40/00; [2000] VSC 471

SUPREME COURT OF VICTORIA

EDWARDS & MOORE v RAABE & ANOR

Smith J

23, 24 October, 10 November 2000 — (2000) 117 A Crim R 191

CRIMINAL LAW – THREATENED BREACH OF THE PEACE – STANDING OF POLICE OFFICER TO BRING PROCEEDINGS – "A PERSON" – MEANING OF IN RELATION TO BREACH OF PEACE PROCEEDINGS – WHETHER POLICE OFFICER EMPOWERED TO BRING PROCEEDINGS – NO ACTUAL VIOLENCE OR THREATENED VIOLENCE – CONDUCT FOUND BY MAGISTRATE LIKELY TO PROVOKE VIOLENT CONDUCT FROM NEIGHBOURS – WHETHER OPEN TO MAGISTRATE TO FIND THREATENED BREACH OF PEACE: *MAGISTRATES' COURT ACT* 1989, S126A.

R., a police officer, instituted a complaint for threatened breach of the peace against E. and his wife M. The particulars of the complaint specified that over a period of time, E. and M. engaged in a course of conduct which made "the lives of the rest of the residents " in the street "unbearable". The conduct included all-night parties with loud music, use of foul language, fights and instances of rubbish being strewn around the street and dumped on neighbours' properties. At the hearing, it was submitted by E. and M. that R. had no standing to bring the two complaints. Such complaints could only be brought by "a person" who was threatened or felt threatened by the acts of violence or threatened acts of violence. The magistrate rejected this submission. In finding the complaints made out and ordering E. and M. to enter into recognisances to keep the peace, the magistrate found that the neighbours were "living their lives on a razor's edge", were "obviously at their wits' end" and that "a recipe for violence existed". Upon appeal—

HELD: Appeal dismissed in each case.

(1) Section 126A of the *Magistrates' Court Act* 1989 provides that the Court may, on the written application of a person, order another person to enter into a bond to keep the peace or to be of good behaviour. The police, because of their special duties, are persons who on any view would have a sufficient interest to bring such proceedings, at least where the police officers concerned are police officers with responsibility for maintaining the Queen's peace in the areas in which the threat of breaches of the peace were said to exist. In those circumstances, the magistrate was correct in deciding that R. was entitled to bring the proceedings.

(2) Whilst the magistrate did not in fact find that there was violence or threatened violence from E. and M. towards their neighbours, there was ample evidence to support the conclusion that the neighbours were at their wits' end and their lives were being made a misery by E. and M. In those circumstances, it was open to the magistrate to:

(a) to conclude that the conduct of E. and M., if persisted in, would have as its natural consequences the provoking of the neighbours to violence; and

(b) to exercise the power to bind E. and M. to keep the peace.

SMITH J:

The Appeals

1. Hector Edwards (Edwards) and Leanne Francis Moore (Moore) have appealed against orders made in the Magistrates' Court at Swan Hill on 20 April 2000 whereby they were ordered to enter into recognisances to keep the peace in the sum of $500.

The Original Proceedings

2. Separate proceedings had been instituted against Edwards and Moore by Sergeant Raabe of the Swan Hill police pursuant to s126A of the *Magistrates' Court Act* 1989. During the hearing the prosecuting officer, John Lyons, was joined as a plaintiff in each proceeding. He was joined after objection had been taken that the proceedings, being a civil proceedings, the plaintiff could not be represented by a policeman.

3. The documents filed to commence the proceedings were entitled as follows:

"Section 126A *Magistrates' Court Act* No. 51/1989.
Complaint for threatened Breach of the Peace and Summons thereon."

After identifying the plaintiff and the defendant, each complaint and summons stated the following:

> "**To the defendant:**
> You are summonsed to attend at the Swan Hill Magistrates' Court for the hearing of an application by the Plaintiff for an order pursuant to Section 126A of the *Magistrates' Court Act* that you enter into a bond, with or without surety or sureties **TO KEEP THE PEACE OR TO BE OF GOOD BEHAVIOUR.**"

The complaint and summons issued against Hector Edwards also gave particulars in the following terms:

> "The defendant and his wife have, over the past several years, engaged in a course of conduct which has made the lives of the rest of the residents in Standen Street unbearable. Every Thursday almost without fail the defendant and his wife have parties. The music that emanates from these parties can be heard all along the street from inside neighbouring houses. The parties themselves often last all night and into the following day. Foul language can also be heard from inside adjoining houses. There are fights which spill out onto the road. Rubbish from this location is strewn around the street and dumped over neighbouring fences. Several residents have either moved or are shortly to move due solely to the behaviour of the residents of number 18 Standen Street. It is the general opinion of the other residents of Standen Street that the occupants of number 18 simply do not care if they disturb any one else. Many residents are fearful of the defendant and his wife and are afraid to leave their houses unattended. Efforts by the police to bring peace to Standen Street have been unsuccessful. Penalty notices for noise pollution have been issued, but this does not seem to have persuaded the residents of number 18 to quieten down. Every other resident has indicated that all efforts to persuade the occupants of number 18 to at least tone down the noise, swearing and offensive behaviour have failed."

4. Similar particulars were included in the Complaint and Summons against Moore.

Questions of Law on Appeal

5. For the purposes of the appeals, the Master has identified two questions of law as follows:

> "(a) What principles should be applied in deciding if a member of the police force has a 'special interest' to make an application pursuant to Section 126A of the *Magistrates' Court Act* 1989.
>
> (b) In what circumstances can an order pursuant to Section 126A be made where there is absence of evidence from the complainant that violence or threatened violence is apprehended."

In the course of submissions made on this appeal by the appellants, it emerged that the errors of law encompassed by the above questions and alleged by the appellants are that the learned Magistrate erred in:

> (a) holding that Sergeant Raabe was a person entitled to commence the proceedings, and
> (b) making an order pursuant to Section 126A in the absence of evidence that violence or threatened violence from the defendants was apprehended.

The provisions of Section 126A *Magistrates' Court Act* 1989

6. The proceedings were brought under s126A of the *Magistrates' Court Act* 1989 (the Act). It is in the following terms:

> "**Power to bind over to keep the peace**
> **126A** (1) The Court may, on the written application of a person, order another person to enter into a bond, with or without surety or sureties, to keep the peace or to be of good behaviour.
> (2) An application under sub-section (1) must be supported by evidence on oath or by affidavit.
>
> (3) The parties to a proceeding under this section and any other witnesses may be called and examined and cross-examined and costs may be awarded as in any other proceeding in the Court.
>
> (4) The Court may order that a defendant who does not comply with an order under sub-section (1) be imprisoned until he or she does comply with it or for 12 months, whichever is the shorter.
>
> (5) An order under sub-section (1) may only be made on an application in accordance with this section unless it is otherwise expressly provided by any other Act."

The "Standing" Issue

7. Resolution of the question of the entitlement of Sergeant Raabe to bring the two complaints and summonses under s126A of the Act turns on the construction of the term "a person" in s126A(1).

8. For the appellants it was submitted that the term should be confined to persons who themselves are threatened or feel threatened by acts of violence or threatened acts of violence. Reliance was placed on the concept of special interest as developed in *ACF v Commonwealth [1980] HCA 53;* (1980) 146 CLR 493 and *Onus v Alcoa* [1981] HCA 50; (1981) 149 CLR 27; (1981) 36 ALR 425; (1981) 55 ALJR 631. The appellants submitted that only those persons threatened or feeling threatened had the requisite special interest. No reference was made to any particular aspects of the section itself from which interpretive guidance might be obtained. It was emphasised, however, that the proceeding is a civil proceeding, a categorisation that was common ground between the parties to the appeal.

9. I was referred to examples of cases where other expressions or similar expressions have been interpreted. For example, in *Day v Hunter* [1964] VicRp 109; [1964] VR 845 at 847-849 the expression "person aggrieved" was considered. This from the appellant's point of view, seemed to me to be, at best, a two edged argument in that the phrase "person aggrieved" would support the narrow construction sought and thus the use of the wider expression "a person" might well support an argument for a wider construction.

10. Comparison was drawn, also, with the *Crimes (Family Violence) Act* 1987 in which the legislation specifically enables the police to be complainants. Such specific authorisation is not present. That legislation was considered in *Fisher v Fisher* [1988] VicRp 93; (1988) VR 1028. Counsel relied on the reasons advanced by Nathan J in that case (at 1038-9) in ruling against the right of the police to appear on behalf of the complainants. Reliance in particular was placed upon the argument that where a police member appears in the role of the solicitor, the complainant or client would be unprotected so far as professional indemnity insurance was concerned and the police could be personally liable for any negligence committed during the conduct of intervention proceedings under the *Domestic (Family Violence) Act*. The other argument emphasised was that members of the police force have public duties to perform and "should not be deflected into becoming instruments of one civil litigant against the interests of another". Nathan J went on to argue that that Act provided that the failure to comply with an intervention order might amount to a criminal offence and commented that "a police member could be obliged to change roles in totally inconsistent ways. On the one hand, appearing in a civil suit, and in the other as a prosecutor in a criminal one. This dichotomy must be avoided."

11. The issue raised in the present proceedings is not whether a police officer might represent a civilian complainant in proceedings under s126A but whether a police officer is "a person" for the purpose of s126A(1) and, therefore, able to bring proceedings under that section is his or her own right. While it is obviously unusual for police officers to bring civil proceedings in the course of performing their duties, I do not, as presently advised, see any conflict situation involved where the proceedings are directed to the preserving of the peace. In so acting they are, to quote Nathan J: "The instruments the community uses to uphold and enforce the criminal law" (at 1039)".

12. It was also put for the appellants that it does not create difficulties to exclude the police from this remedy where a breach of the peace may be involved. If there was concern about the offensive language, the *Summary Offences Act*, s17, could have been used. If there was concern about the excessive noise, the *Environment Protection Act* provisions could have been used (cf *Nicholson v Avon* [1991] VicRp 15; [1991] 1 VR 212). As to instances of violent behaviour there were, of course, other remedies available. Reference was also made to the powers of arrest in the *Crimes Act* 1958. It was put that, if the object of the exercise were to obtain some form of preventive order, then such an order would be available should relevant charges be proved and orders made under the *Sentencing Act*. If arrested, bail conditions could also be sought.

13. The respondents to the appeals argued, firstly, that the "standing" issue, having been raised below, was not, in the end, pressed. That is not as I read the transcript. While there has been some confusion of thought and argument at various times on the issue, I am satisfied that the Magistrate considered that he had to rule on the issue of whether the respondents were entitled

to bring the complaints and summons. In other words, as far as the Magistrate was concerned the fundamental question had not been abandoned.

14. The transcript records that his Worship, at the commencement of his reasons for decision, discussed the role of the police force in the State of Victoria and the obligations imposed upon its officers to keep and preserve "Her Majesty's peace". He referred to a discussion in Paul's, *Justices of the Peace*, (1936) p62 and the oath set out in the *Police Regulation Act* 1958, Schedule 12. He concluded; "I am satisfied that the prosecutor has standing in this matter". His Worship plainly saw the question as being a live question to be determined by him.

15. Counsel for the respondent submitted, in the alternative, that there was no need to demonstrate a special interest but that, if there were, such a special interest existed because of the statutory obligations of the police.

16. Counsel referred to provisions of the *Police Regulation Act* 1958. In particular he referred to s11 of that Act which provides:

> "11. **Authority of Constables**
> Every constable shall have such powers and privileges and be liable to all such duties as any constable duly appointed now has or hereafter may have either by the common law or by virtue of any act of Parliament now or hereafter to be in force in Victoria, and any member of the police force of higher rank than a constable shall have all the powers and privileges of a constable whether conferred by this Act or otherwise."

Counsel also referred to s13 of that Act which provides for officers of the force to take and subscribe an oath set forth in the Second Schedule. It is not necessary to refer to the full terms of that oath. It is sufficient to note that it includes the following:

> "I swear by Almighty God that I will well and truly serve our sovereign lady the Queen as a member of the Police Force of Victoria ...; that I will see and cause Her Majesty's peace to be kept and preserved; and that I will prevent to the best of my power all offences against the same ..."

17. Reliance was placed upon the reasons of Marks J in *Nicholson v Avon* [1991] VicRp 15; [1991] 1 VR 212 at 221:

> "Section 11 of the *Police Regulation Act* 1958 confers on constables of police 'such powers and privileges ... as any constable duly appointed now has or hereafter may have by the common law ... and any member of the police force of higher rank ... shall have all the powers ... to the constable whether conferred by this Act or otherwise.'

There is much authority to the effect that a police officer has a duty at common law to prevent a breach or threatened breach of the peace: see Halsbury's *Laws of England*, vol 36 4th ed, p320."

His Honour then went on to refer to a number of English authorities which recognised a common law duty on the part of police to keep the peace.

18. Counsel for the respondents also sought to challenge the propositions that there was no practical need for police to be able to bring civil proceedings under s126A of the *Magistrates' Court Act* 1989. The fact remains, however, that, taking the present case as an example, the conduct complained of could have been dealt with by the laying of specific charges, the imposition of fines or bonds and satisfactory results may well have been obtainable. The issue is a subsidiary one and ultimately, in my view, not determinative.

19. Returning to the specific question of the construction of the phrase "a person", I accept that some limits should be placed on the expression. The sorts of considerations that have caused the courts to limit standing are relevant. They include the desirability

> (a) of avoiding the processes of the law being used by busy bodies, cranks or people actuated by malice
>
> (b) that persons who have no relationship with the defendants and who have not been affected by them should not be able to cause them to undergo the stress and cost of litigation
>
> (c) of ensuring that the courts will decide only a real controversy between parties.

20. It seems to me, however, that the police, because of their special duties, are persons who on any view would have a sufficient interest to bring such proceedings, at least where the police officers concerned are police officers with responsibility for maintaining the Queen's peace in the areas in which the threat of breaches of the peace is said to exist. In those circumstances it seems to me that the learned Magistrate was right in his conclusion that the complainants were persons entitled to bring the proceedings.

21. Before turning to the other issue raised I note that there are statements in one of the leading authorities which support an argument that the complaint must be laid by a person who is threatened by a breach of the peace. I refer to the statements of Chief Justice Bray in *R v Wright; ex parte Klar* [1971] 1 SASR 103. The judgments in that case contained detailed analyses of the history of the power of Justices of the Peace, and later Magistrates, to bind over persons threatening a breach of the peace. In *R v Wright*, the defendant Klar had been charged with offences under the *Police Offences Act* 1953-1967 committed in the course of a street demonstration against the Vietnam War. He was convicted on both charges. The Magistrate, purporting to act pursuant to the *Justices of the Peace Act* 1361 and his commission as a magistrate, ordered Klar to enter into his own recognisance in the amount of $250 to, *inter alia*, "keep the peace". The case therefore was not one where the issue arose in the context of a complaint filed seeking an order binding the defendant to keep the peace — as in the present case. The court, however, considered the various sources of power and referred amongst other things to s99 of the *Justices Act* 1921-1969 (SA) which set out a complaint procedure to be followed in seeking an order requiring a person to keep the peace. The critical question in the case, however, was the operation of s70ab of the *Justices Act* 1921-1969 SA and whether it was cumulative upon or abrogated the powers previously possessed by Justices of the Peace. The problem arose because the learned magistrate had imposed additional conditions.

22. Chief Justice Bray analysing the power of magistrates to bind persons to keep the peace compared the s99 procedure with the s70ab procedure and said as to the former (at 109):

> "These sections, in my view, relate to one department only of the binding over power, viz. the power to bind over on the complaint of some person alleged to have been threatened."

Chamberlain J (at 121) stated the following in relation to s99:

> "It is clear that the English provision from which this is taken has never been considered as overriding or qualifying the general power of justices, and all it does, in my opinion, is to lay down the course to be followed when a complaint is laid by a person apprehensive of violence at the hand of another. It has no further application."

I note that his Honour's statement is on one view broad enough to cover the present case in that it may be said that the police officers were apprehensive of violence at the hands of the defendants and at the hands of the neighbours.

23. Strictly speaking, these comments were *obiter* and I suggest that they were not intended as exhaustive statements as to the purpose and scope of s99 of the South Australian Act. If they were, it would be difficult to reconcile them with the body of authority to which I will refer which accepts that action can be taken against individuals to prevent a breach of the peace on the basis not that they are being violent but that they may by their conduct provoke violence in others. In such circumstances neither the provoker nor the provoked would have any interest in bringing a complaint in circumstances where it would be clearly in the interest of preserving the Queen's Peace that such a complaint be brought. An order binding over could be made against the provoker and whether it was breached or not would be determined by an examination of the conduct of the provoker and whether that conduct subsequently caused a breach of the peace by provoking violence. They would of course also breach the peace if they initiated violence themselves. While there may well be difficult factual issues to resolve in such cases, and difficult penalty issues to resolve, nonetheless it would appear to me to be a very valuable procedure to have available in the armoury of procedures to preserve the Queen's Peace. In such cases, however, it would be the police who would have the interest in bringing the proceedings. To return to the statements of Bray CJ and Chamberlain J, it might be said that the section gives a power to bind over on the complaint of some person apprehensive that violence may arise as a result of the actions of the defendants, the complainants being the likely victims of such violence or having a duty to preserve the Queen's Peace.

24. I turn then to the other issue raised.

Whether open to make an order under Section 126A of the Act in the absence of evidence of violence or threatened violence on the part of the appellants

25. Counsel for the appellants submitted that it must be established that the defendants had engaged in more than mere bluster (see *Morse v Klooger* [1918] VicLawRp 31; (1918) VLR 204; 24 ALR 66; 39 ALT 138). What is required, they submitted, is the establishing of violent acts or threats of violence by the defendants which pointed to the real possibility of future acts of violence by the defendants. Counsel submitted that the courts over the years have emphasised the limits on the jurisdiction to circumstances of threatened violence. Counsel referred to *R v Wright; ex parte Klar* (1971) 1 SASR 103; *Mann v Yannacos* (1977) 16 SASR 54; *R v Howell* [1982] QB 416; [1981] 3 All ER 383; [1981] 3 WLR 501; *Percy v DPP* [1995] 3 All ER 124; (1995) 1 WLR 1382; *Nicholson v Avon* [1991] VicRp 15; [1991] 1 VR 212; *Bestt v Semple* (1985) 38 SASR 511; 18 A Crim R 313; *Forbutt v Blake* (1981) 51 FLR 465; 2 A Crim R 28; *Griffiths v R* [1977] HCA 44; (1977) 137 CLR 293 (319-22); (1977) 15 ALR 1; (1977) 51 ALJR 749.

26. I have had the benefit of extensive submissions on the facts and the law. Ultimately, the issue raised needs to be considered in the context of the learned Magistrate's decision and reasons.

27. The transcript is not entirely clear, but I suggest that the following is the essence of his Worship's reasons. Firstly, he was impressed by the remarks of Marks J in *Nicholson v Avon* (above), relied upon before him by the plaintiffs:

> "There is no conduct more likely to promote violence than prolonged disturbance of the sleep of neighbours by noise and behaviour of the kind displayed by the uncontradicted facts." (at 221)

His Worship regarded the behaviour of the defendants as "extreme behaviour". He also held that it was not "isolated behaviour". He pointed to a combination of extreme behaviour and gave a number of examples. I will not at this point go into those examples in detail but note that he referred to evidence about the noise of music and people, drunken and noisy parties until 6am, evidence that the lives of the neighbours were a misery, evidence that after the police left having been called to have the behaviour modified, the behaviour would flare up again, — in particular, the music. As to extreme behaviour, there was reference to the language used and evidence that it was disgusting. His Worship referred to evidence of verbal aggression such as Ms Moore, one of the appellants allegedly saying "no fucking white person is going to tell us how to live". He referred to the evidence that it was Mr Edwards who had threatened to get an axe and "get us" and evidence which, he suggested, supported a conclusion of a lack of consideration of the neighbours.

His Worship commented:

> "In my opinion, if people are living their lives on a razor's edge, that's a recipe for violence. It hasn't happened yet but, there is a recipe for violence".

He referred to evidence from Mr Brereton about the appellant Edwards being very aggressive verbally to him after discovering that the application had been made to the Magistrates' Court and the evidence by neighbours of their fear.

28. His Worship also stated that the people who had given evidence "impressed me as reasonable people but obviously at their wits' end".

29. He referred to the issue of rubbish and photographs of rubbish having been thrown over the fence. He then quoted from Paul's *Justices of the Peace* (1936) para 12 and 30. In referring to para 12 he noted that it was stated that it had originally been necessary to aver that there had been a trespass by force and violence but that that was no longer necessary. He then noted that in this case there had been a trespass with the rubbish thrown over the fence. He then referred to para 30 of the same text quoting from that paragraph as follows:

> "… every felony and misdemeanour indictable as such at common law is in a broad sense a breach of the peace as being against the peace of our Lord the King, but breach of the peace was also commonly used in a narrower sense as meaning unlawful acts or conduct (1) involving force or violence; or (2) … directly or manifestly tending to provoke force or violence or to inspire fear or apprehension thereof; or"

30. He then paused before referring to the third meaning saying,

> "or (3)", and this is the point here "(3) calculated to disturb peace and tranquillity".

31. His Worship then referred to the case of *Graham v Haig* [1885] VicLawRp 53; (1885) 11 VLR 244 which was cited in Paul's *Justices of the Peace* in respect of item (3). That case concerned a charge of insulting behaviour in a public place whereby a breach of the peace may be occasioned. It is not clear how his Worship relied upon that case, if at all, but he immediately went on to say

> "Here, of course, it is not only the language but it is a combination of extreme behaviour."

He then concluded that he was satisfied that the application was made out.

On a fair reading of his Worship's reasons, he accepted the evidence of the witnesses called by the plaintiffs. He concluded that the neighbours were living on a razor's edge and that this was a recipe for violence. He did not conclude that there were threatened acts of violence likely to emanate from the defendants but rather that the risk of violence in the future arose from their conduct which was making the lives of their neighbours a misery. I note the threat to use an axe was never advanced by the plaintiffs as an item of violence or threatened violence which had prompted the application. There was no evidence to suggest that it had immediately preceded the application. Such evidence would have been adduced if it existed. Following that incident there appeared to have been no further threats of violence.

32. Thus I proceed on the basis that the learned Magistrate did not in fact find that there was violence or threatened violence from the defendants towards the neighbours. There was in fact little evidence of violence directed to the neighbours although there was ample evidence to support his conclusion that they were at their wits' end and that their lives were being made a misery by the appellants, evidence largely uncontradicted.

33. The question that then arises is whether, in light of those findings, it was open to the learned Magistrate to find that there existed a threatened breach of the peace which would entitle him to make orders requiring the defendants to keep the peace. The situation seen by his Worship was that the conduct of or permitted by the defendants was such as to raise a real danger that it would provoke violent conduct from their neighbours.

34. There is authority for the proposition that persons who provoke acts of violence can be dealt with on the basis that they have caused or may cause a breach of the peace. I refer to *Forbutt v Blake* (above) *Percy v DPP* (above). The former concerned powers of arrest and raised the issues indirectly. *Percy v DPP*, however, is directly in point. In that case the defendant had entered a Military air base on five occasions over a period of approximately two hours, she had climbed the perimeter fence. She was protesting peacefully about the use of the base. She was escorted off the base without incident on each occasion. She did not at any time threaten violence or use violence and did no damage to any property. A complaint was laid under s115 *Magistrates' Courts Act* 1980. I note that it was laid by an officer of the Ministry of Defence police. Section 115(1) provided the following:

> "(1) The power of a magistrates' court on the complaint of any person to adjudge any other person to enter into a recognisance, with or without sureties, to keep the peace or to be of good behaviour toward the complainant shall be exercised by order on complaint ..."

The court (comprising Balcombe LJ and Collins J) held that it was essential that violence or threatened violence be established but also accepted that the power in the section could be exercised where the violence or threatened violence was not that of the defendant but was likely to be provoked by the defendant. Reliance was placed upon a number of decisions where the conduct of the defendant was not violent or threatening violence but likely to cause violence. [at p1392]

> "The conduct in question does not itself have to be disorderly or a breach of the criminal Law. It is sufficient if its natural consequence would, if persisted in, be to provoke others to violence, and so some actual danger to the peace is established."

Reference was made to authorities such as *Wise v Dunning* [1902] 1 KB 167; *R v Morpeth Ward Justices, ex parte Ward* (1992) 95 Cr App R 215. (See also *R v Sharp* [1957] 1 QB 552; [1957] 1

All ER 577; (1957) 41 Cr App R 86 and *R v County of London Quarter Sessions Appeals Committee* [1948] 1 KB 670).

35. In *Percy v DPP* (above) the issue ultimately appears to have been whether it could be demonstrated that violence would be a natural consequence of the defendant's action and the court took the view that there was insufficient evidence to support that conclusion. In discussing that it stated: [at 1394]

> " ... when looking to the possibility of further trespass by the defendant, they had to be satisfied that there might be violence. In our judgment there had to be a real risk, not a mere possibility of a breach of the peace ..."

The court considered that a finding that the defendant's conduct could have provoked others to violence was not supported by the evidence.

36. In the present case I am satisfied the learned Magistrate had reached the conclusion that the conduct of the defendants, if persisted in, would have as its natural consequence the provoking of the neighbours to violence. His Worship took the view that there was a real risk of violence. On the authorities, and in the circumstances of this particular case, it was open to the learned Magistrate so to conclude and to exercise the power to bind the defendants to keep the peace notwithstanding the fact that there was no evidence of threatened violence or relevant violence on their part.

Conclusion

37. For the foregoing reasons, the appeals should be dismissed.

APPEARANCES: For the appellants Edwards and Moore: Mr D Ross QC & Mr M Croucher, counsel. Victoria Aboriginal Legal Service Co-Op Ltd, solicitors. For the respondents: Mr B Dennis, counsel. Victorian Government Solicitor.
