

IN THE SUPREME COURT OF NEW ZEALAND

**SC 24/2008
[2008] NZSC 53**

KEVIN ANTHONY LENAGHAN

v

THE QUEEN

Court: Tipping, McGrath and Wilson JJ

Counsel: M Goodwin for Applicant
M D Downs for Crown

Judgment: 21 July 2008

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B Bail is revoked 48 hours after delivery of this judgment.

REASONS

[1] The applicant seeks leave to argue that a label on a package purporting to describe what the package contains is not admissible evidence of what the package does in fact contain. He was convicted of possession of hypophosphorous acid on the basis of possession of a box bearing a label indicating that is what it contained. No formal analysis of the contents of the box was undertaken.

[2] The applicant's conviction was upheld by the Court of Appeal. The admissibility of the label was not challenged at trial, albeit the applicant alleged that the Crown had failed to prove the nature of the substance. The defence was that the applicant had possession of the substance for an innocent purpose. That explanation was obviously not accepted by the jury. This is hardly surprising as the evidence showed that the applicant had ordered hypophosphorous acid from a specialist company dealing in chemicals, that company obtained the product ordered which arrived in a box bearing the label and the applicant believed the substance to be what the label indicated.

[3] In these circumstances the applicant's suggestion that it is necessary in the interests of justice for leave to be given to argue the evidential point, lacks any foundation in reality. The hearsay aspect of the point lacks any general or public importance as it is now covered by the Evidence Act 2006. If the case were retried the Crown would undoubtedly lay a foundation under s 22 for the use of the evidence; something which understandably was not seen as necessary at the trial, in view of the nature of the applicant's defence, as foreshadowed when the applicant was interviewed by the police.

[4] For these reasons we are not satisfied that it is necessary in the interests of justice to grant leave. We do not consider any question of general or public importance arises nor do we think there is any risk of a substantial miscarriage of justice if leave is declined.

[5] For the avoidance of doubt we direct that the grant of bail pending determination of this application is revoked 48 hours following the delivery of this judgment and the applicant must resume serving his sentence of home detention.

Solicitors:
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