

**IN THE DISTRICT COURT
AT ROTORUA**

**CRI-2016-063-003674
[2017] NZDC 18195**

NEW ZEALAND POLICE
Prosecutor

v

JASON ANANIA SCOTT
Defendant

Hearing: 15 August 2017
Appearances: Sergeant M Gould for the Prosecutor
R Vigor-Brown for the Defendant
Judgment: 15 August 2017

ORAL JUDGMENT OF JUDGE G C HOLLISTER-JONES

[1] The defendant, Jason Scott, is charged with two charges. That on 4 October 2016, he committed wilful trespass, having been warned by [the witness] from First Security to stay out of Whakarewerewa Forest, wilfully trespassed on that place within two years after the giving of the warning. Secondly, on the same day, he did hunt on land, namely at Whakarewarewa Forest without the express authority of the occupier, Kaingaroa Timberlands, the occupier of that land.

[2] I have heard evidence that on 20 July 2016, the defendant was issued with a trespass notice by a staff member of First Security on behalf of the occupier of the land, Kaingaroa Timberlands. Exhibit 3 is a trespass notice signed by the member of First Security and signed off, “Authorised by occupier.” The named person is the defendant, Mr Scott. Then I have heard that on 14 October, the defendant was in the

area of the Whakarewarewa Forest past the “By Permit Only” sign. Produced to me as exhibit 2, is a letter dated 23 January 2017 headed, “Authority to act under the Trespass Act 1980” which is an authority providing delegated authority under the Trespass Act 1980. It is on behalf of [the Chief Executive Officer] of Timberlands Ltd, being the appointment manager. It says, “For the lawful occupier of the land owned and/or leased by Kaingaroa Timberlands partnership.” In the schedule is the land described as the Whakarewarewa Forest.

[3] Mr Vigor-Brown submits that there is insufficient proof that Kaingaroa Timberlands or in particular Timberlands Ltd was the occupier, that it was a person in a position to delegate authority under the Trespass Act. However, there is a more fundamental issue and that is that the letter of authority post-dates the issue of the Trespass Act and post-dates the offence. Accordingly, there is no proof that the person issuing the trespass notice, the member of First Security, was acting under the appropriate delegated authority and, accordingly, I cannot be satisfied that the trespass notice was issued by a person, the delegated authority of the occupier, and accordingly the trespass charge is dismissed.

[4] I turn now to the charge under the Wild Animal Control Act 1977. Section 8(2) Wild Animal Control Act provides an offence provision. It provides that nobody shall, hunt or kill on land without the express authority of the owner or occupier of that land, and it provides that every person commits an offence against the Act who hunts or kills without the express authority of the owner or occupier of that land. So out of that, essentially comes two elements; proof that the defendant on the day in question was hunting, secondly, that he was doing so without the express authority of the owner or occupier of that land.

[5] So in terms of whether he was hunting, one goes to the interpretation section, and “hunt or kill” is defined in s 2 Wild Animal Control Act broadly. It includes:

- (a) Hunting or searching for any wild animal;
- (c) Taking or using any dog, vehicle, snare, trap, poison or like method while engaged in hunting any such animal, whether or not this results in capturing or killing such animal.

[6] So those are the two relevant definition sections. Here, the defendant's car was sighted by the member of First Security on 14 October 2016, parked at the Green Lake gate, an area where members of the public are permitted. Beyond the Green Lake gate is the Whakarewarewa Forest for which hunting is not permitted. The defendant was not in the vehicle and the witness did not mention seeing his dogs either. So, there were footprints around the gate, but it cannot be said that those were the footprints of the defendant or his associate or his dogs. So at the point the vehicle was sighted, the precise whereabouts of the defendant was not known.

[7] [The witness] then opened the gate as he had the key, went up Green Lake Road and whilst he was up Green Lake Road, the defendant went back to his car, because [the witness] returned past the Green Lake gate and turned right into Eight Mile Road and just after entering Eight Mile Road, he saw the defendant's vehicle just within the area for which a permit was required, and just past a sign which reads, "Entry by Permit Only." [The witness] followed the defendant's vehicle along what is known as Eight Mile Road, but that is just a colloquialism, it is a road about five or six kilometres. He followed the defendant for that five or six kilometres at a distance of about 100 metres with the headlights of [the witness'] vehicle on, orange flashing lights on the light bar on the roof activated, and the horn sounding. Finally, the vehicle was stopped and [the witness] approached the defendant, sees a knife either on the defendant or on the console. [The witness] said it was on the defendant's belt and the police constable said that when he came, it was on the console. I do not think the whereabouts of the knife is determinative. More particularly, there was hunting apparel in the vehicle and there were three hunting dogs in the back with GPS tracking equipment attached to the dogs that was on. It was flashing. Apart from that, it cannot be said anything more about the GPS tracking. Nobody has downloaded the information as to where those dogs had recently been.

[8] So when one looks at this, we have the car originally located very close to an area where hunting is not permitted, but with no occupants. But it is then next seen within the non-permitted area, with dogs with GPS monitors activated, the knife in the vehicle with hunting apparel, but more particularly, the defendant not stopping for five or six kilometres. When he was spoken to, he said knew he was not meant to be there, but also said he had some kind of customary right.

[9] I conclude that at the time he was first seen on Eight Mile Road, just beyond the 'Entry by Permit Only' sign, the defendant was in the business of taking a dog and a vehicle for the purposes of hunting, and that his possession of the knife is to be read together with snare, trap, poison, firearm or like method, so that is another circumstance. So the definition of hunting is filled by those circumstances in s 2(c) Wild Animal Control Act.

[10] That element being established, I turn next to the next element under s 8, that there is no evidence that he was acting with the express authority of the owner or occupier of the land. No evidence has been adduced that he had that and, indeed, the evidence points to him not having that authority, and I refer to the evidence of [the manager of First Security], who had earlier warned him off. I have already found that the trespass charge was not approved, however, I think the issue is different in respect to s 8 Wild Animal Control Act and there is no evidence that he had the express authority of the owner or occupier, so those two elements under the Wild Animal Control Act are established.

[11] Accordingly, the defendant is convicted of the charge under s 8 Wild Animal Control Act. I find you guilty of that Wild Animal Control Act charge.

G C Hollister-Jones
District Court Judge