

**IN THE DISTRICT COURT
AT MANUKAU**

**I TE KŌTI-Ā-ROHE
KI MANUKAU**

**CRI-2022-092-009425
[2024] NZDC 7280**

NEW ZEALAND POLICE
Prosecutor

v

ANDREW JOHN COTTLE
Defendant(s)

Hearing: 13 February 2024

Appearances: J Beveridge for the Police
N Taylor for the defence

Judgment: 4 April 2024

RESERVE DECISION OF JUDGE A M WHAREPOURI

[Various Arms Act charges]

Introduction

[1] The defendant, Mr Cottle, appeared before me as a Judge-alone sitting in trial without a jury. He faces five firearms charges under the Arms Act 1983. The charges are:

- (a) unlawfully possessing a prohibited firearm (x2);¹

¹ Arms Act 1983, s 50A(a)(b), maximum penalty 5 years' imprisonment.

- (b) unlawfully possessing a restricted weapon (x2)², and
- (c) unlawfully possessing a prohibited magazine (representative).³

[2] On the morning of his trial he pleaded guilty to the one charge of unlawfully possessing a prohibited magazine. A conviction was not entered. He is for sentence on 6 May.

[3] After hearing from the parties and giving both the opportunity to file additional legal submissions if they wished, I reserved my decision.

Background

[4] Over the years, the defendant, a TV and film armourer, has held a number of firearms licences with various endorsements. In 2022, he held a theatrical and collectors license with C (restricted weapons), D (bona fide collector) and P (prohibited firearms and magazines) endorsements.⁴

[5] The facts, which are not in dispute, may be briefly stated. On 18 October 2022, the police carried out a search at the defendant's home at 255 McKenzie Road, Waiua Pa and his parent's address at 129 Mullins Road, Ardmore. On speaking to police he was given his Bill of Rights advice, a copy of the search warrant to do with both addresses, and a letter revoking his firearms licences. A team of police officers then conducted their search. Some were interested in evidence of criminality while others from the firearms compliance were more concerned with the search and seizure of the defendant's large number of legitimately held firearms and ammunition.

[6] Apart from a rifle under a bed in a bedroom, and another one in the garage with ammunition (which the defendant claimed had been readied to go hunting later that morning), the rest of the defendant's firearms and ammunition at his home were kept in a large shed or barn like structure. The barn was secured by a heavy metal bar across the main entrance, and had inside it a number of tools, gun safes, storage

² Arms Act 1983, s 50(1)(b), maximum penalty 3 years' imprisonment and fine \$4,000.

³ Arms Act 1983, s 50B(a)(b), maximum penalty 2 years' imprisonment.

⁴ The fact the defendant held these licences and endorsements was unchallenged by the prosecution.

shelves, and metal filing cabinets. Inside one of the safes police located two 37 mm single-shot launchers capable of firing munitions. These launchers are the subject of the restricted weapons charges.

[7] At his parent's address in Ardmore the defendant kept a shipping container in connection with his work. The container, which was unlocked, contained assorted gear and equipment as well as a small metal filing cabinet. Inside the locked filing cabinet the Police found two upper and lower receivers.⁵ The two lower receivers were on one shelf, while the two upper receivers were on a separate shelf. The receivers were capable of being fitted together in such a way making two fully functioning firearms. Once assembled the firearms were tagged and labelled with references 85⁶ and 86.⁷ These items are the subject of the prohibited firearms charges.

Prohibited firearms

[8] Section 50A of the Act states:

50A Unlawful possession of prohibited firearm

Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years who—

- (a) is in possession of a prohibited firearm; and
- (b) is not authorised or permitted expressly by or pursuant to this Act to be in possession of that prohibited firearm.

[9] A firearm is anything from which any shot, bullet, missile, or projectile can be discharged by explosive force.⁸ The definition of a firearm also extends to:⁹

⁵ The receiver is the part of a firearm that houses other smaller operating parts. Section 2 of the Arms Regulations 1992 defines a **major firearm part** to include the action (frame, receiver, or upper receiver and lower receiver) of a firearm.

⁶ Sturm Ruger AR566 lower receiver with Advanced Armament Corp upper; see photos 58-60. The item was later given a formal exhibit number 11I2T2K used as the reference preferred by the two armourers who gave evidence in the trial.

⁷ Aero Precision X15 lower receiver with Knight Armaments Co. Model 2 upper; see photos 61 and 62. This was given the formal exhibit reference 11I98JW, and again used as the preferred reference by the armourers.

⁸ Arms Act 1983, s 2(a).

⁹ Arms Act, s2(b).

- (i) anything that has been adapted so that it can be used to discharge a shot, bullet, missile or other projectile by force of explosive; and
- (ii) anything which is not for the time being capable of discharging any shot, bullet, missile or other projectile but which, by its completion or the replacement of any component part or parts or the correctional repair of any defect or defects, would be a firearm within the meaning of paragraph (a) or sub-paragraph (i); and
- (iii) anything (being a firearm within the meaning of paragraph (a) or sub-paragraph (i)) which is for the time being dismantled or partially dismantled; and
- (iv) any specially dangerous air gun.

[10] A “prohibited firearm” as defined by s 2A of the Act includes a semi-automatic firearm (unless of a type specifically excluded), a pump-action shot-gun or rifle with a detachable magazine (or non-detachable magazine holding a greater than specified number of cartridges or rounds) or any other firearm declared by Order in Council made under section 74A to be a prohibited firearm for the purposes of the Act.

[11] Also relevant is s 50C which says:

50C Unlawful possession of prohibited part

Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years who without reasonable excuse is in possession of a prohibited part and who is not authorised by an endorsement made under section 30B to possess a prohibited firearm.

[12] A prohibited part is any part of a prohibited firearm.¹⁰

The issues

[13] The starting issue in this trial is whether any of the receivers, as they were found, were “firearms” for the purposes of the Act? The second and related issue is even if the receivers were firearms, were they “prohibited” firearms? And last, even if the receivers could be regarded as prohibited firearms could it be said that the

¹⁰ Arms Act 1983, s 2C(a).

defendant was in possession of them such that he had committed an offence under s 50A?

The analysis

[14] During the trial I heard from two expert witnesses. Mr Low called by the prosecution has been a police armourer since October 2021. Prior to that he was in the New Zealand Defence Force as an armourer for 11 years. During his time with the defence forces he gained qualifications in ammunition design and construction, ballistics, engineering, and firearms design. Mr Bath was called by the defence. He is a film armourer and gunsmith. Mr Bath outlined that he has worked for 25 years specialise in the adaption of firearms for the film industry. He has also worked for the last 40 years as a gunsmith.

[15] Turning to the first issue, Mr Bath accepted in his evidence that while the lower receivers formed the chassis of the gun as he put it, the upper receivers were in themselves capable of firing a projectile or missile. Therefore the upper receivers meet the definition of a “firearm.” However, the upper receivers are restricted in their firing ability and incapable of semi-automatic fire, unless of course connected to a lower receiver.

[16] As to the second issue both expert witnesses called by the prosecution and defence agreed that both rifles as assembled were semi-automatic weapons. This is because both rifles were capable of discharging a round, ejecting the spent casing, with the rifle automatically drawing or pulling the next round from the magazine into the chamber preparing it for subsequent firing. The police armourer, Mr Low, stated while the upper and lower receivers for each were produced by different manufacturers, they were interchangeable. Mr Low explained that the two pieces were connected by three pins and that it was an easy process to connect and disconnect them. He test fired both weapons and confirmed they operated in a semi-automatic manner. The defence expert Mr Bath also agreed that the rifles received by Mr Low were prohibited firearms. This is not in dispute.

[17] By his firearms report Mr Bath explained that the rifles were made up of receivers from four separate manufacturers. He said the receivers for both rifles were modular parts. He would have assembled the rifles in a different way taking care to match the same calibre upper and lower receivers with one another. The principal reason for doing so was to make it easier for the operator to discern the appropriate calibre round that could and should be used in the firearm. Mr Bath agreed that the parts could be assembled into a working firearm with relative ease. And while he had not test fired the rifles himself, he had no reason to doubt Mr Low's assertion that both were in full working order.

[18] The rifles however were not found by police in an assembled fashion, but instead disarticulated. This was made clear by the officer who found the parts, former Constable Blainey (now having left the Police) who explained:

A. I've taken them out. Photographed them, taken them out and I've put them together, the two upper and lower receivers, to see if they would fit.

Q. And by put them together, what did that entail?

A. Just connect the two upper and lower receivers, there's a couple of pins, just put the pins through and lock it together, just to see if it would, yeah, join together.

Q. And that sounds like it took you a pretty brief amount of time?

A. No, it's not too bad because we, as in the police, similar rifles that we use at the range and we clean them, so.

Q. So how long did it take you to sort of put those two bolts in and –

A. Less than 30 seconds.

[19] When Mr Bath was correctly informed as to how the receivers were found in situ he said:

Q. Now, did you know, did you know at the time you inspected the firearms at the North Shore Police Station that they had been assembled by the police?

A. No, I did not.

Q. How does that change your opinion of them?

A. Well, the way they're assembled, they are completed firearms. Had they been just parts, they would have been prohibited parts or major prohibited parts.

Q. And just briefly, what's a prohibited part?

A. A prohibited part is any part of a prohibited firearm.

[20] When Mr Low was told how the receivers were found, and asked what his view would have been if the four items had been sent to him as they were found in situ, he too would have regarded the receivers as prohibited parts that were capable of being made into two prohibited firearms.

[21] Do the upper receivers in Mr Cottle's possession become "prohibited firearms" simply because they were stored together with a number of lower receivers and could be easily assembled with one another to create a semi-automatic firearm? I am doubtful about this question being answered in the affirmative for two reasons. First, the definition of a "prohibited firearm", unlike a firearm, does not have an expanded meaning.¹¹ If Parliament had intended to widen the definition of prohibited firearm to include a dismantled semi-automatic; a firearm that for the time being is incapable of firing in a semi-automatic action but which could be remedied and made complete by replacement, correction, or repair it would have said as much.

¹¹ See for example *Police v Jackson* [1980] 1 NZLR 78 where the court considered the expanded definition of a firearm under s 2 of the Arms Act 1958 in the context of a defendant found on a public street in possession of .22 calibre rifle but without the bolt which had been left at his brother's address. He was charged with carrying a rifle without some lawful, proper, and sufficient purpose under s 16(1) of the Act. At first instance the lower court found that unless it was possible for the defendant to restore the rifle to a useful state when police encountered him then it was not a firearm. The issue in the case was on appeal was whether the expanded definition imports, in the case of a firearm not capable of discharging a projectile, present ability to complete, replace, correct, or assemble the same. On the facts there was no dispute that the bolt was not in the defendant's immediate possession, and he did not have the immediate ability to restore the rifle to make it useful. After considering the legislative history of ss 2 and 16 Somers J rejected the proposition that the prosecution was required to prove a "present ability" to restore the rifle to a useful condition. In coming to this view, Somers J felt the inclusion of the word "dismantled" in s 2, and its meaning which in the context of the charge of possession or carriage having all the parts of a firearm (whether working or not) at the material time, did not qualify the earlier words "correction or repair". Instead, the word "completion" added a new dimension to the definition of what amounted to a firearm. He said "It necessarily involves a firearm that is not complete. It may for example lack a firing pin or some further work of the nature of original construction may need to be carried out to render it capable of firing. The object carried in the present case lacked a bolt at the time of carriage. In that sense it was incomplete. But there was a bolt for it. I see no reason to distinguish between completion in the sense of providing for the first time some part which never formed part of the rifle (or doing work never done before to complete the same) and completion in the sense of joining to the part carried some other part not carried."

[22] Secondly, upper, and lower receivers, intended to be an integral part of a firearm, are clearly “parts,” and defined as major firearm parts. They are also “prohibited parts” pursuant to s 2C of the Act as they enable a firearm to be fired with semi-automatic or automatic action. The possession of prohibited parts is restricted under s 19B to those over 18 years having an appropriate licence and with endorsement made under s 30 permitting the holder to possess a prohibited firearm or magazine. Those in possession of prohibited parts without a reasonable excuse and not otherwise authorised by an endorsement made under section 30B to possess a prohibited firearm commits an offence pursuant s 50C of the Act. Thus it appears inarguable that the Arms Act treats “firearms” and “parts” distinctly, as evidenced by the separate offences under ss 50A and 50C.

[23] Mr Bath explained that an armourer in the film industry might have a number of receivers on hand or in stock so as to create firearms by mix and match that resemble the particular look which a movie production requires.¹² When Mr Bath was questioned about the possibility of disassembled parts being seen as prohibited firearms for the purposes of the Arms Act, he said:

I would take myself a common sense approach that I do have bunch of parts, I do have a lot of spare parts. It doesn't make them a lot of firearms. There are some parts that are missing. I may have several barrels and I may have only a couple of spare receivers. It doesn't mean that I've got several firearms

[24] I agree with Mr Bath that a common sense approach should be taken. It would be odd for a person to commit the offence of being in possession of prohibited parts while at the same time being in possession of a prohibited firearm simply because the parts could be used potentially to make up a complete firearm. It would also be nonsensical if a person were to commit the offence of possessing a prohibited firearm just by having parts that could be assembled into such, while at the same time being legally entitled to have possession of the prohibited parts due to the person holding the necessary licence and endorsement as is the case here with Mr Cottle legally being entitled to be in possession of the prohibited parts. Instead, the separate treatment of

¹² If Mr Cottle had a legitimate reason to legally assemble a prohibited firearm for example, because the weapon was needed for a major film production, he would have had to do so by first by applying to police for the appropriate permit, and then once this was granted, connecting an upper and lower receiver.

prohibited parts in the legislation indicates that parts are not to be equated with prohibited firearms. The terms should not be conflated.

[25] For these reasons being in possession of prohibited parts, even if capable of being assembled into a prohibited firearm, is not the same thing as being in possession of a prohibited firearm.

[26] As to the third issue, possession requires proof beyond reasonable doubt as to knowledge of what the article is, where it is, actual or potential control and an intention to exercise control over the same thing. Given the modular nature of prohibited parts, any number of upper and lower receivers represents a series of potential permutations that might lead to firearms. For example based on the number of receivers found at the Ardmore address it is possible that four different semi-automatic rifles could have been assembled. But this potentiality does not lend itself to being in possession of a specific item at material time. In fact, it seems an anathema that a person could be guilty of an offence based on disconnected parts that may never have been intended to be connected to one another making a complete prohibited firearm in the true sense of the phrase.

[27] Accordingly, I am of the view that the two s 50A charges in relation to the prohibited firearms cannot be made out by the prosecution on the facts of this case. This is because taking a common sense approach the prohibited firearms did not exist until such time as former Constable Blainey assembled the upper and lower receivers in the manner he did. At this point, the police had made a prohibited firearm. Prior to the witness taking this step the police had only found a number of prohibited parts. But as the defendant held the relevant P endorsements under s 30 at the time, he was lawfully in possession of them and had not committed any offence contrary to s 50C.

Restricted weapons

[28] I turn now to consider the launchers located by police in Mr Cottle's gun safe at his home address and whether they are "restricted weapons."

[29] The two launchers in this case are Spike Tactical brand Havoc models. The first is a 12-inch model, 37 mm calibre, single shot break open launcher mounted on a Spikes Tactical brand Kaos stock system.¹³ As such it was made to resemble a military style grenade launcher. The other is a 9-inch model, 37 mm calibre, single shot break open launcher.¹⁴ There is printed on the side of both launchers, presumably by the manufacturer, the label “WARNING: Use only U.S.C.G approved flares, smoke, or gas rounds”. USCG is an abbreviation for the United States Coast Guard. The items did not appear to be modified in any way.

[30] Section 50 of the Act states:

50 Unlawful possession of pistol or restricted weapon

- (1) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$4,000 or to both who—
 - (a) ...
 - (b) is in possession of a restricted weapon and is not a person authorised or permitted, expressly or by implication, by or pursuant to this Act, to be in possession of that restricted weapon.

[31] “Restricted weapons” are set out in the Schedule to the Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984 and by clause 8 include:

Every firearm, weapon, and device *designed for the purpose* of discharging any lachrymatory, deleterious, or toxic gas, smoke, or other stupefying or overpowering thing capable of rendering any person either wholly or partially incapable of resistance (other than any device designed and intended solely for any medical, surgical, veterinary, scientific, agricultural, industrial, or other similar lawful purpose).

(Emphasis added)

[32] To be a restricted weapon there is no need for proof that the item is in working order although in this instance both launchers were fully operational, capable of discharging a projectile and thus a firearm.¹⁵

¹³ This item in photos 21-23 was given the formal exhibit reference 1QJS58F.

¹⁴ See photos 24 and 25, with formal exhibit reference 1QK0PVJ.

¹⁵ To be classified as a firearm the element of capability is important, but where restricted weapons are concerned there is nothing in the Act to suggest that the device must be in working order to be within

The issue

[33] The police maintain that the launchers are firearms “capable” of firing 37 mm tear gas/CS gas cartridges (which is a lachrymatory gas). It is also submitted that it is this capability which means they fall under the definition of a restricted firearm. The defence case however is that while they may have such a capability, the launchers are designed for a different purpose; they are for firing flares. A flare gun, also known as a Very pistol or signal pistol, is a large-bore handgun that discharges flares, blanks, and smoke. The flare gun is typically used to produce a distress signal.

[34] If the launchers are flare guns, the defendant would be exempt from any penal provisions of the Arms Act, in that it is not an offence to be in possession of a flare pistol for a holder of a firearms licence. Therefore, the narrow issue is whether the launchers are “restricted weapons” for the purposes of cl 8 and the Arms Act.

The analysis

[35] The interpretation of cl 8 was considered in *Moore v Police*.¹⁶ Ms Moore was searched by police and two small aerosol cannisters found inside her handbag. When asked what they were, she answered “mace.” Following ESR analysis the cans were found to contain liquids under pressure (with traces of capsaicinoids) which were irritating to the eyes, nose, and throat.¹⁷ The evidence was that the sprays appeared to be a type of tear gas manufactured for the purpose of temporarily disabling human or canine attacker. One of the cannisters was labelled, in part, “Body Guard Severe Irritant Contains 5% Oleoresin Capsicum”. The other was labelled “Liquid Correction Fluid.”

[36] In dismissing the appeal against conviction the court noted that being in possession of the substance under pressure in the cannisters themselves which was intended of adapted for use as an anti-personnel spray amounted to an offence in and of itself. Thus, it was unnecessary to consider whether the appellant should have been

the statutory class.

¹⁶ AP30/92, 31 March 1993, Blanchard J.

¹⁷ They caused a burning sensation and induced both coughing and sneezing.

convicted on the basis of her possessing the cannisters themselves. However, Justice Blanchard went on to make a number of comments which are helpful. He began by observing the devices were designed for the purpose of discharging gas in the form of a spray into the atmosphere. He also noted that the one labelled "Liquid Correction Fluid" was originally designed to release a fluid not of a kind within cl 8. Someone else and not the original manufacturer had introduced into it the anti-personnel tear gas. Justice Blanchard then said:

If the word "designed" is restricted to the original state of manufacture, this cannister would not be one designed for the purpose within clause 8. It is arguable that what was "designed" was as the user intended at the time when the new contents were introduced but, as the Order in Council is directed to a criminal offence, I prefer the former and more restricted meaning.

[37] Furthermore:

A label on goods can be viewed as a statement made by the person who caused it to be written and placed there and thus is hearsay if the witness is someone other than that person. Is the Court in this instance a prisoner of the hearsay rule? Common sense would suggest that the purpose for which a container of this kind is intended is what is written on the outside of the container by the manufacturer... Here in relation to clause 8 the need of the prosecution is to prove the intended use of the aerosol can, rather than proving its contents. (The contents were, as I have held, adequately proved by the analysis carried out by the DSIR scientist.) On the basis of the authorities to which I have just referred, it seems to me that it is permissible to take into account that part of the label which gives the name of the product, namely "Body Guard" although, in the present state of the law, I think I must disregard the rest of the label, which is really a description of the contents. But "Body Guard" is the get up of the article and I think can be admitted to provide some evidence of what it was that the can was intended to contain and, therefore, of what it was designed to do... when coupled with the analysis proving the contents of the can, I believe that the name of the product provides sufficient evidence of the purpose for which the can was intended to be used, being one falling within clause 8. I am of the view in the words of Cooke, P. in *R v Baker* [1989] 1 NZLR 738 at 741, that "in the particular circumstances it is reasonably safe and of sufficient relevance to admit the evidence [of the name on the can] notwithstanding the dangers against which the hearsay rule guards."

[38] Accordingly, *Moore v Police* is authority for the proposition that while not definitive, the labelling on an item can be helpful to determine the purpose for which an item was intended to be used at least from the perspective of the person who caused the label to be affixed. Further, in the absence of any evidence suggesting aftermarket

modifications being made, the word “designed” should be restricted to the original state of manufacture.

[39] In coming to a view that the launchers are not restricted weapons, but flare pistols, I have been influenced by several factors. First, I found the evidence of Mr Bath more persuasive than that from Mr Low. Mr Bath was adamant in his evidence that:

They're designed to fire a flare. The fact that they look like a military firearm is neither here nor there I think myself. It's the function of the firearm, or the launcher.

[40] Mr Bath had frequently seen the Havoc launchers for sale as flare guns at Carvell's Auction House.¹⁸ He also explained that the launchers were favoured in the TV and film industry because they look like grenade launchers on screen, were relatively cheap to purchase and easily modified to fire blanks on production sets. They were also popular with bona fide collectors, especially military enthusiasts, again because of their aesthetic appeal. However, they could not be used in this country with local munitions (apart from 37 mm flares) because the New Zealand military and police use 40 mm calibre grenades and or gas cannisters. Thus, while capable of firing a 37 mm gas projectile of the type referred to in clause 18, they were not made for this purpose.

[41] Secondly, the fact that the manufacturers had taken no steps to render the launchers incapable of firing any lachrymatory substance, as Mr Low pointed out, is different from saying they were designed with this purpose in mind. Being “capable” means having the ability or qualities necessary for doing something while the natural and ordinary meaning of “design” is to create, fashion, execute, or construct something according to a plan. The words “designed” for the “purpose of” central to the definition of a restricted firearm underscores the intent of Parliament is to capture certain firearms that were intentionally made for a particular reason. The reason in this case being to discharge the type of substance mentioned in cl 8. Being capable of something and deliberately designed for a task are linked in as much as something which is designed for a specific purpose may be capable of achieving other purposes.

¹⁸ This country's most preeminent auction house for firearms.

But the two are not synonymous; the fact that something is capable of doing one thing does not mean the thing performed was the main or dominant purpose for which the article was originally designed. Equating product capability with a product's purposeful design would result in every flare pistol becoming a restricted weapon.

[42] Thirdly, while the manufacturer's labelling referring to US Coast Guard approved gas rounds capable of being used with the launcher might be instructive, it is a product warning not to use anything other than approved items rather than a positive assertion as to its intended use. The statement informs a user what not to insert into the device when using it. While the manufacturer's assertion does refer to gas use it is more likely than not that this reference is a sales or marketing strategy by pointing to a products versatility. It is a mere sales ploy because the Havoc models are capable of firing a gas cannister like every other flare pistol. It states that which is true for most if not every flare pistol, but perhaps not commonly appreciated by the general public. What is perhaps more helpful is that the launchers are commonly marketed as flare guns.

[43] If the word "designed" is also restricted to the original state of manufacture, the strict rules in the United States to do with buying gas projectiles, grenade launchers or using the same means the launchers were designed with the more specific purpose of being flare pistols in mind. Mr Bath's evidence here was:

A. ...they couldn't promote that to sell to the general public as gas launchers because they're restricted in America.

Q. But they are –

A. It's capable.

Q. – because they've printed it on the side of their launcher?

A. They would be print – yeah, it's capable. That's what they're stating, it's capable of firing it. But they wouldn't promote people to fire gas out of it because that would be illegal in America. If you bought one for the purpose of firing gas or you had gas cannisters with it or you purchased it with gas cannisters, that's actually a federal offence. It's, yes, it's quite, I think it's in my report. Yes, I brought up the ATF rules on it and they're quite happy for people to have them as flare launchers but if you have gas ammunition with it with the intent of using gas cannisters, then they view it pretty differently.

Q. That's the American law?

- A. That's the American law, but it shows to me the actual thought process between the people who have designed and built and manufactured those. They want to manufacture and design and build these within the confines of the American law. They don't want to be prosecuted for producing grenade launchers or gas launchers and selling them to the general public.

[44] In the end my view is that a launcher is a "restricted weapon" if it was created by the manufacturer with the main or dominant purpose being to discharge the type of substance which cl 8 is concerned with. How something is labelled, the manner in which the item is advertised and marketed by the manufacturer, how it is bought and sold, and evidence of common usage can all be useful to help discern what something is designed to do. I consider that there is insufficient evidence to prove to the requisite standard that the launchers were designed for the main or dominant purpose of discharging a lachrymatory substance in terms of cl 8. Instead, I determine that it is more likely than not that the launchers are flare guns, notwithstanding their appearance.

Conclusion

[45] I rule the charges of unlawfully possessing a prohibited firearm and unlawfully possessing a restricted weapon are not proven.



Judge M Wharepouri
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 04/04/2024