51/82

SUPREME COURT OF VICTORIA

LEONARDI v ZULLO

Starke J

25 May 1982

CRIMINAL LAW - DRUGS OF ADDICTION - POSSESSION OF TETRAHYDROCANNABINOL - WHETHER NATURAL INGREDIENT OR ADMIXTURE IRRELEVANT - CHARGE DISMISSED BY MAGISTRATE - WHETHER MAGISTRATE IN ERROR: *POISONS ACT* 1962, S27(1).

The defendant in this case had in his possession tetrahydrocannabinol. Whether it was a natural ingredient of some other substance or not is irrelevant. The question was whether he possessed a substance which is known by this name and on the evidence, without doing any violence to the language of the statute, he was. After all some of the most dangerous drugs such as cocaine and heroin are habitually pedalled mixed with other harmless powders. Accordingly, the magistrate was in error in dismissing a charge of possession of Indian hemp on the ground that the substance found had to be pure tetrahydrocannabinol in order to constitute an offence against the Act.

***Goodchild's Case* (1978) WLR 578, not followed.**

STARKE J: This is an order to review a decision of a Stipendiary Magistrate at the Oakleigh Magistrates' Court on the 1st of July 1981, The respondent, who is the defendant below, was charged under s27(1) of the *Poisons Act* that on 14th April, 1981, at Clayton, not being an authorised person under Part I of the Poisons Act, did have in his possession Indian hemp. The information was subsequently amended in a way I will describe and was dismissed by the Magistrate. Master Bergere, on 21 August 1981, granted the informant an order to review on three grounds:

> (a) That the Magistrate was wrong in holding if he so held that the respondent could not have been convicted of having in his possession Indian hemp as charged by the information before amendment;
> (b) That the Magistrate should not have amended the information but should have convicted the respondent of having in his possession Indian hemp as defined in s26(1) of the *Poisons Act* 1962;
> (c) That on the whole of the evidence and on a proper construction of ss26 and 27 in the Eighth Schedule of the *Poisons Act* 1962 the Magistrate should have convicted the respondent.

The arguments presented to me by Mr Weinberg for the respondent are eloquent testimony to the assiduity of those who from time to time appear for persons charged under the various provisions of the *Poisons Act* in presenting technical arguments of no merit which have on many occasions succeeded. The argument presented in this case fell into two clearly divided compartments.

The first argument was that for various reasons which I will not pause to enumerate that if the Magistrate had not amended the information the respondent could not have been found on the evidence to have had in his possession Indian hemp. Because I have formed the clearest of views in respect to the other argument presented by Mr Weinberg I do not propose to determine the first matter which he put to me and to which I have just referred.

What occurred at the conclusion of the evidence for the informant was this. The defendant elected not to give evidence and his solicitor submitted that there was no case to answer. The Magistrate apparently agreed with that submission because he permitted an amendment on application by the informant to delete the words "Indian hemp" and substitute therefor the word "tetrahydrocannabinol". Having allowed that amendment the Magistrate, having retired to consider his decision, returned and dismissed the information and referred to *Goodchild's case* (1978) WLR 578, and a Queensland case, *The Queen v Keskic* which is reported in 1979 QLR 348.

The s27 under which the charge was laid is, in so far as is relevant, in these terms:

> "Sub-s (1) no person other than an authorised person shall have in his possession or disposition any Indian hemp or other drug of addiction or any specified drug or any preparation of them or any of them."

In s3, the definition section to the Act, a "drug of addiction" means any substance or preparation specified in Schedule Eight to this Act or added thereto by proclamation. Schedule Eight of the Act includes tetrahydrocannabinol which was added, so I am informed, to the Schedule in 1976. Mr Weinberg's argument is a deceptively simple and attractive one. He says that it is not suggested that the substance found in the possession of the defendant was pure tetrahydrocannabinol and, indeed, the certificate which is evidence under s56 of the *Poisons Act*, or the contents of it, does not purport to say that the substance found upon the respondent was pure tetrahydrocannabinol. The words of the certificate are these:

> "The brown resinous material contained tetrahydrocannabinol ..."

and then there are further words which are not relevant for present considerations. Mr Weinberg submitted that the substance found had to be pure tetrahydrocannabinol in order to constitute an offence under the section, and if it was merely an ingredient of what was found, whether a natural ingredient or an admixture, then the offence was not made out. He suggested that there would be calamitous results if people who did not have the substances referred to in the Eighth Schedule in a pure state could be charged and convicted of possessing these drugs. I accept with equanimity the consequences of a decision to the contrary effect which, in my opinion, would not in any way be calamitous.

Mr Weinberg relies on *Goodchild's case* (*supra*) which I have already referred to as supporting the first proposition. To that I have two things to say. The first is that I am by no means persuaded that *Goodchild's case* does support his proposition having regard to the language of this section and the language of the certificate. Secondly, I do not regard this as a case of any importance except of course to the respondent to it. I do not regard it as having far-reaching results. Finally, I do not think it is the law of this State assuming that *Goodchild's case* is on all fours that I am bound by it. It is certainly of course persuasive and highly persuasive authority but not conclusive or decisive authority.

In my opinion the defendant in this case did have in his possession tetrahydrocannabinol. Whether it was a natural ingredient of some other substance or not seems to me to be irrelevant. The question is whether he possessed a substance which is known by this name and on the evidence, in my opinion, without doing any violence to the language of the statute, he was. After all some of the most dangerous drugs such as cocaine and heroin are habitually pedalled mixed with other harmless powders. In those circumstances in my opinion the Magistrate fell into error in dismissing the information and the Order Nisi will be made absolute. The matter will be referred back to the Magistrate to be dealt with in accordance with this decision.
