

10/81

## SUPREME COURT OF VICTORIA

**PARKER v KIS**

Marks J

29 July 1980

**MOTOR TRAFFIC – DRINK/DRIVING - BLOOD SAMPLE TAKEN – SAFEKEEPING OF BLOOD SAMPLE – NO EVIDENCE OF SAFEKEEPING OF BLOOD – PRESUMPTION OF REGULARITY – MAGISTRATE NOT SATISFIED THAT REGULATIONS COMPLIED WITH – CHARGE DISMISSED – WHETHER MAGISTRATE IN ERROR: MOTOR CAR ACT 1958, S81(1).**

A Magistrate dismissed the charge on the basis that in the absence of any evidence in relation to the safekeeping of blood, the presumption of regularity or continuity did not apply. Upon appeal—

**HELD: Appeal upheld.**

**The prosecution was not required to prove that the Regulations have been complied with.**

*Hindson v Monahan* [1970] VicRp 12; (1970) VR 84;  
*Wylie v Nicholson* [1973] VicRp 58; (1973) VR 596;  
*Lloyd v Thorburn* [1974] VicRp 2; (1974) VR 12;  
*Waters v Good*, Unreported, Nelson J, 30 August 1976;  
*Pavlecic v Crisman*, Gowans J, 29 May 1975;  
*Huntington v Jupp* O'Bryan J, 19 May 1978;  
*Woodward v McNab* Murray J, 31 August 1978;  
*Attwood v Lacey* Gray J, 24 May 1979;  
*Penhallariack v Knight* McGarvie J, 26 June 1979; and  
*Coyle v Guthrie* Gray J, 13 September 1979, followed.

**MARKS J:** The prosecution is not required in relation to the said information to prove that Regulations 223B; 223C; 223D and 223E of the *Motor Car Regulations* 1966 (as amended) had been complied with.

Perhaps I should add in case there be any confusion that it does not mean for all purposes that the Regulations are irrelevant. Whether they are relevant may depend on the course taken by the defence in any particular case. If it is sought to attack the *prima facie* reliability of the certificates tendered under the Schedules – in this case Schedules 6 and 8 – it may be that non-compliance with those Regulations or any of them if such be the case, could become relevant to a question whether in the upshot a tribunal of fact is prepared to accept those certificates as sufficient proof of their contents.