42/75

SUPREME COURT OF VICTORIA — COURT OF APPEAL

BEACH v PITTARD

Gowans, Menhennitt and Dunn JJ

22 July 1975

CRIMINAL LAW – POSSESSION OF INDIAN HEMP – DEFENDANT FOUND GUILTY OF OFFENCE – CERTIFICATE OF ANALYSIS TENDERED TO THE COURT – EFFECT OF – CHAIN OF PROOF BETWEEN SEIZURE AND ANALYSIS OF SUBSTANCE – PRINCIPLES OF CONTINUANCE AND REGULARITY – WHETHER APPLICABLE IN THIS CASE – WHETHER MAGISTRATE IN ERROR IN FINDING CHARGE PROVED: *POISONS ACT* 1962, SS27(1), 56(1).

The defendant was convicted of being in possession of Indian hemp. (S27(1) of the *Poisons Act* 1962) The order nisi was made returnable before the full court to enable the decision of Harris J in *Anglim & Cooke v Thomas* [1974] VicRp 45; [1974] VR 363 to be challenged.

The crux of the argument on behalf of the defendant was that there was a gap in the chain of proof because the material seized from the defendant was handed by the informant — who found the material seized in the defendant's possession — to the liaison officer at the Norman McCallum Police Forensic Science Laboratory, and not to the analyst who did the analysis. Therefore there was no sufficient proof that the material analysed was that seized from the defendant.

Evidence was adduced that the informant conveyed the substance seized (and exhibited to the Court) to the Forensic Science Laboratory labelled the substance and handed it to the liaison officer etc,. Subsequently the informant served a certificate of analysis on the defendant (original tendered in evidence). The details in the certificate corresponding to the writing on the label etc. The certificate was made evidence by reason of s56(1) of the *Poisons Act* 1962 as enacted by the *Poisons Amendment Act* of 1971. Upon order nisi to review—

HELD: Order nisi discharged.

1. The evidence of the informant and the details in the certificate were quite sufficient to establish at least *prima facie* that the material analysed and referred to in the certificate was that seized from the defendant. The informant identified it in the first instance as the material seized from the defendant, he identified it as the material which he himself had left at the Laboratory, and he identified it as the material which he tendered as an exhibit to the court as being that which he had seized from the defendant and left at the Laboratory.

2. Applying the principles of continuance and regularity to the facts of this particular case, they led inevitably to the result that the Magistrate was entitled to reach the conclusion that the evidence was sufficient to prove that the material analysed was the material that was taken from the defendant.

***Anglim and Cooke v Thomas* [1974] VicRp 45; [1974] VR 363; and**
***Collins v Mithen*, unrep, Gowans J, 21 May 1975 (MC12/1975), applied.**

DUNN J: ... A provision in these terms has been in the *Poisons Act* for many years and a similar provision appears in s116 of the *Medical Act* 1958. By this provision the certificate of analysis is made sufficient evidence of three things: first, of the identity of the thing analysed; secondly, of the result of the analysis; and thirdly, of the matters relevant to such proceedings stated in the certificate.

One of the matters relevant to the proceedings in this case, was the analysis of the contents of the sealed plastic bag labelled in the manner described by the informant.

In my opinion, the evidence of the informant and the details in the certificate were quite sufficient to establish at least *prima facie* that the material analysed and referred to in the certificate was that seized from the defendant. The informant identified it in the first instance as the material seized from the defendant, he identified it as the material which he himself had left at the Laboratory, and he identified it as the material which he tendered as an exhibit to the court as being that which he had seized from the defendant and left at the Laboratory.

It has to be remembered that it is open to a defendant who is minded to challenge the certificate of analysis to do so by taking advantage of the express provisions in sub-s(2) of s56 enabling this to be done.

It therefore follows in my opinion that the evidence in this particular case did establish a sufficient connection between the material seized from the defendant and the material analysed by the analyst to form a *prima facie* case. But in addition to that it has to be remembered that there is, in circumstances such as this, a presumption of continuance and of regularity which it is proper to apply. It does have to be borne in mind, as was said in *Scott v Baker* (1969) 1 QB 659; [1968] 2 All ER 993; [1968] 3 WLR 796, that presumptions of this kind have applied with caution in criminal matters.

But there are two decisions from members of this Court which in my opinion properly apply the presumptions and which, applied to the circumstances of this case, would support the correctness of the decision in the court below. Dealing with them in the order in which they were delivered, in the case of *Anglim and Cooke v Thomas* [1974] VicRp 45; [1974] VR 363, Harris J applied the presumption in similar circumstance. At p366 he dealt with the matter in these terms:

> "Mr Richter submitted that there was a gap in the evidence which left it unclear or at least did not establish with any precision that the substances left by Constable Hanson at the laboratory were the substances which were the subject of analysis by Oughtred. He relied upon the absence of evidence expressly linking the substances left by Constable Hanson with those received by the analyst, upon the discrepancies between the information on the one hand and the certificate on the other hand and upon the fact that the analyst did not give an answer with respect to a number of the substances analysed. All these matters are proper matters for criticism but the Magistrates' Court did in fact accept the certificate as evidence. It was a question of fact for the Magistrates' Court to decide whether there was sufficient evidence that the substances found in the defendants' possession by Constable Hanson were the substances referred to in the analyst's certificate. The point was argued before the Magistrates' Court and that court was satisfied on this point. I am not persuaded that this decision was one which no reasonable court could come to on the evidence. After all, there is an inherent probability that the substances would have been properly dealt with at the laboratory."

In coming to the conclusion that the presumptions are applicable to this case I have not overlooked the arguments which Mr Pittard submitted, that the certificate was capable of criticism in this case because of the gap in the dates – between the date on which the material was left at the Laboratory and the date on which the analyst did the analysis, and because of the absence of any reference to the paper bag in the certificate of analysis, that being the bag which the informant said he seized the material in.

The learned presiding Judge of this Court dealt with the same problem in the case of *Collins v Mithen*, in at unreported judgment delivered by him on the 21st May 1975, and I desire to quote from that judgment because I approve, with respect, of what the learned Judge there had to say. He said:

> "But in my opinion there are two presumptions which ought to come into operation in relation to this matter. They are both presumptions of fact. One is a presumption of continuance, that is to say, that it ought to be presumed as a matter of fact that during this short time between the Friday evening and the Monday, the blood in the container preserved its identity, that is to say that it continued to be the same blood as was in the container on the Friday night. The same presumption operates to justify an inference that the condition of that blood did not change of itself during that time.
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> In addition, there is a presumption of regularity in relation to the custody of the sample, or, to put it perhaps in a way which is more pertinent for present purposes, there is a presumption against irregularity with respect to the custody of the sample – a presumption against the occurrence of any fraud against the law.
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> When these two presumptions are put together, I think the effect is that there was evidence that the blood in the container on Friday was the same blood and in the same condition as the blood in the container on the Monday, and that no person had wrongly interfered with the blood itself or with its condition."

Applying those principles to the facts of this particular case, they lead inevitably to the same results that the learned Magistrate was entitled to reach the conclusion that the evidence

was sufficient to prove that the material analysed was the material that was taken from the defendant. Gowans J included in his judgment a quotation from the case of *Hardess v Beaumont* [1953] VicLawRp 46; [1953] VLR 315 at p320 from the judgment of Dean J:

> "I would add that the presumptions to which I have referred are founded on obvious good sense and that the courts should be ready to apply them in cases of this kind."

For these reasons, in my opinion the order nisi should be discharged.

GOWANS J: I am of the same opinion and there is nothing that I can usefully add to the reasons which have been given by my brother.

MENHENNITT J: I agree.

GOWANS J: The order of the Court is order nisi discharged with costs.
