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BETWEEN

BENT

Appellant

A N D THE POLICE

Respondent

Hearing: 5 September 1984

Counsel: B.M. Stanaway for Crown
D.C. Fitzgibbon for Appellant

Judgment: 5 September 1984

ORAL JUDGMENT OF HOLLAND, J.

The appellant appeals against her conviction in the District Court at Christchurch on two charges of being in possession of drugs contrary to the provisions of the Misuse of Drugs Act 1975.

As a result of the execution of a search warrant, which perhaps somewhat accidentally led to the police searching the house of the appellant, there was found hidden inside the dining room table a small tin containing cannabis, and there was also found on the top shelf of a medicine cabinet in the bathroom some pills which were shown to be doloxene pills. It is clear that the search warrant was originally issued because of suspicion against someone else and in relation to another address, but for some reason not disclosed in the evidence the police followed up this search warrant in searching the premises of the appellant. It is not disputed that the drugs were found in the way outlined. The sole issue is the defence of the appellant that she was unaware that they were in her possession. The issue is really one of credibility and no serious issue of law arises. It is clear

that in the circumstances of this case the onus was on the prosecution to establish that these drugs were under her physical control and that she knew of the drugs.

The District Court Judge has taken the view that it is incredible that a woman with two of her children, being the sole occupants of the house, would not know of the cannabis, and that it was cannabis, hidden in the dining room table, and of the doloxene tablets, and that it was the doloxene tablets, in the medicine cabinet. It is quite impossible on appeal to hold that such a view could not be reasonably held or should not have been held on the facts proved in this case. This is not a case of a jointly owned or occupied property. Every opportunity was given to the appellant to indicate that there may have been other residents in the property but she denied it. It is true there was evidence that other people called from time to time and that people had sometimes stayed in her house, but I share the District Court Judge's view that it is incredible that in those circumstances pills could have been left in a medicine cabinet and cannabis hidden under a dining room table without the sole adult occupant and housekeeper being aware of it. The appellant gave evidence. The District Court Judge did not believe her. That was his function and it is quite impossible on appeal on the facts of this case to suggest that that was not a conclusion properly reached.

Counsel for the appellant has said all that can be said for her and indeed has asked me to infer that although she denied having permanent residents in the house she might have done so. Such an inference would be quite improper for any judicial person to make.

I am satisfied that the convictions were properly entered. The appeal is dismissed.

C. D. Hollander