

Background

[4] On 17 September 2015, Mr Terry was served with a trespass notice warning him to stay off Ida Valley Station for a period of two years from that date.

[5] Late in the afternoon of 9 May 2017, Russell Neville and Stuart McIntosh were moving sheep along Aston Road, driving them to a roadside paddock. Aston Road adjoins Ida Valley Station. They were also dropping off rams that were on the back of their utility vehicle. There was no dispute that, when they were doing this, Mr Terry drove along Aston Road towards them. He slowed down as he passed by the mob and close by their vehicle. Mr Terry said in evidence that, from there, he carried on along Aston Road before making a right turn onto Old Dunstan Road. He said he drove along that road, stopping to open a gate over a cattlestop and then drove on to Poolburn Dam before proceeding onwards towards Roxburgh. The distance from the cattlestop to the Poolburn Dam is approximately eight kilometres.

[6] Mr Neville and Mr McIntosh said that, as the white Toyota Hilux drove past them, they noticed hunting dogs in a box on the back of the Toyota Hilux. As the driver of the Toyota Hilux went past them, he lowered his head towards his chest, as if he did not want to be observed. Both men were concerned as to what the person in the vehicle might be doing. They said that, as they finished putting the sheep in the paddock and dropped off some rams, they had the white Toyota Hilux within their view. They saw it turn right from Aston Road onto Old Dunstan Road and observed it travelling along Old Dunstan Road for some distance. They said they could see the vehicle's course of travel through observing the vehicle itself and also the dust that it put up from the gravel road. In that way, they saw it travel to a point just after the cattlestop. Mr Neville said he saw the vehicle turn right from Old Dunstan Road onto the open country of Ida Valley Station. Mr McIntosh said he did not see the vehicle actually move off Old Dunstan Road but saw where its travel along Old Dunstan Road came to an end when it was no longer putting up dust.

[7] Both men say that, after they had finished shifting the mob of sheep and dropped off the rams on Aston Road, they turned their vehicle around, drove back along Aston Road, turned right into Old Dunstan Road and drove to the point where

they inferred the white Toyota Hilux had turned off Old Dunstan Road to go onto Ida Valley Station land. At that point, they observed tracks, freshly made by a vehicle leaving Old Dunstan Road and travelling onto and across Ida Valley Station land. They then drove on a short distance further to a point where they had a view over Ida Valley Station where they say they were able to observe the same vehicle they had seen earlier travelling over Ida Valley Station into the distance. The vehicle they observed disappeared from their view. They dropped off some more rams at a point along old Dunstan Road and went onto the Poolburn Dam before turning around and returning to the base of Ida Valley Station near the intersection of Old Dunstan Road with Aston Road. During that time, they sighted no other vehicles on either Aston Road or Old Dunstan Road. They did not see the white Toyota Hilux again after it disappeared from view.

[8] There was no dispute that Mr Terry was the driver of the white Toyota Hilux which passed by Mr Neville and Mr McIntosh when they were moving the mob of sheep on Aston Road.

[9] Section 8 Wild Animal Control Act makes it an offence for a person to hunt across any land, without the express authority of the owner or occupier of that land. Under s 38 of that Act, in any prosecution for such an offence including that created by s 8(2):

... proof that any person found in any area where wild animals are usually present had with him ... any dog ... that could be used for the purpose of hunting or killing any wild animal, shall be evidence from which the court shall presume, until the contrary is proved, that the person was hunting or killing wild animals in the area.

[10] At trial, there was no issue that, if Mr Neville and Mr McIntosh had been correct in saying they had seen dogs in the box on the back of Mr Terry's vehicle, they would be dogs that could be used for hunting a wild animal. In his evidence, Mr Terry accepted that he had three dogs. He said they were house dogs but they were also hunting dogs.

[11] There was no issue that the land on which it was alleged Mr Terry had gone in his vehicle was an area where wild animals were usually present. Mr Terry accepted this was an area where people hunted recreationally with permission of the owner. It

was an area where Mr Terry had hunted previously. It was an area where people went pig hunting.

[12] If it was proved that hunting dogs were in the box on the back of Mr Terry's vehicle and that vehicle did go onto Ida Valley Station, there was thus a presumption that Mr Terry, in driving that vehicle onto Ida Valley Station, with those dogs, was doing so for the purpose of hunting.

[13] There was no dispute that Mr Terry had not obtained permission of the owner to be on the station.

[14] The central issues at trial were thus whether the prosecution had proved that the vehicle Messrs Neville and McIntosh said they observed on Ida Valley Station was the same vehicle that Mr Terry drove past these witnesses as they were moving sheep on Aston Road and whether these witnesses had seen dogs in the box on the back of Mr Terry's vehicle.

District Court decision

[15] Judge Crosbie first found that, at the time, there was no other vehicle travelling along Old Dunstan Road and Mr Terry's vehicle was the only vehicle on that road to be seen.¹

[16] The Judge cited a decision of Doogue J in the High Court in *Bevin v Police* which states it is settled law that, once hunting on land without authority is proven, the onus shifts to the defendant to prove on the balance of probabilities that they were without intent or fault.²

[17] The Judge then cited the Court of Appeal's decision in *Valenski v Conservator of Forests* to show the operation of the reverse onus under s 38(1) Wild Animal Control Act.³ In that case, the defendant was found to have been in a helicopter without doors flying at a low height over a station. The Court said it was unable to disregard the

¹ *Police v Terry* [2018] NZDC 26054 at [8].

² *Bevin v Police* HC Hamilton AP18/87, 21 May 1987.

³ *Valenski v Conservator of Forests* CA39/85, 1 November 1985.

onus regardless of the lack, or perceived lack, of link between the actions of a defendant and what could be described as “hunting” generally.

[18] Judge Crosbie found Mr Terry to be neither credible nor reliable as a witness. He gave his reasons:⁴

- (a) Mr Terry’s evidence before the Court departed significantly from the statement he provided to police, particularly in relation to his reasons for driving on that day.
- (b) his position on key aspects of the evidence changed throughout his evidence and was internally inconsistent:⁵
 - (i) his position on whether he had dogs with him moved from not having any, because they were at home with his partner, to not remembering whether he had them with him. He accepted that Mr Neville and Mr McIntosh could be correct in having seen dogs on the back of his utility. This was described by his Honour as a “significant backflip” demonstrating a lack of credibility;
 - (ii) he initially claimed the dog box was not one that provided any level of visibility of a dog’s nose when on the back of a utility. This was disproven by the production of photographs by the Police showing the dog box was sufficiently raised to be able to view dogs’ noses; and
 - (iii) he gave confusing and unreliable evidence as to steps he may or may not have taken in adjusting or cutting down the dog box. At times his explanations appeared “desperate”.

[19] As a consequence of the Judge finding Mr Terry’s evidence as a witness was neither credible nor reliable, he found it clearly and unequivocally established that Messrs Neville and McIntosh saw Mr Terry’s utility that day while it had a dog box

⁴ At [24]; Reasons were given consistent with the clear requirement for trial judges in Judge-alone trials to give reasons, particularly relating to findings on credibility and reliability: *Sena v Police* [2019] NZSC 55 at [35]–[36] citing *R v Connell* [1985] 2 NZLR 233 (CA) at 238 per Cooke J.

⁵ At [25]–[32].

on the back containing hunting dogs. He further accepted Mr Neville's evidence that he saw the utility turn onto Aston Road from Old Dunstan Road and onto the Ida Valley Station. The Judge said Mr McIntosh's evidence corroborated Mr Neville's evidence in a number of ways and provided the Judge with an assurance that Mr Neville was a credible and reliable witness. The Judge found proved that Mr Terry drove onto Ida Valley Station in a vehicle on which hunting dogs were situated.

[20] The Judge found that the photographic evidence produced by Mr Terry was not capable of aiding a discharge of his persuasive burden. The photos were consistent with the Police case and timeline. The Judge found that the 25 to 35 minute window between the two photos being taken provided ample time for Mr Terry to drive onto Ida Valley Station.

[21] Accordingly, he determined both charges proved and found him guilty on each.

Principles on appeal

[22] Section 232 Criminal Procedure Act 2011 provides that the High Court may only allow an appeal against conviction if satisfied that the trial Judge "erred in his or her assessment of the evidence to such an extent that a miscarriage of justice has occurred", or that "a miscarriage of justice has occurred for any reason". A miscarriage of justice means any error, irregularity, or occurrence in or in relation to the trial that has created a real risk that the outcome of the trial was affected, or has result in an unfair trial.⁶

Appellant's submissions

[23] Mr Mooney for Mr Terry submitted the Judge made seven errors that gave rise to a miscarriage of justice:

Medical evidence

[24] Mr Mooney submitted:

⁶ Criminal Procedure Act 2011, s 232(4).

- (a) The Judge did not allow into evidence a medical record relating to Mr Terry's head injury in 2015 as a business record.
- (b) The Judge did not allow into evidence a medical record relating to Mr Terry's knee injury in 2017.

[25] Mr Mooney submitted the Judge should have admitted the medical records as evidence as business records under s 19 Evidence Act 2006 as no useful purpose would have been served by requiring persons who prepared the records to give evidence as a result of time elapsed since their making and the fact those people would have had to deal with so many patients.

Timing of Mr Terry's statement to Police

[26] Mr Mooney submitted the Judge erred in stating Mr Terry spoke to police the following day. In fact, Mr Terry was not spoken to by police until 20 July 2017 – two months later.

[27] Mr Mooney contended this error would have adversely and unfairly contributed to the Judge's adverse credibility and reliability findings against Mr Terry, particularly so when Mr Terry had said he could not remember things particularly well.

Timing related to Facebook Messenger photos

[28] Mr Mooney submitted there was no evidence to support the Judge's finding that there were other means by which Mr Terry could get back onto Old Dunstan Road and to the Poolburn Dam to take the photograph.

[29] Mr Terry had produced in evidence a photograph taken of a gate over the cattlestop on Old Dunstan Road. He said he had to stop and open it after travelling onto Old Dunstan Road from Aston Road. The photograph was produced on a page which associated it with a message he had sent to his partner at the time he says he took the photograph. On that page, there was a timestamp showing the message had been sent at 4.58 pm. He also produced photographs of the Poolburn Dam area, which he said had been taken when he was looking out over the Poolburn Dam area from Old Dunstan Road, and which he had sent to his partner. On the page with those

photographs was a timestamp consistent with them having been sent on 9 May 2017 at 5.29 pm.

[30] Mr Mooney noted that Mr Neville said in evidence he saw the utility drive onto Ida Valley Station at “approximately” 5.30 pm. Similarly, Mr McIntosh said this occurred “about”/“around” 5.30 pm.

[31] At trial, the Judge was asked to accept Mr Terry could not have driven from where he was at the cattlestop to Poolburn Dam in the time when those photographs were taken if he had travelled onto Ida Valley Station, as described by the two witnesses.

[32] The Judge found that Mr Terry could have driven from Ida Valley Station back onto Old Dunstan Road and then gone to Poolburn Dam to take a photo (at 5.29 pm). Mr Mooney submitted there was no evidence as to how Mr Terry would have been able to drive to the Poolburn Dam when he did to take photos there if he had been on Ida Valley Station.

Non-consideration of the possibility of other vehicles

[33] Mr Mooney submitted the Judge did not fully turn his mind to the possibility that a different vehicle could have come from the opposite direction and driven into Ida Valley Station.

[34] Mr Mooney highlighted an excerpt from the evidence where Mr McIntosh agreed with Mr Terry’s then counsel, Mr Collins, that he could not rule out the possibility that there was another vehicle on Old Dunstan Road at that time coming from the opposite direction. Similarly, Mr Neville did not rule out the possibility there was another vehicle. Further, Mr McIntosh said the cattlestop is at a point in the road where it crests a hill. As a result, no dust would have been seen after the cattlestop, so direct sight of Mr Terry’s vehicle was lost and then, some moment later, the men saw a vehicle – not necessarily Mr Terry’s vehicle in Mr Mooney’s submissions – driving onto Ida Valley Station.

Time required to travel from the gate onto Ida Valley Station and then to the Poolburn Dam

[35] Mr Mooney submitted the Judge did not take into account the time required to travel from the gate where Mr Terry is alleged to have driven onto Ida Valley Station to Poolburn Dam where he took a photo of the Dam.

[36] Counsel submitted it was impossible for Mr Terry to have travelled eight kilometres from the cattlestop to Poolburn Dam at the likely practical speed of 20 to 30 km/h so as to be able to take the photo of the Poolburn Dam at 5.29 pm if he had been on Ida Valley Station land, as Mr Neville and Mr McIntosh say they had witnessed.

Non-consideration of whether Mr Terry had proven on the balance of probabilities that he had not been hunting

[37] Mr Mooney submitted the Judge did not turn his mind to whether Mr Terry proved on the balance of probabilities that he was not hunting.

[38] Mr Mooney said the Facebook Messenger photos did more than the Judge allowed them. He said they established Mr Terry was not on Ida Valley Station at 4.58 pm or 5.29 pm as the Judge “appears to have accepted”. He said these messages established Mr Terry could not have made the journey as alleged by the Police when they are coupled with the lack of evidence of an alternative path to Poolburn Dam from the vehicle’s entry to Ida Valley Station, without involving it circling back to the same gateway onto Old Dunstan Road and thus crossing paths with Mr Neville and Mr McIntosh as they drove up to the cattlestop. He said finally that the Judge’s refusal to admit the medical evidence meant the Court did not turn its mind to whether Mr Terry was in fact physically unable to walk or run after the pig dogs at the relevant time.

Respondent’s submissions

[39] Mr Bates for the Crown responded to the submissions presented for Mr Terry. I have had regard to those submissions in my consideration of all the evidence and the

ways in which it was suggested for Mr Terry that there had been errors in the Judge's decision and miscarriage of justice.

Timing of the Police interview of Mr Terry, and the Judge's assessment of Mr Terry's credibility

[40] The Judge made clear adverse findings as to both the credibility and reliability of Mr Terry's evidence on issues that were crucial to his defence and also the prosecution case. His conclusions in this regard were not based on the demeanour of Mr Terry as he gave his evidence but on a careful consideration of what he had said in evidence and how he came to say it. The Judge had the advantage of hearing precisely how those issues had emerged in the course of evidence from all witnesses and the way Mr Terry's evidence chopped and changed when he was challenged on various points and confronted with the evidence that contradicted his account of what he had to say about what he had been doing on 9 May 2017. The Judge appropriately gave reasons for the assessment he made as to Mr Terry's credibility and reliability, consistent with what is required of a judge as recently set out in the Supreme Court's judgment in *Sena v Police*.⁷ The Judge's conclusions were reasonable given all the evidence as it was recorded during the trial.

[41] As Mr Bates for the Crown properly acknowledged, the Judge did make a mistake in saying Mr Terry was interviewed the day after it was alleged he was on Ida Valley Station. He was not in fact interviewed until more than two months later when he was spoken to on 20 July 2017. The fact remains there were significant inconsistencies between Mr Terry's various explanations as to what he had been doing at the relevant time.

[42] Police obtained a statement from Mr Terry, made at the Alexandra Police Station, on 20 July 2017. In that statement, Mr Terry acknowledged the Police had spoken to him previously by phone about an incident that had occurred on Tuesday 9 May 2017 at approximately 5.30 pm in the Ida Valley area, where his vehicle was observed heading first along Aston Road then turning right onto Old Dunstan Road, before turning off and across land of the Ida Valley Station. Mr Terry also

⁷ *Sena v Police*, above n 4, at [35]-[36].

acknowledged in his statement that, when the Police first spoke to him, his explanation at the time had been that he was going to help a friend who was stuck in the area.

[43] Mr Terry had thus known the Police were interested in what he had been doing on 9 May 2017 around 5.30 pm before he made his statement to the Police. He had time to clear up any potential confusion he might have had about dates, had he needed to do so.

[44] In the statement he made on 20 July 2017, Mr Terry repeated his explanation as to what he had been doing. In doing so, he said he never left Old Dunstan Road and the person he was going to help was Michael Harvey. He also told the Police his partner was in the vehicle with him. He said he did not have any dogs with him on his utility as he made that trip.

[45] On 22 July 2017, after he had been interviewed at the Police Station, Mr Terry sent a text to the owner of Ida Valley Station asking him to meet with him to resolve the situation in a way that would avoid them having to be involved with a court case. In that text, Mr Terry denied he had been on the Station. He said he had been in the area on 9 May 2017 when he went up to shoot some geese and he had gone there with his partner Micayla. Mr Terry said in that text that he had also been in the area on 12 May 2017 when he had gone there to help Michael Harvey winch out Mr Harvey's vehicle after it became stuck.

[46] In his evidence, Mr Terry said he had gone to the Poolburn area around 5.00 pm on 9 May 2017. He said he had no intention of going hunting and he was just taking his partner's young daughter for a drive over the hill when her mother had a migraine. At the trial Mr Terry said nothing about going to that area on 9 May 2017 to shoot geese.

[47] Mr Harvey's evidence was given by way of a statement admitted to evidence by consent. In that statement, Mr Harvey explained how he had gone to the Serpentine area not far from Poolburn on the night of Friday 12 May 2017, had become stuck and had to spend the night there. He said he contacted Mr Terry and Mr Terry had driven to him, approaching from the Onslow end early in the morning on Saturday 13 May

2017. This would have been from a direction opposite to that when he had driven along Aston Road and Old Dunstan Road to Poolburn on 9 May 2017.

[48] It was reasonable for the Judge to consider that the inconsistencies in Mr Terry's explanations as to what he had been doing on 9 May 2017 reflected adversely on his honesty as a witness. It is hard to see how his explanation to the Police for being seen in the area of Ida Valley Station at about 5.30 pm on 9 May 2017 could have been the result of poor memory or innocent confusion. Mr Terry had gone to the Poolburn reservoir area to help pull out Mr Harvey's vehicle from where it was stuck. On the evidence of both Mr Terry and Mr Harvey, he did this in the early hours of the morning. When speaking to the Police, Mr Terry was seeking to explain why he had been in the area late in the day. On 13 May 2017, he had helped pull out Mr Harvey's vehicle. He had approached the area from the Onslow end. On 9 May 2019, he had approached the area from the opposite direction.

[49] The Judge accepted the evidence of Mr McIntosh and Mr Neville that they had seen the snouts and heads of dogs in a box on the back of Mr Terry's vehicle as it passed them when they were with the mob of sheep on Aston Road. They identified the dogs they saw as being hunting dogs. Mr McIntosh described the dogs he saw as looking like pig hunting dogs, not sheep dogs.

[50] In cross examination, Mr Terry's then counsel showed prosecution witnesses a photograph of a box on the back of a vehicle which did not have any gap or grill through which witnesses would have been able to see dogs. This was obviously done to suggest the witnesses had not seen any dogs in the way they had described. In his evidence, Mr Terry initially said that, on the day in question, the dogs had been left at home with his partner.

[51] The Police officer who interviewed Mr Terry gave evidence of inspecting Mr Terry's vehicle on 20 July 2017. He observed the dog box that was on the Toyota Hilux at that time. It then had a grill along each side of the box big enough for someone to see a portion of a dog's face and nose through it. The constable was not challenged as to the correctness of what he observed.

[52] There was then produced in evidence by consent a photograph taken of a dog box on Mr Terry's vehicle on 21 February 2017. It showed a dog box on the back of the utility with a grill, consistent with what the constable and two witnesses had observed. When cross examined over these matters, Mr Terry gave contradictory and conflicting evidence as to how he had altered the box at different times.

[53] Given the inconsistencies and contradictions in his evidence, alongside the evidence from the Police constable and the photographs, the Judge was well justified in concluding that Messrs McIntosh and Neville would have been able to see the faces of the dogs in the box on the back of Mr Terry's vehicle when it passed them on Aston Road on 9 May 2017. The Judge could also have concluded that Mr Terry had altered the dog box and then photographed it in an attempt to show that the witnesses would not have been able to see dogs in the dog box on 9 May 2017 as they had described.

[54] The Judge reasonably concluded Mr Terry's evidence as to the changing state of the dog box was "confusing and unreliable" and at times "appeared to be desperate".

[55] After considering all the evidence, given the Judge had concluded that Mr Terry's evidence was neither "credible, nor reliable", the Judge considered it appropriate to put Mr Terry's evidence to one side. There was a reasonable basis for him to disregard Mr Terry's evidence in that way.

Timing issues and non-consideration of the possibility of other vehicles

[56] There was good reason for the Judge to conclude that it was Mr Terry's vehicle which Messrs McIntosh and Neville observed travelling over Ida Valley Station land to the right of Old Dunstan Road. These were remote country roads. Messrs McIntosh and Neville acknowledged they could not say that it was impossible for another vehicle to have been on Old Dunstan Road between Poolburn Dam and Aston Road around the relevant time. They did not have a view of the whole of that approximate 13 kilometres of road. It was nevertheless clear from their evidence that they saw no sign of any other vehicle travelling along Old Dunstan Road at a time which would have been consistent with that being the white vehicle the witnesses observed on Ida Valley Station, or which would have been responsible for the freshly made tracks leading from Old Dunstan Road to the Station land just after the cattlestop.

[57] Mr Neville was clear that he had observed Mr Terry's vehicle turning off Old Dunstan Road to go onto Ida Valley Station land. Mr McIntosh had not seen the vehicle turn off but had noticed the point at which dust from the vehicle ended, at a point just past the cattlestop. Both men saw freshly made tracks left by a vehicle at that point consistent with that vehicle also being the one they saw travelling over Ida Valley Station into the distance.

[58] Both men had taken a keen interest in what the vehicle was doing after it had passed them on Aston Road. They were suspicious of what the driver was doing, having observed the dogs that were in the back and also having noted the unusual behaviour of the driver in not acknowledging or facing them in any way. Mr Terry accepted that there was no acknowledgement between him and Messrs McIntosh and Neville, as might have been expected with "the country code", as he slowly went past them when they were with the mob of sheep. The men were suspicious enough to have noted the registration number of the vehicle and to have telephoned the owner of Ida Valley Station to see if anyone had permission to be hunting on his property on that day.

[59] The Judge could reasonably conclude that, if Mr Terry took photographs of the gate at the cattlestop and of Poolburn Dam at the time he sent messages to his partner, this would not have been inconsistent with his also having travelled onto Ida Valley Station. The distance between the cattlestop and Poolburn Dam was approximately eight kilometres. He could have travelled for some or all of the distance at more than 30 kph. Mr Terry would not necessarily have had to return to Old Dunstan Road at the point he had left it to go on to Poolburn Dam. Old Dunstan Road was not bordered by fences. There were a number of cattlestops along that road. There would thus have been little to prevent Mr Terry returning to Old Dunstan Road having travelled across some part of Ida Valley Station land. As the Judge reasonably decided was likely, this was something Mr Terry might well have chosen to do once he had seen the witnesses' vehicle stop just beyond the cattlestop on Old Dunstan Road, as they observed Mr Terry's vehicle on Ida Valley Station.

[60] The Judge proceeded on the basis the evidence from the witnesses as to the time they had seen Mr Terry's vehicle on Aston Road at around 5.30 pm was only approximate.

[61] Mr Terry did produce some documentary evidence to show he had sent the photographs of a closed gate and of Poolburn Dam to his partner at the times he indicated. The only evidence to establish the photographs were taken at the time of those messages was from Mr Terry. The Judge had found that Mr Terry was so lacking in credibility that he put to one side all of Mr Terry's evidence. Mr Terry claimed in evidence that he had stopped for five to seven minutes at the gate where he took a photograph and relieved himself. Neither of the witnesses had seen this. It was not suggested they could or should have observed him being stationary at the cattlestop in that way. It was not suggested to witnesses that there had been a gate closed across the cattlestop at the time.

[62] One of the photos, purportedly of the Poolburn Dam, was associated with a message sent at 5.29 pm. The message said "Full moon tonight". The photo appears to show the sun either rising or setting rather than a full moon.

[63] The Judge could reasonably conclude that Mr Terry's evidence as to the timing of the messages to his partner and the photographs was not sufficient to raise a reasonable doubt as to whether he had travelled onto Ida Valley Station land.

Medical evidence

[64] It was submitted for Mr Terry that there was an unfairness to him and an error in the way he was not permitted to refer to medical records to show that he would have been unable to go hunting on 9 May 2017 because of a previous injury. He had said nothing about that when he was interviewed by the Police. He said nothing about that in his evidence at trial.

[65] There was no error in the way the Judge dealt with the medical evidence Mr Terry's counsel wished to put before the Court. There was no formal ruling on the matter but, when the issue arose, the Judge indicated he would not accept that evidence as documentary evidence if the defence wished to produce it for the purpose of proving

that Mr Terry was incapable of hunting animals on Ida Valley Station on 9 May 2017. The Judge indicated that, if the evidence was being adduced for that purpose, the defence would need to establish that the maker of the relevant statements was unavailable to give evidence. However, he permitted counsel to produce a copy of an unsigned ACC medical certificate for Mr Terry. That certificate referred to Mr Terry having suffered an injury to his knee and a sprain when kicked by a cattle beast on 28 January 2017. The certificate said he was unfit to work from 1 May 2017 to 4 June 2017. The Judge permitted the defence to produce that certificate as evidence that Mr Terry had suffered an injury but made it clear he was not accepting it as evidence that Mr Terry was incapable of hunting animals on 9 May 2017.

[66] I do not see there was any error in the Judge proceeding in that way or that the evidence was dealt with in a way which has led to a miscarriage of justice. Once the Judge accepted that Mr Terry had hunting dogs in the box on the back of his vehicle on 9 May 2017, there was evidence that Mr Terry considered himself capable of going hunting at that time.

[67] In his text to the Station owner, where he had sought a resolution that would avoid his facing court proceedings, Mr Terry referred to being on ACC at the time he was observed on Ida Valley Station and then served with a trespass notice in 2015. He had said nothing in that text of being unable to hunt on 9 May 2017. He made no claim as to this in his evidence at trial.

[68] Mr Mooney sought to further advance his submissions as to this claimed error by attaching to his submissions for the appeal further medical records. These included records as to an injury Mr Terry had suffered on 14 June 2015 when he had fallen off a motorbike, and as to the injury he had suffered when a cow kicked his right knee in January 2017.

[69] There was nothing in the medical information to suggest that Mr Terry was still disabled in May 2017 from the 2015 accident.

[70] As to the injury Mr Terry suffered in January 2017, there was a reference in a doctor's report to Mr Terry having been assessed on 22 February, 30 March and 25 May 2017. Information in that document suggested that, when initially assessed on 22 February 2017, Mr Terry said he had been unable to walk and had been on crutches until about 10 days prior to those assessments. At review on 30 March 2017 he was able to walk but with a shortened gait. By 25 May 2017, he was going to the gym twice a week and was biking five days a week. He had begun working one day a week on wilding tree control.

[71] Had the information in those records been admitted as business records, it would not have been sufficient to establish that, when Mr Terry drove his vehicle onto Ida Valley Station with hunting dogs on the back, he did so for some purpose other than hunting.

Failure to consider whether Mr Terry had proven, on the balance of probabilities, he had not been hunting

[72] Once the Judge accepted, as he was justified in doing, that Mr Terry had hunting dogs in the box on the back of his vehicle on 9 May 2017, there was good reason for him to reject Mr Terry's explanation as to why he had been on Aston Road and then driving along Old Dunstan Road on 9 May 2017.

[73] I do not accept the submission that the Judge failed to turn his mind to whether Mr Terry had met the burden which he had, pursuant to s 38(1) Wild Animal Control Act, to show that he had not gone onto Ida Valley Station for the purpose of hunting animals.

[74] In his decision, the Judge said, once hunting on land without authority was proven, the onus moved to Mr Terry to prove, on the balance of probabilities, that he was without intent or fault.⁸ He gave an example of the way the reverse onus operated with his reference to *Valenski v Conservator of Forests*.⁹

⁸ Citing *Bevan v Police*, above n 2.

⁹ *Valenski v Conservator of Forests*, above n 3.

[75] The Judge said that in his overall assessment of Mr Terry's lack of reliability and credibility he could not be satisfied that Mr Terry's partner's child was in the backseat of the vehicle on 9 May 2017 or whether he had taken her away for a drive.

[76] The Judge expressly asked himself "has any part of Mr Terry's evidence persuaded me that he was not hunting?". After posing that question, the Judge referred to the assessment he made earlier as to Mr Terry's lack of reliability and credibility. He considered that, even accepting Mr Terry's timing as to when he took photographs at the closed gate, the cattlestop and as he approached the Poolburn reservoir, he had ample time to have driven onto Ida Valley Station with his hunting dogs. Accepting the timing of the photographs as Mr Terry had stated, he considered that all that timing did was raise an issue as to how long Mr Terry had been on the property. He drew an inference that, just as Mr Neville had seen Mr Terry on Ida Valley Station, it was likely that Mr Terry had seen Mr Neville and his vehicle so as to exit Ida Valley Station as he did and take the photographs that he did. He accepted that it would have been Mr Terry's overall intention to hunt with his dogs but that was cut short. The Judge thus considered all the evidence he had heard. He explained why the evidence was not sufficient to satisfy the onus which was on Mr Terry to show he had not gone onto Ida Valley Station from Old Dunstan Road for the purpose of hunting.

Conclusion

[77] Mr Terry has been unable to establish that the Judge made any error in his assessment of the evidence or that a miscarriage of justice has occurred in any of the ways that were advanced.

[78] Mr Terry's appeal is dismissed.

Solicitors:
J Mooney, Barrister, Queenstown
RPB Law, Dunedin.

This judgment was delivered by me on 4 October 2019 at 10.00 am.
Registrar / Deputy Registrar
Date: 4 October 2019