsel for the Informant that the certificate was admissible and, under s84 *Road Safety Act* 1986, in the absence of evidence to the contrary, constituted proof of the contents of VicRoads’ records of the suspension of Mr Marijancevic’s licence.

30. I am not persuaded to the contrary by Mr Marijancevic’s reference to the Court of Criminal Appeal’s decision in *Joseph Marijancevic*.^[6] The important difference between the subject statutory provisions in that case and s84 of the *Road Safety Act* 1986 lies in the fact that s84 does not require the certificate purporting to be issued by Mr Donelly as an authorised person to bear his signature. Nor does the *Oxford Dictionary* reference provide a basis for a contrary view.

31. Primary evidence of the contents of a document is the original. Section 84 of the *Road Safety Act* should be construed as permitting evidence of the contents of VicRoads’ records to be given in the form of a printed document, notwithstanding that the document is printed for the

first time after being transmitted by email to the person by whom it is obtained. In so far as the “best evidence” rule survives^[7], given the purpose for which the certificate was admissible under s84 of the *Road Safety Act*, it was, in my opinion, properly to be regarded as an original document.

32. Section 84(1) of the *Road Safety Act* 1986 provides the statutory means for adducing evidence as to the contents of VicRoads’ records. The certificate fell within the description of “a certificate purporting to have been issued by an authorised person” who was certifying as to the relevant contents of VicRoads’ records. The learned Magistrate did not err in so far as he relied upon the certificate as proof of its contents.

33. Mr Marijancevic’s challenge to the admissibility of the certificate and its use by the learned Magistrate should fail.

34. The appeal should be dismissed.

[1] Magistrates' Court hearing transcript, T43 ll 26-9.

[2] See: *DPP v Hinch*, 5 August 1994, Unreported decision of Mandie J; BC 9400955.

[3] (1991) 54 A Crim R 431.

[4] (1991) 54 A Crim R 431 at 450 per Crockett, Southwell and Ashley JJ.

[5] Magistrates' Court hearing transcript, T24 ll 14-9.

[6] (1991) 54 A Crim R 431.

[7] See: JD Heydon, *Cross on Evidence* 1996 at [39005].

APPEARANCES: The appellant Marijancevic appeared in person. For the respondent Ridsdale: Mr AD Halse, counsel. Office of Public Prosecutions.
