



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**REVIEW JUDGMENT**

Case no: CR 53/2017

In the matter between:

**THE STATE**

and

**PAUL BRANDT**

**ACCUSED**

(HIGH COURT MAIN DIVISION REVIEW REF NO. 663/2017)

In the matter between:

**THE STATE**

and

**STEPHANUS CHRISTIAANS**

**ACCUSED**

(HIGH COURT MAIN DIVISION REVIEW REF NO. 665/2017)

**Neutral citation:** *S v Brandt* (CR 53/2017; CR 53/2017 ) [2017] NAHCMD 230 (17 August 2017)

**Coram:** USIKU, J and UNENGU, AJ

**Delivered:** 17 August 2017

**Flynote:** Criminal Procedure – Automatic review – Questioning in terms of s 112(1) (b) of the Criminal Procedure Act, 51 of 1977 – Failure by magistrate to ask whether mandrax tablets found in possession of the accused contained methaqualone – Scientific certificate not handed in to prove methaqualone – Court set aside the conviction and sentence of cases and remitted the cases to the magistrate for proper questioning.

**Summary:** The two accused, Paul Brandt and Stephanus Christiaans pleaded guilty to charges of possession of mandrax tablets containing *methaqualone*. They were questioned by the magistrate in terms of s 112(1) (b) of the Criminal Procedure Act, 51 of 1997, whereafter they were convicted and sentenced to 12 months imprisonment each. On review, the court set aside the convictions and sentences imposed due to failure by the magistrate to ask whether the tablets the accused possessed contained *methaqualone* or not. As a result, the cases were remitted to the court below to question the accused properly and prove *methaqualone* by means of a scientific certificate.

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### ORDER

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- (i) The conviction and sentence in each case cited above are hereby set aside and both cases remitted to the magistrate's court Keetmanshoop before the learned magistrate Shikongo<sup>1</sup> to question the two accused properly in terms of s 112(1) (b).
- (ii) The learned magistrate is directed to resubmit the cases if the accused are convicted and reviewable sentences have been imposed.

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<sup>1</sup> s 304(2)(v) of the CPA.

## REVIEW JUDGMENT

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1. The State v Paul Brandt: Review Case No. 663/2017 and
2. The State v Stephanus Christiaans: Review Case No. 665/2017

### **UNENGU, AJ (USIKU, J concurring):**

[1] Both these matters were submitted for automatic review in terms of s 302 of the Criminal Procedure Act<sup>2</sup>, (the CPA).

[2] In the matter of the State v Brandt, the accused was charged with possession of potentially dangerous dependence – producing drugs namely 1/2 and 2/4 mandrax tablets containing methaqualone which is a contravention of s 3(b) read with sections 1, 3(ii), 7, 8, 10, 14 and part 111 of the schedule of Act 41 of 1971 as amended.

[3] The accused pleaded guilty. He was questioned in terms of s 112(1)(b) of the CPA, convicted and sentenced to 12 months imprisonment.

[4] Stephanus Christiaans, the accused in the second review matter, was also charged with the same offence but for possession of four full tablets containing methaqualone.

[5] The accused also pleaded guilty. He was questioned in terms of s 112(1) (b) of the CPA, convicted and was sentenced to an effective 12 months imprisonment.

[6] On review, I was not satisfied that the learned magistrate during questioning the accused persons, covered the element that the mandrax tablets they possessed contained the substance known as methaqualone.

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<sup>2</sup> Act 51 of 1977 (the CPA).

[7] I queried the learned magistrate to explain whether the accused in the cases could admit during questioning in terms of s 112(1) (b) of the CPA that the tablets found in their possession contained methaqualone in absence of a report (certificate) to that effect.

[8] The learned magistrate did not answer the query but replied that the court asked the accused in each case to admit or dispute the allegation made by the State against them in the charge annexure that they had in their possession or used a potentially dangerous dependence – producing, methaqualone tablets and they agreed. Based on that admission the magistrate convicted them without a certificate showing whether the tablets found in their possession contained the substance called methaqualone.

[9] The court must satisfy itself about the substance in mandrax by means of scientific evidence in the certificate. This is important in cases where an accused person is unrepresented. See *S v Maniping and S v Twala*<sup>3</sup>.

[10] Questioning in terms of s 112 (1) (b) of the CPA should cover all the elements of the offence by asking adequate questions to cover all aspects not drawing inferences for insufficient explanation of the accused.<sup>4</sup>

[11] In view of the above mentioned, it is prudent and fair for the interest of justice to refer the matter back to the magistrate to question the accused properly in terms of s 112(1) (b) in order to cover the element of whether the tablets found in possession of the accused persons in both matters contained the prohibited substance methaqualone by means of certificates from the National Forensic Institute which analysed the tablets.

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<sup>3</sup> 1994 NR 69 (HC).

<sup>4</sup> See *S v Nashapi* 2009 (2) NR 803 (HC); *S v Thomas* 2006 (1) NR 83 (HC).

[12] In the results, I make the following order:

- (i) The conviction and sentence in each case cited above are hereby set aside and both cases remitted to the magistrate's court Keetmanshoop before the learned magistrate Shikongo<sup>5</sup> to question the two accused properly in terms of s 112(1) (b). In order to determine whether the substances contained the prohibited substance methaqualone.
- (ii) The learned magistrate is directed to resubmit the cases if the accused are convicted and reviewable sentences have been imposed.

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P E UNENGU  
Acting Judge

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D USIKU  
Judge

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<sup>5</sup> s 304(2)(v) of the CPA.