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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M.203/84

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BETWEEN CURD

Appellant

AND POLICE

Respondent

Hearing: 3 September 1984

Counsel: M.J. Glue for Appellant
D.J.L. Saunders for Respondent

ORAL JUDGMENT OF HARDIE BOYS J.

This is an appeal against conviction and sentence on a charge of knowingly permitting premises to be used for the cultivation of cannabis. The cannabis plants in question were twelve in number varying in size from 30cm to about 150 cm and they were planted in the vegetable garden of the home which the appellant owns and occupies, growing amongst the grapes. The only evidence given was that of a police officer who, in addition to describing the plants and their location, referred to a series of questions which he asked the appellant and her answers. It is true, as Mr Glue has said, that the answers were to some degree equivocal. She began by saying that the plants must belong to her as she owned the property, but that is so equivocal that it might be no more in fact than an

accurate statement of the law and I do not think it advances the matter very much further at all. Then when asked again whether she owned the plants she said she didn't. She denied she smoked cannabis but she said there was a boarder in the house. She said she had not planted the cannabis. When asked if she watered the plants she said 'not specifically, I turn the sprinkler on the garden and they get watered'. She was asked "You knew these plants were cannabis you didn't plant them" and she replied "yes". And then - I think this is a significant point - she was asked whether she knew it was illegal to grow cannabis: and why did she allow the plants to grow there. She said 'It is everybody's right to allow them to do what is right for them basically'.

If one takes each of those questions and answers in isolation it is no doubt correct, as Mr Glue submitted, that the replies were sufficiently equivocal that no particular admission as to knowledge or any other ingredient of the offence can be taken out of them. But the evidence has to be looked at as a whole, and in my opinion Mr Saunders is right when he says that the total evidence justifies the inference being drawn that the appellant did have the knowledge or grounds for reasonable suspicion that form the first ingredient of the offence, and of the unwillingness on her part to take the means available to prevent the offence which forms the second ingredient: I refer to what Lord Diplock said in Sweet v Parsley [1969] 1 All ER 347, 363.

These plants had been growing for some time. They were large plants. The appellant was cultivating her vegetable garden, watering the vegetable garden. The inference that she

knew the plants were there is irresistible and so from her replies, is the inference that she knew the nature of the plants. And of course, as it was her property and her garden, she could have pulled them out along with any other weeds growing there as well. In my view there is no basis on which the appeal against conviction can be sustained and that will be dismissed.

The sentence is appealed against on the basis that the appellant is on a domestic purposes benefit and has very heavy outgoings in connection with this property and also has two very young children to care for. The point was also made that over the period when these plants were coming into their greatest growth she had had a great deal of worry with her youngest child who had been born prematurely and had been extremely ill. I think it was encumbent on the Judge to impose a monetary penalty in a case of this kind. Certainly it was not a case that called for imprisonment and it did not call for any alternative to imprisonment, but it was important that some indication be given that society expects different standards from those which the appellant herself expressed in response to the detective's questions. I am concerned however about the amount, not in itself, but purely because of the appellant's ability to pay. It is true as Mr Saunders said that she can obtain the Registrar's permission to pay by instalments, but it is not desirable that payment of a fine should be stretched over many many months. It ought to be got out of the way reasonably quickly. I think that on her circumstances it would take her a quite unreaonsably long time to pay off this fine. Purely for that reason, so that the

penalty is matched to her means, I propose to reduce the fine to $150 which she can, I am sure, readily pay off in a short period of time. The appeal will be allowed to that extent.

Solicitors:

M.J. Glue, CHRISTCHURCH, for Appellant
Crown Solicitor, CHRISTCHURCH, for Respondent.