

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

T.53/84

1450

THE QUEEN

v.

and

PLUMBER
BELLINI

Hearing: 9 November 1984

Counsel: Tannerhill for Plummer
Miss Goddard for Bellini
Fardell for Crown

Judgment: 16th November 1984

JUDGMENT OF SINCLAIR, J.

The two accused in this prosecution sought to obtain orders under s.347 of the Crimes Act directing that they do not stand trial. The two accused were charged with conspiring to supply heroin and, in the alternative, with conspiring to supply cocaine - as an alternative to each of those charges, charges of offering to supply either heroin or cocaine.

Almost all the evidence against the two accused is that which has been obtained by means of telephone tapes or audio tapes with further evidence as to interviews with the two accused and visits by the two accused to various

telephone or in the conversations which have been recorded is in a jargon frequently used by those involved in the drug scene and the real question at issue is, in essence, the interpretation which is to be placed upon these conversations.

Mr Tannerhill, for Plummer, readily concedes that his client was involved in a drug dealing but maintained that the drug was neither heroine nor cocaine but was cannabis. Mr Fardell, however, submitted that having regard to the words used and the prices mentioned that cannabis was not one of the drugs involved and that it was either heroine or cocaine.

Having been directed to the various pieces of evidence by both counsel, I am of the view that the question of interpretation is one which ought to be left to the jury as I am of the view that the interpretation contended for by Mr Fardell is one which, in the circumstances, a jury may well adopt.

In those circumstances, I am of the view that it is improper for a Judge to intervene and put his own interpretation on the facts and particularly on the words used as that is to usurp the real function of the jury.

I indicated that that was my tentative view during the course of the hearing and Mr Tannerhill accepted that in those circumstances he would have difficulty in persuading me to grant the application insofar as it related to either heroine or cocaine. However, he went on to submit that in fact the evidence did not support a charge of conspiracy and that, at best, there were preparatory discussions going on between Bellini and Plummer but that in fact no agreement was ever reached.

I do not accept that submission but I think it wrong to discuss the facts in full and simply say that in my view, on the evidence which I had to consider, there was sufficient for me to hold that a jury, properly directed, could convict on a charge of conspiring to supply either heroine or cocaine.

In the circumstances, each application will be dismissed.

R. D. J.

Solicitors:

Messrs Deacon and Tannahill, Wellington, Solicitors
for Plummer;
Miss Goddard, Auckland, Solicitor for Bellini,
Crown Solicitor, Auckland, for Respondent.