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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.1240/84

1594

BETWEEN TANYA AVOCA ALLEN
Appellant

AND THE POLICE
Respondent

Hearing: 17th December, 1984

Counsel: Halse for Appellant
Miss Shine for Respondent

Judgment: 19 December 1984

JUDGMENT OF SINCLAIR, J.

The Appellant was convicted on a charge of consuming a Class 'A' controlled drug, namely cocaine, and on appeal it was submitted, as was submitted in the Court below, that there was insufficient evidence to justify a conviction by reason of the fact that the only evidence against the Appellant was an admission made by her to an investigating Police Officer.

The evidence shows that on the 8th May, 1984 Detective W. A. Stewart went to some premises in Remuera where he spoke to the Appellant and later took her to the Police Station where she was asked if she knew one Gregory Rose. She replied that she did know him through her boyfriend, Peter Steele, and that she had known him for three or four years. Detective Stewart stated that he asked her if she had ever used cocaine that had been purchased from Gregory Rose, whereupon the Appellant replied that she had about Easter. The detective then took a statement from her which was contained in the detective's notebook and in that statement which was signed

by the Appellant she admitted going to Rose's address just prior to Easter weekend of 1984 with her boyfriend Peter and she stated that the two of them made a decision to get one gram of cocaine. She stated that she did not know how much would be paid, but that her boyfriend Peter spoke with the man Rose. The statement went on to state that the drug was for her own use and that of Peter and that it was purchased in a paper packet which was white in colour. The statement went on to refer to certain cannabis found at the Appellant's address and she admitted to being a cannabis user for some six years. At the conclusion of her statement she said that the cocaine was used "in one blast".

The detective's notebook was returned to him but the record is quite clear that the statement was read and was produced to the Court. In the course of his evidence Mr Stewart stated that after the statement had been written by him in his book it was read by the Appellant and she signed it.

Mr Halse submits that having regard to the evidence available this case falls squarely within the ambit of the decision of Hine v. Police, M.1042/80, Auckland Registry, judgment 11th August 1980. In that case there was a bare admission by the appellant of having smoked cannabis on one particular occasion and it was held by Vautier, J. that that admission, standing alone, was insufficient to found a conviction for using cannabis. Reference was made to the decisions also in Bird v. Adams (1972) Crim. L.R. 174; R v. Chatwood & Ors (1980)1 All E.R. 467; Coward v. Police (1976)2 N.Z.L.R. 86; R v. Davis, C.A.151/76, judgment 1st March 1977; and Barnard v. Police M.268/80, Hamilton Registry,

8th December, 1980. However, as is so often the case, each decision turns upon its own facts.

Probably the most helpful decision of all is that in Police v. Coward where the following is said at page 89:

> "In the present case the appellant admitted using cocaine on a certain date. That admission was unqualified and must be viewed in the light of all the surrounding circumstances to determine whether it was, indeed, an admission of facts within the appellant's personal knowledge. I think there are circumstances here which assist in that enquiry. The appellant's admission was not merely to 'use' of cocaine on one isolated occasion (although the charge is restricted to one 'use', but 'use' on 'previous occasions'. He demonstrated familiarity with the jargon, which appears to be such a feature of the drug scene, by referring to 'snorting'...."

Applying that test to the present case we have the Appellant's unqualified admission that the purpose of going to Rose's place was to buy cocaine in a one gram lot, that such a gram of cocaine was in fact purchased in a white packet which is a common method utilised by drug dealers for selling that type of drug. The Appellant is not a stranger to drugs, admitting that she was a cannabis user and had been over a considerable length of time, so one is entitled to infer that the Appellant has more than a passing knowledge of the drug scene. Adding all these factors together it seems to me that the admission of the use of the cocaine by her boyfriend and herself "in one blast" was sufficient to found a charge of using cocaine.

The District Court Judge who heard the matter had the same argument put to him as it was put to this Court and he was of the view, although he did not refer to the use of cannabis, that all the other circumstances were sufficient to support the charge as laid. In my view that was a decision which

he was entitled to come to and in the circumstances the appeal is dismissed.

P. D. Ellis J.

SOLICITORS:

Foy & Halse, Auckland for Appellant
Crown Solicitor, Auckland for Respondent