

IN THE HIGH COURT OF NEW ZEALAND  
NEW PLYMOUTH REGISTRY

AP.6/91

BETWEEN: RICHARD GODFREY HAMMOND  
of New Plymouth,  
Leather Worker

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Appellant

A N D: THE POLICE

Respondent

Appeal Hearing: 1 March 1991

Oral Judgment: 1 March 1991

Counsel: R T Wilson for appellant  
T Brewer for respondent

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ORAL JUGMENT OF HENRY J

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This is an appeal against conviction on one charge of having possession of some 50 'Temgesic' tablets, the conviction being entered in the District Court at New Plymouth on 7 December 1990. The tablets in question were contained in an envelope addressed to a Mr B White, the origin of the envelope being unknown, and sent to the appellant's Post Office box in New Plymouth.

The sole issue is whether the facts as found by the Judge in the Court below are sufficient to establish beyond reasonable doubt that the appellant knew the envelope contained a controlled drug. Appellant was under observation when he attended the Post Office. He collected his mail from the box which was his, and was observed to look at this particular envelope. It was placed by him between two items of what is described as

junk mail. When approached by the Police he told them that he did have some junk mail, he looked at the envelope and said that it was something for 'B White' and replaced it between the two pieces of junk mail. He told the officers that the mail was his and shortly later reasserted that the mail was for him. When the particular envelope was opened and the tablets removed he said it was not his and drew attention to the address being directed to the man White. He also told the officers that he knew what Temgesic was.

Mr Wilson, in the course of his comprehensive submissions, has referred to the dictum of the Judge to the effect that he was taking judicial notice that it was common practice for a person concerned with drugs to have sent to him by mail drugs, using a fictitious name for the addressee and also to ensure that there were not any indications on the mail itself as to the contents or identity or address of the sender. I doubt whether the reference to judicial notice was entirely appropriate, but as a matter of common sense in my view the Court is quite entitled to find that it is likely that a person having drugs sent by post would address mail to another name and not leave any information from which its origin could be traced. That is simply a matter of commonsense and the reasons for adopting such conduct are obvious.

Mr Wilson has carefully analysed many of the relevant facts and has submitted in respect of each that it is capable of an innocent explanation, and he submitted further that on the totality of the evidence the burden of proof was still not discharged.

I have considered the submissions carefully but in my view the totality of the evidence here is such as to allow properly a finding of proof of knowledge. In addition to the particular facts mentioned by counsel, it must also be borne in mind that the Judge had the benefit of seeing and hearing the appellant himself give exculpatory evidence, evidence which he obviously rejected, having in the course of that expressed his disbelief of him on some collateral matters where his evidence was in conflict with that of the officers.

The finding of guilt was open to the Judge and accordingly the appeal must be dismissed.



Solicitors:

Till Henderson King & Co., New Plymouth, for appellant  
Crown Solicitor, New Plymouth, for respondent