IN THE SUPREME COURT OF NEW ZEALAND

SC 21/2006
[2006] NZSC 38

DAVID JOHN YOUNG

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: Appellant in Person
M D Downs for Crown

Judgment: 6 June 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted at jury trial in the District Court of possessing an airgun other than for some lawful, proper and sufficient purpose, contrary to s 45(1) of the Arms Act 1983. It was contended before the jury that the weapon possessed by the applicant was not an airgun. Expert evidence for the Crown that the weapon acknowledged by the applicant to have been carried by him was indeed an airgun seems to have been accepted by the jury.

[2] On appeal, the applicant argued that the Judge had misdirected the jury as to the application of s 48, which justifies the use of force in self-defence. He contended

that he was in possession of the airgun for the purposes of self-defence, having been previously threatened by the complainants. The Judge directed the jury that there was no evidence to form a foundation for self-defence and that therefore self-defence was not a justification for the possession of the firearm.

[3] The applicant seeks leave to appeal from the judgment of the Court of Appeal. In submissions filed in support of the application he contends that it is necessary in the interests of justice for the Supreme Court to grant leave to appeal because of the importance of the right of self-defence under s 48 of the Crimes Act and on the basis of the right to natural justice recognised by s 27(1) of the New Zealand Bill of Rights Act 1990.

[4] The conclusion of the Court of Appeal that there was no evidential foundation on which a jury could conclude that the applicant was in possession of the airgun for the lawful purpose of self-defence meant that the issue of self-defence was rightly withheld from the jury by the Judge. It was held in *R v Wang*[1] that the defence should not be put to the jury unless there is a credible or plausative narrative for the purpose of self-defence. The application of this settled law to the evidence in the trial raises no point of principle and was undoubtedly correct. No question of miscarriage of justice arises. Nor are any of the other grounds under s 13(1) made out. The application for leave to appeal is dismissed.

Solicitors:
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1 [1990] 2 NZLR 529 at 533.