

BETWEEN DAVID JOHN YOUNG
 Appellant

AND LAND TRANSPORT SAFETY
 AUTHORITY
 Respondent

Court: Anderson P, O'Regan and Robertson JJ

Counsel: Applicant in Person
 A Thompson for Respondent

Judgment (on the papers): 19 May 2005

JUDGMENT OF THE COURT

A Leave to appeal is declined.

B No order for costs.

REASONS

(Given by Anderson P)

[1] This is an application for special leave to appeal to this Court against a decision of the High Court dismissing an appeal against conviction on summary trial before two Justices of the Peace. At the request of the parties this application is being heard and determined on the papers. The context of the application is

adequately described by Fogarty J in a decision, delivered on 17 February 2005, declining special leave to appeal to this Court:

[1] On 29 November last I dismissed an appeal by the appellant, Mr Young, against a decision of two Justices of the Peace, delivered on 11 August. The decision set out its reasons. Drawing from that decision the circumstances of the case were that Mr Young, a taxi driver, had been harassed for some time by two men. On the day in question he was in his taxi on a taxi stand outside the Casino in Christchurch when he was approached by these two men. One of the men opened the taxi's passenger door and spoke to him in the sphere of apologising for what he had done in the past and reached in and removed the appellant's identification card from the dashboard. The appellant got out of his car, approached that man and took several swings at him with a chrome tube.

[2] The appellant was charged that being a driver of a taxi he failed to conduct himself in an orderly manner, an offence created by s37(3) in r12(2)(a) part 1 of schedule 3 of the Transport Services Licensing Act 1989.

[3] The appellant's argument at the hearing before the Justices of the Peace and on appeal was that his conduct was self-defence as recognised by s48 of the Crimes Act. The Justices of the Peace found that at the time Mr Young was never under any threat of physical violence from these two men who were harassing him.

[4] The key determination in my judgment was that using force against a person by way of self defence can only be used when a person has been assaulted or where an assault is imminent and in exceptional circumstances that the concept of assault can include actual bodily harm of a psychological nature.

[5] The decision considered and distinguished the case of *R v Kneale* [1998] 2 NZLR 169, a decision of the Court of Appeal. The decision found that the harassing and provocation that Mr Young had been subjected to did not tend to fall within such psychological injuries as contemplated in *Kneale* so that the normal rules applied and Mr Young, not being threatened by physical violence, had no justification in using force to bring an end to his discomfort.

[6] Mr Young now seeks leave to appeal to the Court of Appeal. The ability to seek leave is provided for in s144 of the Summary Proceedings Act 1957. Before leave to appeal may be granted the Court must find that there is a question of law which due to its general or public importance or for any other reason ought to be submitted to the Court of Appeal for its decision. See *R v Slater* [1997] 1 NZLR 211.

[2] In his written submissions in support of the application Mr Young accepted that there is no unanswered or novel question of law involved in the appeal. He argued, however, that the non-observance and disobedience of answered questions of law are the cause of the application. That is, although the law is settled it was misapplied in the particular case by the lower courts.

[3] Such an argument implies that the facts have been misunderstood by the triers of fact either as to what they constituted or how they have been characterised for the purposes of the application of the legal principles. Falling short of irrationality, such a process raises questions of fact, not law and cannot therefore amount to a question of law which due to its general or public importance or for any other reason ought to be submitted to the Court of Appeal for its decision.

[4] Leave to appeal is therefore declined. We think it inappropriate to make any order for costs in the circumstances of the particular case.

Solicitors:
Land Transport Safety Authority, Dunedin