

*Case Name:*  
**R. v. Medeiros**

**Between**  
**Ashley Medeiros, and**  
**Her Majesty the Queen**

[2010] O.J. No. 4768

Ontario Court of Justice  
Toronto, Ontario

**M. Green J.**

April 29, 2010.

(142 paras.)

**Counsel:**

Counsel for the Crown, I. Stamicar, Ms.

Counsel for the Accused, V. Manoukian, Esq.

---

**M. GREEN J.:-**

**1** MS. STAMICAR: Your Honour, with respect to the appeals proper list, we only have one matter outstanding and that would be lines number six and seven for Ashley Medeiros.

**2** Mr. Manoukian, Your Honour, is letting me know that this is a matter that's up for an argument, that his argument will be approximately 15 minutes - mine will be no longer than one minute. So I will let you decide whether or not you'd like to take a recess at this time.

... AT THIS POINT IN THE PROCEEDINGS, ANOTHER MATTER ON THE DOCKET WAS SPOKEN TO.

**3** THE COURT: All right then. All right. You anticipate - you want to argue this appeal now, is that it, Mr. Manoukian?

**4** MR. MANOUKIAN: Yes, I would like to argue this morning, but I understand that perhaps the Clerk and the Reporter may need a break. I don't mind coming back in a few minutes if that's agreeable?

5 CLERK OF THE COURT: How long are you going to be?

6 THE COURT: It is going to be fifteen minutes, he says.

7 CLERK OF THE COURT: All right. I can wait.

8 THE COURT: Madam Reporter? All right. You are on. Are there any materials, Madam Clerk? Thank you. Let me just take a look at the papers for a moment.

9 MR. MANOUKIAN: Your Honour, I'm also going to be referring to the case of Regina and Palmaria. I did give a copy of it to my friend. This is a decision of Justice Shamai, S-H-A-M-A-I, in this particular court. It's reported in the year [2005] O.J. No. 5276, Palmaria spelled P-A-L-M-A-R-I-A.

10 THE COURT: Sorry, what is the appeal from?

11 MR. MANOUKIAN: Your Honour, this is an appeal from conviction of driving - a novice driver driving a motor vehicle with a blood alcohol level excess zero. There is a regulation in Ontario, Regulation 340/94 that novice drivers, people who hold Class G1 or G2 licence, shall not drive a motor vehicle with basically alcohol in their blood.

12 THE COURT: There are two convictions here.

13 MR. MANOUKIAN: Yes.

14 THE COURT: So one is driving with excess of 0.0. Is that it?

15 MR. MANOUKIAN: That's correct, Your Honour.

16 THE COURT: And it is a G2 licensee, is it?

17 MR. MANOUKIAN: Yes.

18 THE COURT: And the second offence is -

19 MR. MANOUKIAN: Is for drive without proper headlights. And we are going to be abandoning the appeal with regard to the drive motor vehicle without proper headlights.

20 THE COURT: All right. So that will be dismissed as abandoned then. Is that correct?

21 MR. MANOUKIAN: Yes, Your Honour, that is correct.

22 THE COURT: That leaves just the single conviction under appeal. Right?

23 MR. MANOUKIAN: Yes, Your Honour.

24 THE COURT: All right. I am with you so far.

25 MR. MANOUKIAN: Okay. Your Honour, I'd like to refer to page seven of the trial transcript.

26 THE COURT: All right. I have it.

27 MR. MANOUKIAN: Approximately line six. During the examination in-chief of the police officer, he says, "Further inspection of this photo Ontario Driver's licence indicated that the driver was a Class G2 licence holder, which puts a condition on the driver to refrain from operating a motor vehicle with any alcohol in their body or blood."

28 At approximately line 11 Mr. Manoukian, "Your Worship, I apologize. I'm going to object to the fact that the officer refers to the licence as being G2 at this time." So the Crown was put on No-

tice at the time that there was going to be some issues made or raised with regard to G2 licence holder.

29 THE COURT: All right.

30 MR. MANOUKIAN: Furthermore, if I take you - fast forward you, Your Honour, to -

31 THE COURT: This a replay of the trial personnel, is it not?

32 MS. STAMICAR: That is correct. Yes.

33 THE COURT: All right.

34 MR. MANOUKIAN: Page 33 of the transcript, Your Honour, if I can just fast forward.

35 THE COURT: Yes.

36 MR. MANOUKIAN: Approximately line 17. "The focus of the investigation - the essential element of the offence is that it be a G2 licence holder, that's the essential element of the offence. And when the matter is tied in with an essential element of the offence, the prosecution must prove this case. The Court cannot take judicial notice of the fact that the officer saw a licence and therefore the officer says it's a G2 licence. Its an essential element of the case, and therefore I submit to you that the prosecution has not proved beyond a reasonable doubt that the individual, Ashley Medeiros, was in possession of a novice driver's licence, that being G2."

37 I have to correct myself, Your Honour, I should not have said "beyond a reasonable doubt" because at this stage it's a motion for a non-suit and as such - I do apologize, Your Honour. I take that back.

38 THE COURT: That was on a motion for a non-suit.

39 MR. MANOUKIAN: Yeah. It was in the submission phase.

40 So basically I'm raising the issue that it's not a question of you seeing a G2 licence holder. It has direct implications with regard to the charges that are going to be laid. In that regard, Your Honour, I wish to refer to the case of Regina and Palmaria, which I passed to you earlier on today.

41 THE COURT: Yes, I have it.

42 MR. MANOUKIAN: Page three - by the way, Palmaria was a case which involved again a G2 blood alcohol conviction. On page three of the decision, this is what Justice Shamai has to say, beginning almost at line three.

43 THE COURT: The top of the page.

44 MR. MANOUKIAN: Yes.

"With regard to the evidence of the G2 licence holder, it may be that if the evidence led by the prosecutor at trial regarding the licence had been for the purpose of providing reasonable and probable grounds, for example, for investigation, then the hearsay nature of the testimony in that regard may well have been sufficient for the purposes of the Court. However, when the G2 licence is a critical aspect of the Crown's case, then it is incumbent upon the Crown to provide evidence which overcomes the hearsay nature of the police officer's testimony that

he observed a G2 licence with a certain number attached to it. None was provided. The Crown's case must fail on that ground alone."

45 Section 210(6) of the Highway Traffic Act, Your Honour -

46 THE COURT: Give me just a moment. Two ten six?

47 MR. MANOUKIAN: Yes.

48 THE COURT: All right.

49 MR. MANOUKIAN: I apologize. Two ten, subsection seven of the Highway Traffic Act. I apologize. Under the heading of "Evidence" is has this to say:

"A copy of any writing, paper, or document filed in the Ministry under this Act, and 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."

50 The best evidence rule, Your Honour, required. And there is a provision in the Highway Traffic Act that when such information is with the Ministry of Transportation, then evidence shall be produced purporting to what class licence the person holds. This wasn't done.

51 If I may refer you to page 42 of the reasons of judgment.

52 THE COURT: All right. One moment.

53 MR. MANOUKIAN: And I did bring this argument at trial. The learned Justice of the Peace, at approximately line 17 on page 42, says the following:

"Now, the section number that I'm referred to here deals with evidence of any writing, paper, or document filed with the Ministry. And this document that the officer saw is not filed with the Ministry." I think clearly the learned Justice of the Peace was in error here. It is a -

54 THE COURT: Well, I think that is an unfortunate reading of the provision, but I do not know if that is a complete answer to the question.

55 Can I just interrupt you to ask - you have a non-suit motion, right

56 MR. MANOUKIAN: Yes.

57 THE COURT: And these reasons for judgment of the learned Justice of the Peace, are they reasons on your application for non-suit?

58 MR. MANOUKIAN: No. The only other reasons at the end of the trial. However, I did file a motion for non-suit and this is found on page seven of the trial transcript. It begins on page seven, Your Honour.

59 THE COURT: No, but your non-suit motion is at page 33, is that not right? Is that not right?

60 MR. MANOUKIAN: I apologize, Your Honour. Let me get my -

61 THE COURT: Yes.

62 MR. MANOUKIAN: Yes. Yes, it is. I apologize, it is, yes.

63 THE COURT: So where is the Court's ruling on that?

64 MR. MANOUKIAN: Beginning page 31 -

65 THE COURT: No, but where is the ruling on your non-suit motion?

66 MR. MANOUKIAN: I'm trying to look for it, Your Honour.

67 THE COURT: Well, is it really a non-suit motion? I do not follow it.

68 MR. MANOUKIAN: I don't -

69 THE COURT: Because when I look at Ms. Stamicar's submissions at page 39, I do not understand - and perhaps I just need your assistance here. I take it the defence did not call any evidence, but why would that change the burden of proof if the submissions were at the end of the case?

70 MS. STAMICAR: If I may, Your Honour, I did have the ruling on the motion for non-suit.

71 THE COURT: Oh, you found it.

72 MS. STAMICAR: It's at page 31.

73 THE COURT: Oh, thank you.

74 MS. STAMICAR: You're welcome.

75 MR. MANOUKIAN: So approximately page -

76 THE COURT: Well, wait a second. Where is the - you see, the comments at page 33 that you initially referred me to, Mr. Manoukian, are after the non-suit ruling. You said you made a mistake in terms of framing the standard at that point because, in fact, it was a non-suit application. So that was not the test, beyond reasonable doubt. But in fact this is after the ruling on the non-suit.

77 MR. MANOUKIAN: Yes.

78 THE COURT: So these are your final submissions.

79 MR. MANOUKIAN: My final submission. I usually revisit them at the final submission stage if I brought a motion for a non-suit, but argue it from the perspective of reasonable doubt, or beyond reasonable doubt.

80 THE COURT: Right.

81 MR. MANOUKIAN: I try to reinforce the arguments at the motion for non-suit.

82 THE COURT: Okay. I take it you raised the same argument in the course of your non-suit. Is that correct?

83 MR. MANOUKIAN: Yes, I did, Your Honour. At approximately page 24 I did raise -

84 THE COURT: So where is His Worship's ruling on the non-suit?

85 MR. MANOUKIAN: Unfortunately I haven't come across it, Your Honour, and you raise a good point.

86 THE COURT: What I am trying to find is where the Justice of the Peace rules on the hearsay point.

**87** MR. MANOUKIAN: Yes. There is no ruling from the Justice of the Peace from that respective order. I did raise it on page 24 of the transcript which deals with the motion for non-suit at approximately line 20, Your Honour.

**88** MS. STAMICAR: I'm willing to concede that, Your Honour. I don't see any - the Justice of the Peace referring to the G2 issue, whether or not it was - concerned hearsay, although I think he may have referred to it earlier. I'm just going to see if I can find it, Your Honour. I remember seeing something.

**89** MR. MANOUKIAN: I think what happened, Your Honour, is we went from the motion for a non-suit straight into submissions because there was no evidence called by the defence at this stage. However, the learned Justice of the Peace doesn't appear to have ruled on the issue of the G2 issue in the motion for non-suit.

**90** THE COURT: No, he does not appear to have at all.

**91** MR. MANOUKIAN: No.

**92** THE COURT: But he does re-visit it in his final judgment, does he not?

**93** MR. MANOUKIAN: In the submission stage. He does mention it in the final judgment on page 42, lines approximately 17 to 21, and this is where I believe the learned Justice of the Peace erred in law in stating that this document that the officer saw is not filed with the Ministry, but that is not the essence of -

**94** THE COURT: That is page 42, is it?

**95** MR. MANOUKIAN: Yes, that's right.

**96** THE COURT: Let me just take a look at that. What line?

**97** MR. MANOUKIAN: Beginning line 19, Your Honour.

**98** Well, of course nobody expects a driver's licence that you produce to the officer to be filed in the Ministry of transportation, you have to have that on you, but unfortunately I'm not sure why the learned Justice of the Peace -

**99** THE COURT: No, I understand that. That is the only thing he has to say about the proof of the G2 licence.

**100** MR. MANOUKIAN: Yes, Your Honour. I don't -

**101** THE COURT: And the only evidence of the G2 licence is the officer saying "What I was presented was a G2 licence."

**102** MS. STAMICAR: That is correct, Your Honour. If I can briefly respond to that, if I may, Your Honour.

**103** THE COURT: Yes, if you could. Thank you.

**104** MS. STAMICAR: My submission is that Mr. Manoukian's interpretation of what s. 210(7) of the Highway Traffic Act says, that section refers to the Crown and the defence being able to file Ministry documents with the Court without the signature or the seal being questioned. It doesn't state that the Crown or the defence must submit such evidence.

**105** THE COURT: No, no, no. I took it to mean only that - although it may have turned out to be a red herring for the Justice of Peace, but I took it to mean only that, as a kind of evidentiary shortcut, available to any party -

**106** MS. STAMICAR: Exactly.

**107** THE COURT: - in order to prove something.

**108** MS. STAMICAR: Exactly.

**109** THE COURT: And so that it is, in a sense, an alternative to the evidentiary rules under the Evidence Act, for example, for proof of documents in Government possession. It is not that it has to be proven in that way, but the licence itself - is the licence, for example, in this case seized by the officer, and when he attended in court, did he present the very licence?

**110** MS. STAMICAR: I don't believe that was the case, no.

**111** THE COURT: So the only evidence is indeed, it seems to me, hearsay evidence.

**112** MS. STAMICAR: My submission, Your Honour, is that it's not hearsay evidence for the following reasons.

**113** THE COURT: Okay.

**114** MS. STAMICAR: Every driver in the Province of Ontario is required to have a proper licence and they're supposed to carry it on them as they're operating any motor vehicle.

**115** THE COURT: Right.

**116** MS. STAMICAR: And to that extent, Your Honour, it is also illegal - and I made that - I was the prosecutor with respect to this particular case on the trial. I raised that issue, that no driver is allowed to carry more than one licence, it's in fact illegal. There's a charge in the Highway Traffic Act -

**117** THE COURT: All right.

**118** MS. STAMICAR: - saying that it's illegal to carry more than one licence. So when the officer made a demand for the driver's licence, the defendant in this case submitted that licence to the officer.

**119** THE COURT: Yes.

**120** MS. STAMICAR: That was the only licence they presented, and that was a prima facie document that the officer -

**121** THE COURT: Yes. But whatever licence it was they presented -

**122** MS. STAMICAR: Yes.

**123** THE COURT: - it is the status of the licence that is at issue. The only evidence of the status of that licence is an officer saying that "I read on this document the following thing," which -

**124** MS. STAMICAR: Yes.

**125** THE COURT: So the document is in fact the out of court speaker.

**126** MS. STAMICAR: Yes.

127 THE COURT: And it is not being cross-examined because it is not there, it is not in court.

128 MS. STAMICAR: That's my only submission, Your Honour. I'm not going to respond to that.

129 THE COURT: Right.

130 MS. STAMICAR: You are correct in that regard.

131 THE COURT: Well, I think the question is - and I respect Justice Shamai's view in Palmaria and I do not think I can follow it in that regard. I think this is just simply inadequate proof and I think that unfortunately the Justice of the Peace misinstructed himself as to the appropriate law in this area. The question is what is the appropriate remedy then?

132 MS. STAMICAR: I don't know what Mr. Manoukian's asking for. We haven't discussed that, Your Honour.

133 MR. MANOUKIAN: Your Honour, the proper remedy is that the Crown could not prove a prima facie case.

134 An essential element of the offence was for the Court to receive information that the appellant, or defendant in that case, was in fact a G2 licence holder. This never came up in court. In order to be charged under this section, the Crown must prove that -

135 THE COURT: No, I understand that. The proper remedy of course is to grant the appeal. I meant beyond that. I mean, should a new trial be ordered, or should an acquittal be entered.

136 MS. STAMICAR: I would suggest, Your Honour, this I remember this trial, it was lengthy and Mr. Manoukian was there doing what he does very well, in my opinion. He was defending his client. He did a very good job at it. And again, in Appeal Court, he is well known for being very articulate with respect to these matters.

137 I don't think ordering a new trial is appropriate.

138 THE COURT: Well, when you are finished flattering him, do you want to tell me what it is you want to do with this.

139 MS. STAMICAR: I'm going to ask for an acquittal. I'm not going to ask for a new trial.

140 THE COURT: All right.

141 MS. STAMICAR: I think that's - that would be going too far.

142 THE COURT: All right. Thank you. The appeal is granted. I think on the proper submission of Crown Counsel, which I am sure Mr. Manoukian is not going to object, I will accept the recommendation that an acquittal be entered.

qp/s/qllyr/qljzg/qlpxm



---- End of Request ----

Print Request: Current Document: 1

Time Of Request: Friday, November 19, 2010 20:35:01