IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

No. AP31/86

S/9

BETWEEN HEENAN

/255

Appellant

NOT RECOMMENDED

A N D POLICE

Respondent

Hearing: 29 August 1986

Counsel: R.T. Chapman for Appellant
M.S. Sullivan for Respondent

Judgment: 29 August 1986

ORAL JUDGMENT OF HOLLAND, J.

The appellant was convicted in the District Court at Invercargill on a charge of having in his possession cannabis plant. He appeals against that conviction. The offence is alleged to have occurred shortly after midnight on 31 December at Queenstown when the appellant, perhaps unwisely, went to the police station to make enquiries about a friend of his who was being held there on suspicion of driving while intoxicated. The police decided to search the appellant's car. Cannabis plant was found in the car after removing a panel from the dashboard where there was provision for a radio or stereo. There could be no doubt that the appellant was in possession of the car, and accordingly physically in possession of the cannabis plant. He denied that he had any knowledge of this cannabis plant concealed in the car. He gave evidence in support of that denial and said that his vehicle was left unattended and used by a number of people in Queenstown for the purpose of using the stereo

in the vehicle and suggested that the cannabis might have been stored in the vehicle by anyone. The story offered by the appellant was an unlikely one.

The District Court Judge recognised the issue as one of credibility. He also recognised that the question of the knowledge of the appellant rested on circumstantial evidence from which he was invited to make inferences. He had to weigh up that circumstantial evidence against the denial on oath by the defendant. He referred to a number of authorities relating to inferences in a criminal charge and correctly stated the law. He then, however, applied the law to the facts in the following terms. He stated:-

> "In these circumstances it is open to me to draw two inferences; ..."

He then set out the first inference from which he would infer that the defendant had knowledge of the cannabis, and the second inference was that some person other than the defendant had placed the cannabis in the defendant's vehicle. He then said:-

> "In weighing the proper inference which I should take I have regard to the decisions to which I have referred. Having considered the circumstances I am of the view that the inference which the defendant invites me to draw in his favour is not reasonable. In my view the more reasonable inference is that the plant material and sweets were placed there by the defendant, and accordingly, despite the defendant's denials which I do not accept, I find the information proved beyond reasonable doubt."

Although the District Court Judge has concluded with the finding that the information was proved beyond reasonable doubt he has not properly recorded the legal requirement imposed on him in considering the evidence offered by the defendant which he rejected as not being reasonable. It

was necessary for the District Court Judge to go further than that. Before he could reject the inference or evidence favourable to the appellant he had to find that he was left in no reasonable doubt that such evidence or inference was wrong. His next sentence in which he commences "In my view the more reasonable inference is ..." indicates that the District Court Judge might have erred in considering the matter on the balance of probabilities or which version was more reasonable. I have considerable sympathy with the District Court Judge. I do not regard an appellate Court's function to examine the reasoning process of a District Court Judge with a toothcomb but this was a vital matter. The Judge has clearly referred to the onus on the Crown as being beyond reasonable doubt, but in order to reject the evidence given by the defendant it was necessary for him to make a finding that it was not reasonably possible. His use of the word "not reasonable" coupled immediately with the reference to the other inference being "more reasonable" leaves the Court in some substantial doubt as to the finding of credibility. If this were a more serious charge involving more substantial penalty I should have referred the matter back for a rehearing, but I do not consider it appropriate in this case and the appellant is entitled to be acquitted.

The appeal will be allowed and the conviction quashed.