SUPREME COURT OF QUEENSLAND

CITATION:	*R v Van Den Hoorn* [2003] QCA 364
PARTIES:	**R** **v** **VAN DEN HOORN, Johan Hendrick** (appellant)
FILE NO/S:	CA No 183 of 2003 SC No 335 of 2002 SC No 570 of 2002 SC No 207 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	26 August 2003
DELIVERED AT:	Brisbane
HEARING DATE:	26 August 2003
JUDGES:	Williams and Jerrard JJA and Dutney J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed**
CATCHWORDS:	CRIMINAL LAW – PARTICULAR OFFENCES – DRUG OFFENCES – IDENTITY OF PROHIBITED SUBSTANCES – where appellant convicted of production and possession of cannabis sativa – where appellant contends the plants he was growing were cannabis indica – where was evidence at trial that the plants were cannabis sativa – whether plants were categorised correctly as cannabis sativa – whether learned trial judge interfered unjustifiably in presentation of defence – whether any basis for overturning convictions
COUNSEL:	The appellant appeared on his own behalf C W Heaton for the respondent
SOLICITORS:	The appellant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

WILLIAMS JA: Indictment 335 of 2002 presented against the appellant alleged production of cannabis sativa on or about 30th of January 2002 and possession of cannabis sativa on or about that date. Indictment 570 of 2002 alleged production of cannabis sativa on the 9th of August 2002. The matters went to trial in May 2003.

The first trial was concerned with the Indictment 335 of 2002. The evidence before the Court on that occasion included a police raid on the appellant's property and an analyst's certificate certifying that plants seized on that occasion were cannabis sativa. The jury returned verdicts of guilty of both counts.

That trial was immediately followed by the trial of the charge in Indictment 570 of 2002. On that occasion, in addition to evidence as to the seizure of plants, evidence was called from a botanist to supplement the analyst's certificate certifying that the plants were cannabis sativa. The botanist confirmed that the plants in question were cannabis sativa. In light of that evidence a conviction was recorded by the jury.

In the course of giving evidence at the second trial the appellant referred to plants growing at that time on his property and that resulted in a police raid which uncovered further cannabis plants. An ex officio indictment was presented alleging production of cannabis sativa between the 1st of January and the 18th of May 2003 and possession of cannabis sativa on the 17th of May 2003.

The appellant represented himself at the two trials but when it came to sentence he was legally represented. On that occasion he pleaded guilty to the charges on the ex officio indictment. The most severe sentence imposed was on the second indictment, where he was imprisoned for 12 months, but that was suspended after two months with an operational period of 12 months. For present purposes that can be said to be the operative sentence. The appellant has served his two months and this is an appeal against his convictions only.

The appellant appeared on his own behalf before this Court and relied, amongst other things, on a large volume of material which he presented to the Court in support of his appeal. The grounds of appeal were also drafted by the appellant and a number of them are not entirely clear. It can however be said that the appellant alleges that he was coerced into pleading guilty to the ex officio indictment. I can see no substance in that allegation, particularly given the fact that he admitted on oath whilst giving evidence at the second trial to the production of the plants which the indictment alleged were cannabis sativa.

So far as the first trial is concerned, the appellant complains that there was no valid search warrant justifying the police in raiding his property on that occasion. However, it does seem that any deficiency in that regard was remedied by the police obtaining post-search approval under section 78 of the Police Powers and Responsibilities Act. Again I can

see nothing in the issue raised by the appellant here such as would provide a basis for overturning the conviction.

There is then generally allegations that in each of the trials the prosecutor unfairly led witnesses and that the learned trial Judge interfered unjustifiably in the presentation of the defence. Having perused the record of the trials I can see no substance in either of those grounds. In so far as there was some leading by the prosecution, that was within permissible limits. The learned trial Judge was confronted with a difficult trial situation. The issues raised by the appellant were randomly raised and the trial Judge had the difficult task of trying to ensure that the trial proceeded in an orderly manner. I can see nothing in the record which would constitute undue interference by the learned trial Judge in the presentation of the defence case.

Apart from one matter which I will deal with in a moment, I can see no substance in any of the other issues raised by the appellant, some of which, as I have already indicated, are barely comprehensible.

The other matter which needs to be addressed is the matter which was the subject of much of the appellant's oral submission before this Court, and that is that none of the plants that he was growing were cannabis sativa but rather were cannabis indica. That is an issue which was raised to some extent with the botanist called at the second trial. Given the provisions of the Drugs Misuse Act, the certificate

which was before the Court on each trial and the evidence of the botanist, there was ample evidence establishing that the plants in question here were as a matter of law within the genus cannabis sativa.

In so far as the appellant contends that there are sub-species of cannabis, some of which ought not correctly be categorised as cannabis sativa, that is a matter for reform of the legislation if that is an anomaly; I am by no means suggesting that it is. So far as the Act is concerned it is clear that cannabis sativa is a prohibited drug. The evidence in the two trials in question was that the plants that the appellant was growing were categorised as cannabis sativa and it follows, in my view, that there is no basis for this Court interfering with the conviction.

The appeals against the convictions should be dismissed.

JERRARD JA: I agree.

DUTNEY J: I also agree.

WILLIAMS JA: The order of the Court is that the appeals against conviction are dismissed.
