EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

IN THE DISTRICT COURT
AT WAITAKERE

CRI-2017-090-003253
[2018] NZDC 319

NEW ZEALAND POLICE
Prosecutor

v

KARLENE TAUKIRI
Defendant

Hearing:	11 January 2018
Appearances:	A Hayns for the Prosecutor M English for the Defendant
Judgment:	11 January 2018

ORAL JUDGMENT OF JUDGE K J GLUBB

[1] Karlene Taukiri appears before the Court today facing one charge of possession of a pipe for an offence against the Misuse of Drugs Act 1975. She has pleaded not guilty to that charge.

[2] The purpose of today's hearing is in essence an application pursuant to s 101 although I do not have one on file, for a determination of the admissibility of evidence found in consequence and an arrest made of the defendant.

[3] She was arrested on suspicion of theft on 29 June 2017 whilst at the police station and awaiting interview, she acted in a manner which was suspicious while seated in that room. Sergeant Cleeton believed that she had concealed something previously in her handbag. His evidence was presented to the Court in the way of his

formal written statement and also he gave evidence viva voce, was that he had asked her to put her handbag outside the door of the interview room which is standard police practise when suspects are on police premises. When she did that she made a movement with her hand and appeared to conceal something. He then asked her to stand so that she could be photographed and those photographs are before the Court. And in doing so she placed her jumper on the seat. When that jumper was lifted a methamphetamine pipe was located. It is that which is the subject of the charge before this Court.

[4] There is in essence no challenge to discovery of the pipe when the defendant stood up and the check of the seat was made. The challenge is to the lawfulness of the initial arrest.

[5] Defence submits that there was no good cause to suspect the defendant had committed an imprisonable offence and if that is the case then there would be no good reason to detain the defendant and to return to the police station. And if that had not happened then the pipe would not have been discovered.

[6] Counsel have placed reliance on two authorities in submissions made to the Court. First and foremost the decision of Fisher J, in *R v Taylor*[1]. In that case the Court listed the relevant principles as detailed at page 8 of the Judgment. I summarise those.

(a) The principles are that the first step is to determine what information had come to the officer concerned.

(b) That information is then to be objectively assessed to see whether it amounts to good cause to suspect.

(c) It is sufficient if there is good cause to suspect.

(d) It is not reliant on admissible evidence.

[1] *R v Taylor* T66/91, 24 February 1992.

(e) Failure to make proper inquiries can be relevant in that assessment.

[7] The incident that confronted Sergeant Cleeton on this day was fluid. There was an allegation of unlawful taking and the owner of the vehicle had allegedly located two people with that vehicle in a carpark outside Pak'nSave. Sergeant Cleeton came upon that scene and made inquiries. Whilst undertaking those inquiries in relation to that matter and with those two people, a male and a female standing with the informant, he found that the female who was with the car, her details provided did not accord with police records. Subsequently that was checked and updated and she gave further information which appeared to accord. Her name was [name deleted]. It transpires she is the sister of the defendant in this matter.

[8] Whilst undertaking those inquiries Sergeant Cleeton also received information that the car and its two occupants, a male and a female, had that morning allegedly stolen a socket set from [the hardware store] in New Lynn. That was an allegation of offending that occurred at 12.45 pm. He encountered the parties in the carpark at 1.48 pm, so 62 minutes later. That is relevant for present purposes.

[9] The information he received was a general description of the alleged suspects, the vehicle details and there was CCTV footage which was attached to the notification on the police system but it was not viewable at the roadside. The police facilities did not enable him to inspect that at that time.

[10] The description that was given was of a male and a female who were alleged to have taken these items, the description was quite detailed and appeared to match both the male and the female with the car. Relevantly the woman was described as a Māori, 20 to 30 years of age, five foot eight, medium to solid build, black puffer jacket, black leggings and furry boots.

[11] Upon a review of this information and also noting the two people associated with the car he considered that they matched the general description and accordingly both were arrested. He gave directions to other attending constables to effect their arrest so that the matter could be further investigated essentially. The vehicle was searched and the property was not recovered.

[12] At that point the defendant in this matter, Ms Karlene Taukiri came towards the vehicle. She had been shopping in Pak'nSave. She provided her details and Sergeant Cleeton said in evidence that he did not recall specifically what checks he did but said ordinarily he would check the details and he confirmed that in doing so, he had noted that she was on active charges for shoplifting and also drugs matters. He also said in evidence that he believed that Ms Taukiri in fact matched the description of the female given for the theft better than her sister [name deleted]. He noted her association with the vehicle, and the recency of the allegations, the fact the property had not been located and the fact that she matched the general description which was reasonably specific; black tights and fluffy boots. He said he had reasonable grounds to suspect that she had committed the offence of theft and arrested her.

[13] They then returned to the Henderson Police Station. When there the CCTV footage was viewed and it transpired that the male was involved but the female was a third party who was in fact identified and subsequently dealt with. In consequence both women faced no further proceedings in relation to the theft and would have been released but for matters which overtook Ms Taukiri.

[14] Defence submit that this was an arrest for the purpose of investigation and more so, that the fact that as there were two females arrested it effectively nullified that belief, as at least one would likely be innocent which Sergeant Cleeton said as a matter of mathematical assessment would be correct. They therefore submit that the arrest was unlawful.

[15] The prosecution on the other hand submit that s 315(2) is not limited in its scope to only one suspect. I record for the sake of the judgment that s 315(2) says that "Any constable and/or persons whom he calls to his assistance may arrest and take into custody without warrant under s (b) any person who he has good cause to suspect of committing a breach of the peace or any offence punishable by imprisonment.

[16] The prosecution further submit that as long as there is a reasonable basis for that belief then the officer is justified in affecting the arrest. They also submit that there is nothing to preclude further investigation in the determination of the decision to charge. They make the submission that the two decisions are quite distinct rather

than arrest and that it is very common practice in situations such as this. Here that further investigation, not possible at the roadside, absolved those who had been arrested, but the sergeant was not to know that at the time.

[17] Defence also submit that the police should have simply confirmed the address and then released the suspects and then made those further inquiries and thereafter relocated and charged them if necessary.

[18] Sergeant Cleeton said that a bail address and the fact that the name given means very little for the police in reality. They could still slip police further attention and also effectively dispose of any property that might be outstanding. I accept that that is a self-evident reality.

[19] In this case the sergeant had encountered three people associated with an allegedly stolen car, also allegedly involved in a theft from a shop recently committed. The property was outstanding and inquiries were needed in that regard. Had he not acted and made these arrests or directed those arrests, it is entirely possible that the socket set could have been disposed of. That was a factor that he also took into account.

[20] He was also aware that the defendant was on active charges for shoplifting and in fact more closely resembled the description of the female suspect involved in the theft. The prosecution place some reliance on the decision of *Tuk Mani v Police*[2]. In that decision Gendall J cites with approval, the observations of Randerson J in *Niao v Attorney General*[3]. In the judgment it is observed that a failure to make proper inquiries could be relevant to a question of whether there is good cause to suspect. The passage quoted from *Niao* reads:

> The proposition may be relevant are likely to be limited in practise and will depend entirely on the circumstances. In my view much will depend upon issues such as the strength or otherwise of other evidence available to the arresting officer, the ease with which the additional inquiries could be made, the likely bearing which the result of those inquiries would have on the issue of good cause to suspect and the exigencies of the case including issues such as whether delay might lead to the destruction or construction of evidence and

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[2] *Tuk Mani v Police* M138/99 High Court Wellington 16 July 1999.
[3] *Niao v Attorney General*.

> whether the suspect was likely to run off or disappear if the arrest was delayed. It is always important to bear in mind when considering these issues that the relevant test is whether there is good cause to suspect not whether there is prima facie case or proof beyond reasonable doubt.

[21] Fisher J in the decision of *Taylor*[4] also made the observations that "the question of good cause to suspect is not to be confused with a prima facie case, nor with a case based on legally admissible evidence".

[22] "Further, the review of an arrest for possible breach of s 315(2), Crimes Act 1961 or s 22 New Zealand Bill of Rights Act 1990 is an important but narrow exercise. The object will normally be no more than to weed out those arrests made in circumstances where instead of objective grounds to suspect, there is nothing more than improper motive, caprice, vendetta or gross negligence on the part of police."

[23] On careful analysis of the information available to Sergeant Cleeton, whilst he was unsure which of the women might have committed the theft in question, he had ample objective grounds to suspect the defendant had committed the offence of theft. Further inquiries were required but that was not nor can it be a fetter on the police ability to form the requisite belief at that time and to act upon it.

[24] As Gendall J said in *Tuk Mani,* if the information conveyed to the police officer when objectively assessed is sufficient to amount to there being good cause to suspect that a crime has been committed, that is sufficient. He went on to say;

> The situation that confronted the constable was something that was not at all unusual when police are called to apprehend alleged shoplifters. When the circumstances are viewed objectively I have no doubt that the police constable had good cause to suspect that the appellant had committed an offence and that he was justified in arresting her.

[25] I am equally satisfied that the situation confronting Sergeant Cleeton was not in the least unusual. When the circumstances are viewed objectively I have no doubt that the sergeant had good cause to suspect that the defendant had committed the offence of theft and was therefore justified in arresting her.

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[4] *R v Taylor* T66/91, 24 February 1992.

[26] I am also satisfied that the fact that further inquiries could be undertaken, or that there were potentially two suspects in this offence does not render the belief unjustified. That those further inquiries absolved effectively amplifies this point but as I said, that was not something that could be predicted or dealt with at the roadside.

[27] I conclude that this challenge must fail. Accordingly, I rule that the arrest was lawful. In consequence, there is no need for me to undertake the balancing assessment as I am satisfied the evidence found was not improperly obtained. I rule the evidence admissible.

K J Glubb
District Court Judge