

82/76

SUPREME COURT OF VICTORIA

CHARLES v HARBEN; SAUNDERS v ROGERS

Nelson J

17 August 1976

CRIMINAL LAW – TRAFFICKING IN INDIAN HEMP – FINDING BY MAGISTRATE THAT MARIJUANA MEANS "INDIAN HEMP" – CHARGES FOUND PROVED – WHETHER MAGISTRATE IN ERROR: POISONS ACT 1962, S26.

Each defendant was convicted of trafficking in Indian Hemp. A female witness stated that she requested one of the defendants to obtain some "marijuana" for her and that such marijuana was in fact supplied to her by the defendants. The defendants admitted these facts. Upon Order Nisi to Review—

HELD: Order nisi discharged.

1. As to the substance itself, the female witness stated that she previously smoked marijuana some twenty times and was familiar with the sensations it produced and that she did smoke the substance which was handed to her and that it was marijuana. Each of the accused asserted that the substance in which they trafficked was marijuana. No evidence was called by the accused nor was there any evidence to indicate that the substance was not in fact marijuana. There was ample evidence upon which the Magistrate was entitled to find that the substance was, in fact, marijuana.

2. The definition of 'marijuana' leaves no doubt that the word 'marijuana' has the same meaning as that which is attributed to the expression 'Indian Hemp' in s26 of the *Poisons Act*. There is no doubt that Courts are entitled to take judicial notice of the meaning of words as defined in standard works.

3. The Magistrate stated that there was no doubt that Indian Hemp and marijuana were the same and, in the context of the proceedings which were then before him, he was clearly referring to Indian Hemp as defined in the Act. In view of the meaning of the word 'marijuana', which is well established, he was clearly entitled to reach that conclusion. Indeed, it is difficult to see how he could have reached any other conclusion.

Whitmore v Harding (1974) 9 SASR at p312; MC74/76; and
Dimitriou v Samuels (1975) 10 SASR at p331; MC75/76, not followed.

4. It was an issue of fact as to whether the substance in which the accused trafficked was Indian Hemp, as defined. The Magistrate was entitled to find that when the witnesses said that the substance was marijuana then having regard to the generally accepted meaning of that word they were referring to the substance which by definition was the same substance described in the statute as Indian Hemp.

NELSON J: ... Two questions, however, have been the subject of debate before me. The first is whether the Magistrate was entitled to find upon the evidence that the substance in which each of the defendants so trafficked was, in fact, marijuana and, secondly if he did so find, whether he was entitled to find that marijuana was Indian Hemp as defined in the *Poisons Act*.

As to the substance itself the female witness stated that she previously smoked marijuana some twenty times and was familiar with the sensations it produced and that she did smoke the substance which was handed to her and that it was marijuana. And as I have already said, each of the accused asserted that the substance in which they trafficked was marijuana. No evidence was called by the accused nor was there any evidence to indicate that the substance was not in fact marijuana, and the first ground of complaint can be shortly dealt with because, in my opinion, there was ample evidence in what I have outlined upon which the Magistrate was entitled to find that the substance was, in fact, marijuana.

The second question, however, was whether he was entitled to find that the substance fell within the definition of Indian Hemp as defined in the *Poisons Act* s26.

Marijuana itself is defined in a number of standard dictionaries and medical works. In the *Shorter Oxford Dictionary* it is defined as:—

'Indian Hemp, Cannabis Sativa; the dried leaves and flowers of this used in cigarettes as a narcotic.'

Mr Meagher also referred me to a number of other standard works where the meaning of the word 'marijuana' is defined. In my opinion those definitions leave no doubt that the word 'marijuana' has the same meaning as that which is attributed to the expression 'Indian Hemp' in s26 of the *Poisons Act*. I do not think there is any doubt that Courts are entitled to take judicial notice of the meaning of words as defined in standard works.

The Magistrate in this case stated that there was no doubt that Indian Hemp and marijuana were the same and, in the context of the proceedings which were then before him, he was clearly referring to Indian Hemp as defined in the Act. In view of the meaning of the word 'marijuana', which I am satisfied is well established, he was, in my opinion, clearly entitled to reach that conclusion. Indeed, it is difficult to see how he could have reached any other conclusion.

It is an issue of fact as to whether the substance in which the accused trafficked was Indian Hemp, as defined. The Magistrate was entitled to find that when the witnesses said that the substance was marijuana then having regard to the generally accepted meaning of that word they were referring to the substance which by definition is the same substance which is described in the statute as Indian Hemp.

That consideration would be sufficient to dispose of these orders to review, but I was referred by Mr Moshinsky, and reliance was placed upon, two decisions of single judges in the Supreme Court in South Australia, namely, the decisions of *Whitmore v Harding* (1974) 9 SASR at p312, and *Dimitriou v Samuels* (1975) 10 SASR at p331. Both those cases were dealing with legislation in similar terms to that which is contained in the relevant provisions of the Victorian *Poisons Act*. In each case the substance which was the subject of the charge laid was described by a witness in the proceedings as Indian Hemp and in each case the Court considered that there was no evidence which connected the substance so described with Indian Hemp as defined in the South Australian Act.

In the cases with which I am dealing the Magistrate was satisfied that the meaning of the word used by the witnesses, namely, 'marijuana' was the same meaning as that which is attached to the expression 'Indian Hemp' in the definition in s26 and that when the accused, in each case, trafficked in a substance so described, they trafficked in Indian Hemp as so defined and, in my opinion, he was entitled to be so satisfied. The South Australian cases, consequently are not directly in point on the question which arises in these cases which are before me. Even, however, if their effect should be interpreted to be that a court is not entitled to rely on the generally accepted meaning of a word in order to determine whether it accords with a definition given in the Act, I would not be prepared to follow them.