

**IN THE DISTRICT COURT
AT TAIHAPE**

**I TE KŌTI-Ā-ROHE
KI TAIHAPE**

**CRI-2024-067-000083
[2025] NZDC 21877**

NEW ZEALAND POLICE
Prosecutor

v

**NEIL ANDREW BUCHANAN
ANDREW STEWART GIFFORD
ROBERT ERIC WHITEHOUSE**
Defendants

Hearing: 11 March 2025
Appearances: Sergeant S Hickey for the Prosecutor
N Taylor for the Defendants
Judgment: 8 December 2025

RESERVED JUDGMENT OF JUDGE S B EDWARDS

[1] The defendants, Neil Andrew Buchanan, Andrew Stewart Gifford and Robert Eric Whitehouse, are jointly charged with hunting a deer on Waiouru Military Training Area land without the express authority of the occupier of that land, contrary to s 8(2) of the Wild Animal Control Act 1977.

The prosecution case

[2] The prosecution case is that on the morning on 16 April 2024, the three men were rafting down the Rangitikei River in single-person inflatable rafts in an area

where Zone 9 of the Waiouru Military Training area borders one side of the river and Ngamatea Station the other side.

[3] The evidence of Mitchell Ewart, a professional hunting guide contracted to Ngamatea Station, was that he was on a guided hunt with three clients, positioned on a hill above the river, when he observed the three rafts pull up to the shingle bank on the Army side of the river. Two of the occupants (Mr Gifford and Mr Whitehouse) got out of their rafts while Mr Buchanan stayed in his raft. Mr Gifford had a rifle.

[4] Using his cellphone and a scope, Mr Ewart recorded Mr Gifford lying, then standing, at the edge of the shingle pointing his rifle in an upward direction. Mr Whitehouse was standing next to him, at one stage pointing in the same direction Mr Gifford was pointing his rifle.

[5] Mr Ewart did not hear any shot fired because of the wind but drove his side-by-side quad down to the river, where he filmed Mr Buchanan who was by this time out of his raft and sitting on the riverbank. Mr Ewart did not see Mr Gifford or Mr Whitehouse at that stage.

[6] A wounded Sika stag came downhill out of scrub from the direction Mr Gifford and Mr Whitehead had been facing and fell into the river. The deer got itself onto a shingle island and stayed there for a time before getting back into the river and swimming to the Ngamatea Station side of the river. Mr Ewart located and dispatched the deer as it was clearly suffering. He considered it had been shot in the brisket area.

[7] As Mr Ewart was driving back up the track in his side-by-side, he looked back to see the three men get into their rafts and quickly paddle downstream.

[8] The defendants were found further downstream at around 2.40pm that afternoon by Senior Constable Bruce Francis and Mr Adam Hoffman, Range Manager of the Waiouru Military Training Area. They had set up a fly camp in scrub on Army land approximately 50 metres from the river's edge. The camp was not visible from the river.

[9] Senior Constable Francis seized a Sako rifle with a .223 round in the magazine and a pair of 10x42 Vortex binoculars which Mr Gifford acknowledged were his and a hunting belt with a sheafed knife, Gamin GPS and a single .223 round, found in a pack Mr Buchanan acknowledged belonged to him.

[10] The defendants were given permission to remain where they were overnight as Mr Buchanan was unwell after falling out of his raft multiple times during the day. Mr Hoffman offered to fly Mr Buchanan out in the helicopter he and Senior Sergeant Francis had arrived in, but the three men decided to stay.

[11] While acknowledging only one firearm was found, the prosecution relies on the presumption in s 38(1) of the Act in relation to all three defendants. The prosecution alleges that hunting the deer was a joint enterprise.

The defence case

[12] The defence does not dispute that Mr Gifford shot the deer in the circumstances outlined by Mr Ewart and depicted in the video evidence, nor that Mr Whitehouse was standing next to him when he did so. Mr Buchanan acknowledged this when he gave evidence, and the prosecution witnesses were cross-examined on the basis that is what occurred.

[13] The issue is their location and the location of the deer when they shot it. The defence contends that the prosecution cannot prove beyond reasonable doubt that the defendants shot the deer on the Waiouru Military Training Area land because there is a reasonable possibility they were on Ngamatea Station land.

[14] The defence also challenges the application of the s 38(1) presumption to Mr Whitehouse and Mr Buchanan, on the basis that the firearm was in the sole possession and control of Mr Gifford. (The applicability of the presumption to Mr Gifford is not disputed.)

The charge and what the prosecution is required to prove

[15] In any criminal prosecution, the onus is on the prosecution to prove each of the essential elements of the charge beyond reasonable doubt. Subject to the presumption in s 38(1) of the Act, there is no onus on the defendants to prove or disprove anything.

[16] Mr Gifford and Mr Whitehouse elected not to give or call evidence on their behalf. Again, subject to the presumption in s 38(1), this does not add to the case against them, as it is for the prosecution to prove their guilt, not for them to prove their innocence.

[17] Mr Buchanan gave evidence, but the fact he gave evidence does not in itself change the onus on the prosecution to prove the elements of the charge it has filed to the required standard of beyond reasonable doubt.

[18] In relation to each of these jointly charged defendants (considered separately) the prosecution must prove beyond reasonable doubt that:

- (a) the defendant hunted a wild animal, namely deer;
- (b) on land, namely Waiouru Military Training Area;
- (c) without the express authority of the occupier of that land.

[19] Section 38(1) of the Act provides:

38 Presumptions and obligations in connection with hunting and killing

- (1) In any prosecution for an offence against this Act, proof that any person found in any area where wild animals are usually present had with him or under his control any poison, snare, net, trap, or firearm, or any vessel, vehicle, or aircraft so adapted or equipped as to be capable of being used for hunting or killing any wild animal, or any dog or weapon 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.

[20] As the police assert this presumption applies to each of the defendants, they are required to prove beyond reasonable doubt that each of the defendants:

- (a) was in an area where wild animals are usually present; and
- (b) had with him or under his control any firearm...or any weapon that could be used for the purpose of hunting or killing any wild animal.

[21] If the prosecution proves these things in respect of any of the defendants, then I must presume, until the contrary is proved (on the balance of probabilities) that the defendant concerned was hunting or killing wild animals in the area.

[22] Mr Gifford accepts the presumption applies to him. Mr Whitehouse and Mr Buchanan accept they were in an area where wild animals are usually present but require the prosecution to prove they were in joint possession or control of Mr Gifford's firearm.

[23] The term used in s 38 to refer to location "in any/the area" is broad. In this case, the police elected to charge the defendants with hunting the deer on Waiouru Military Training Area land. I propose to deal with this element of the offence under s 8 as it has been particularised in the charge first, because the application of the presumption to Mr Gifford and my decision as to whether the presumption applies to Mr Whitehouse or Mr Buchanan does not negate the need for the police to prove the location element of the offence under s 8 as they have particularised it in the charges filed.

The location issue

[24] Mr Hoffman's evidence was that the boundary between Zone 9 of the Waiouru Military Training Area and Ngamatea Station is in the middle of the Rangitikei River and that there is no publicly accessible land on either side of the river in that area.

[25] Mr Ewart said those living and working on Ngamatea Station, including his employer, were of the same understanding.

[26] Mr Hoffman referred to the Coal Miner's Act 1954 as the origin of his understanding that the boundary runs through the middle of the river. While fairly conceding he had no first-hand knowledge of the legislation, Mr Hoffman thought it identified rivers in areas which were historically believed to have coal deposits and sought to preserve the right to use the rivers to transport coal.

[27] While my research was unable to locate any 1954 Act, s 261 of the Coal Mines Act 1979 (now repealed) provided:

261. Right of Crown to bed of navigable river–

(1) For the purpose of this section–

“Bed” means the space of land which the waters of the river cover at its fullest flow without overflowing its banks:

“Navigable river” means a river of sufficient width and depth (whether at all times so or not) to be used for the purpose of navigation by boats, barges, punts, or rafts.

(2) Save where the bed of a navigable river is or has been granted by the Crown, the bed of such river shall remain and shall be deemed to have always been vested in the Crown; and, without limiting in any way the rights of the Crown thereto, all minerals (including coal) within such bed shall be the absolute property of the Crown.

(3) Nothing in this section shall prejudice or affect the rights of riparian owners in respect of the bed of non-navigable rivers.

Cf 1925, No.39, s206

[28] Rather than defining the boundaries between private land, or between private land and Crown land, the provision preserved to the Crown the right to the bed of every navigable river and to all minerals, including coal, within those beds. The Crown's right to these resources is confirmed in s 354(1) of the Resource Management Act 1991:

354 Crown's existing rights to resources to continue

(1) Without limiting the Interpretation Act 1999 but subject to subsection (2), it is hereby declared that the repeal by this Act or the Crown Minerals Act 1991 of any enactment, including in particular–

(a) section 3 of the Geothermal Energy Act 1953; and

(b) section 21 of the Water and Soil Conservation Act 1967; and

(c) *section 261 of the Coal Mines Act 1979,*–

shall not affect any right, interest, or title, to any land or water acquired, accrued, established by, or vested in, the Crown before the date on which this Act comes into force, and every such right, interest, and title shall continue after that date as if those enactments had not been repealed.

....

(my italics)

[29] The prosecution and defence produced several maps of the area where Zone 9 and Ngamatea Station are located as exhibits, including the NZ Topo map which also appears as the Outdoor Access Map on the Herenga ā Nuku Aotearoa/Outdoor Access Commission website. This map shows a boundary line for the defence force land which lies almost entirely on their side of the river. In parts there is considerable distance between the orange boundary line and the blue line of the river, while in other parts the boundary line appears almost at the water's edge.

[30] Mr Ewart conceded, when shown an enlarged version of this map on which he had earlier marked the spots where he saw Mr Gifford lining up a shot and where he believed the deer was when it was shot, that both spots were on the right-hand side of the orange boundary line.

[31] Senior Constable Francis, who had produced the Outdoor Access Map for the prosecution on the basis it was publicly available and commonly used by the public to determine where they could and could not go, considered that the orange lines marked the live firing area where unauthorised entry was prohibited, rather than the boundary between the army land and Ngamatea Station.

[32] However, the senior constable earlier conceded that the public would be entitled to rely on the lines delineating the top and bottom of the Army Training Area as the boundary between the Army land and another block of land.

[33] The defence produced a Land Information NZ (LINZ) map which, when enlarged, shows double line boundaries which appear to be intended to delineate each side of the river but do not follow the course of the river (which is understandable, given the river's course and flow constantly shifts and varies).

[34] No certificates of title were produced showing the parcels of land vested in the Crown and acquired for Defence purposes or the parcel of land owned by or leased to Ngamatea Station.

[35] In the absence of any evidence or legal authority to support the prosecution's contention that the boundary between the Waiouru Military Training Area and Ngamatea Station is the middle of the Rangitikei river, and given Mr Ewart's evidence placing the defendants and the deer outside the boundary line shown on the Outdoor Access map, the prosecution has not proved beyond reasonable doubt that the defendants hunted the deer on Waiouru Military Training Area land, as charged. There is a reasonable possibility that they hunted the deer on Ngamatea Station Land.

[36] Of course, if, based on the map evidence produced, the defendants had been charged with hunting the deer on Ngamatea Station land, they would have had no defence to that charge as they did not have the express authority of the occupier of that land to hunt there either.

[37] While formulating this reserved decision, I considered exercising my power under s 133 of the Criminal Procedure Act 2011 to amend the particulars of the charge specifying the land involved. However, having considered the High Court decision in *Powley v NZ Police*, I decided that such an amendment raised the issue of potential prejudice to the defendants and should not be made without giving counsel the opportunity to be heard, which I did not view as practical at this late stage.¹

[38] I consider that in relation to these charges, the issue of the Queen's chain raised by the defence is a red herring.

[39] In the High Court decision in *Mt Algidus Ltd v The Commissioner of Crown Lands*, Boldt J confirmed as erroneous the popular notion that the Queen's chain confers automatic access rights:²

[7] Mt Algidus's claim concerns land which has popularly become known as the "Queen's chain" – land set aside alongside coastlines and inland watercourses for public access and recreation and, at least since the enactment

¹ *Powley v NZ Police* [2023] NZHC 1943.

² *Mt Algidus Ltd v The Commissioner of Crown Lands* [2024] NZHC 2154 at [7] and [8].

of the Conservation Law Reform Act 1990 (the Reform Act), for conservation purposes as well. Those purposes include the maintenance of the bodies of water and their water quality, the maintenance of aquatic life, the control of species harmful to aquatic life, and the protection of the strips themselves.³

[8] The Queen’s chain does not, as some have come to believe, confer an automatic right of access to every beach, lakefront and riverbank in New Zealand. ...

[40] Senior Constable Francis’ evidence was that while the public sometimes assumes that the Queen’s chain exists everywhere, it exists in only a few places and does not apply to the banks of the Rangitikei River. He also referred to extensive information about public access to waterways contained on the Herenga ā Nuku Aotearoa/Outdoor Access Commission website (also the source of the Outdoor Access map relied on in this case).⁴

[41] Importantly, where it does apply, the Queen’s chain is about *access* to riverbanks, lakefronts and beaches. It is not about the right to hunt in those places. As experienced hunters, and in the case of Mr Buchanan and Mr Whitehouse, pest control officers, the defendants undoubtedly knew this.

[42] Mr Buchanan admitted in evidence that he had never relied on the Queen’s chain as a marker for where he was allowed to be when he was earning his livelihood as a pest control officer.

[43] The fact that Mr Gifford had a valid Hunting Permit (produced in evidence) for several areas including the Kaimanawa Forest Park with permit area maps attached supports my view that the defendants knew they were hunting illegally after they left Department of Conservation land on the southern access corridor track (or on Mr Buchanan’s evidence, after they left the edge of the helicopter company’s concession land).

[44] Other evidence which reinforces guilty knowledge on the defendants’ part includes Mr Buchanan’s admission that they lied to Senior Constable Francis when they claimed they had walked all 40 kilometres of the southern access corridor (or pole

³ Section 24C.

⁴ See the tab “Access to Rivers” published 7 January 2022, last updated 14 December 2023.

track) when they had helicoptered in with Kaimanawa Alpine Adventures, for fear of “dragging [the helicopter company] into the situation” and also the prosecution evidence that when Mr Buchanan’s GPS was switched on, they were inside Zone 8 of the Military Training Area. I do not accept Mr Buchanan’s evidence that the defendants were unaware of this at the time.

[45] The defendants do not dispute that they stopped their rafts and Mr Gifford fired at the deer near to and towards Zone 9 of the Waiouru Military Training Camp, a live firing range. Mr Hoffman was clear in his evidence about the safety risks to defence force personnel conducting training exercises in the bush from hunters straying or firing shots into their training area. The defence force relies on hunters to know their responsibilities and act lawfully and responsibly. I am satisfied that as very experienced (and professional) hunters, the defendants were aware of their legal responsibilities and the specific safety concerns associated with the area they were in.

[46] As the police have not proved the location element of the offence under s 8 as they particularised it in the charges filed, the prosecution must fail, and I am not required to determine whether the s 38 presumption applies to Mr Whitehouse or Mr Gifford.

[47] However, even without the presumption applying, I would be satisfied that Mr Whitehouse hunted the deer because the wide definition of “hunt” in the Act includes “searching”. I consider Mr Whitehouse’s actions in pointing towards the deer as Mr Gifford lined up his shot, as described by Mr Ewart and depicted in the video evidence, amounted to searching. In addition, Mr Buchanan’s evidence was that Mr Gifford and Mr Whitehouse were not on the riverbank when Mr Ewart arrived on his quad bike because they had gone to look for the shot deer in the bush.

[48] While I am not going to determine whether the prosecution has proved the presumption applies to Mr Whitehouse or to Mr Buchanan, or proved the hunting of the deer was joint enterprise for which Mr Buchanan is equally culpable, in my view the factual and credibility findings I have made above call into question whether any of the three defendants are fit and proper persons to retain or renew their firearms licences. However, that is a matter for others to determine.

[49] The prosecution has not proved an essential element of the offence under s 8 as they particularised it in the charges filed. I find each of the defendants not guilty.

Judge SB Edwards

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 08/12/2025