IN THE SUPREME COURT OF NEW ZEALAND
DUNEDIN REGISTRY

No Special Consideration

N.Z.L.R.

M. No. 100/76

404 NO (but NB p3)

BETWEEN MICHAEL ROGER LOADER

Appellant

A N D POLICE

Respondent

Hearing: 30 July 1976

Judgment: 6 September 1976

Counsel: D.G. Fels for Appellant
W.F. Thomson for Respondent

JUDGMENT OF JEFFRIES J.

This is an appeal against conviction under s. 6 (1) of the Narcotics Act 1965 in that the appellant had in his possession the narcotic cannabis.

For the purposes of this appeal the facts can shortly be stated. The appellant was on 22 May of this year driving his Ford Falcon utility vehicle, registration No. GR 9739, in the vicinity of the Exchange in Dunedin City. He was stopped by a constable and, with his consent, his vehicle was searched and under the dashboard was found a plastic bag which appeared to the constable to contain cannabis. The constable, who was acting on instructions from his superior in stopping and searching the vehicle, called his superior, Detective Constable Doyle, to the scene and he questioned the appellant and also took charge of the plastic bag containing the vegetable matter. He placed the appellant under arrest and the bag was placed in a safe in the Senior Sergeant's office at the Police Station by Detective Doyle. A Detective Judkins took the bag from the safe and posted it to the address of the Government Analyst, Christchurch on 24 May, by way of acknowledged registered post and at the hearing produced receipt for registered mail No. 422 dated 24 May. A Doctor Lewis Pannell, a scientist employed

with the Department of Scientific and Industrial Research, Christchurch, was called to give evidence that in the course of his duties a plastic bag which had been received by way of registered post was handed to him on 25 May by the Government Analyst. He gave evidence that it was registered at the time with No. 422 from Dunedin. He said he carried out an analysis of the substance and it proved to be cannabis.

At the hearing counsel for the appellant argued the point that the chain of evidence was incomplete from the finding of the material and the eventual analysis of that material by Dr Pannell. In particular he said the chain broke down at the point where the envelope containing the cannabis was posted from Dunedin addressed to the Government Analyst, because the Government Analyst himself was not called, but Dr Pannell who had received the envelope from the Government Analyst.

The learned Magistrate in his decision relied on a passage from Phipson's text book on evidence in the 9th edn. at p. 110 on a statement concerning the general course of business of an office as being sufficient to establish the probability that a general course would be followed in a particular case. The support for this proposition reaches back to an early case of Espinasse called Lucas v. Novosilieski Espinasse's Reports Vol. I-II, E.33 GEO. III, H.39 GEO. III at p. 296. Espinasse is notorious for his inaccuracy, but there are a few cases upon which reliance must be placed upon his report failing any other. I say this by way of an obiter remark because I am satisfied that the learned Magistrate did not have to rely upon Phipson, or Espinasse to reach the decision he did. For myself I think the chain of evidence has been satisfactorily established to enable a conviction to be supported. There is sufficient identification of the exhibit from the time it was removed from Leader's vehicle by Constable Stacey to receipt by Dr Pannell. In particular Detective Judkins gave evidence of registering it at the Dunedin Post Office with No. 422 and that matches the evidence given by

Dr Pannell. He did not have to rely upon any hearsay evidence by way of repeating what he had been told by the Government Analyst when he received the plastic bag for analysis to support identification of the exhibit. The cannabis itself was produced and there was no denial of the exhibit by the appellant who gave evidence as not being the one found in his vehicle. His defence was it did not belong to him and advanced the possibility it had been planted in his vehicle by two hitch hikers. The Magistrate did not accept that possibility.

Finally, Mr Thomson on behalf of the Police, submitted that s. 108 of the Summary Proceedings Act which states "No determination shall be appealed against by reason only of the improper admission or rejection of evidence" is relevant. I do not think the Police could rely upon this section as it is clear from the recent Court of Appeal decision The Queen v. Morgan, C.A. 154/75, that hearsay evidence where it forms an essential part of the proof of a case is not admissible in criminal proceedings.

There was also an appeal against sentence which clearly fails. The learned Magistrate imposed a fine of $300 and in view of the fact that this is the appellant's second conviction for this type of offence it could not possibly be held excessive.

The appeals against conviction and sentence are dismissed.

Solicitors: Cook, Allan & Co., DUNEDIN, for Appellant
Crown Solicitor, DUNEDIN, for Respondent