CR 03073

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

RAM HEAD OUTFITTERS LTD.

Appellant

- and -

THE GOVERNMENT OF THE NORTHWEST TERRITORIES

Respondent

Appeal from conviction for abandoning edible caribou meat contrary to *Wildlife Act*. Crown appeal from sentence. Both appeals dismissed.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J. E. RICHARD

Heard at Yellowknife, Northwest Territories
on May 24, 1996

Reasons filed: August 7, 1996

Counsel for the Appellant: Austin Marshall

Counsel for the Respondent: John Donihee

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REASONS FOR JUDGMENT

1 The appellant company was convicted of an offence under the *Wildlife Act* of these territories, i.e., abandoning edible caribou meat near the appellant's camp in the MacKenzie Mountains. It appeals that decision to this Court, stating that there was insufficient evidence at trial to justify the conviction.

2 The appellant is an outfitter duly licensed under the *Wildlife Act*. It provides services to hunters who wish to hunt big game, including caribou. It is an offence under the *Wildlife Act* to waste or abandon any caribou meat that is fit for human consumption (s.57(1)(a)).

3 As noted by this Court and the Territorial Court in previous cases, the regulation of hunting activities is a matter of considerable significance in the Northwest Territories, as it is in the Yukon. An important public interest, an important public resource, is at

stake. The people of these territories, through their legislators, have decreed that hunting activities, for sport or otherwise, are not to interfere with the conservation of wildlife resources such as caribou.

4 In a similar case in our sister territory, Judge Faulkner stated:

> The abandonment of edible meat is a persistent problem in the guiding and outfitting industry. Trophy hunters do not go hunting to obtain meat. They go for the hunt and the trophy. The hunter usually lives a long way away in another country. Carting the meat home involves inconvenience and expense.
>
> The outfitter does not generally want or need all of the meat his operations produce. Taking it out involves time, effort, and especially where aircraft must be used, considerable expense.
>
> The location is usually remote and unlikely to be discovered. Scavengers can usually be counted on to dispose of the evidence within a few days. *R v Marsters* [1994] Y.J. No. 83 (T.C.).

5 In the present case the trial judge heard evidence for two days. The evidence indicated that the appellant had operated from its camp during the 1994 season, providing its usual outfitting services to its hunter clientele. At the camp the appellant provided meals to its employees and clientele, including meals prepared with freshly-killed caribou meat. It was also the practice to temporarily store at the camp the edible portions of any caribou which had been killed by the hunters. This meat was transported from the kill site to the camp by the appellant's employees on a regular basis, and then subsequently taken out of camp by the hunters or by the appellant. The appellant often took this excess edible meat to the people of the neighbouring communities of Fort Norman and Norman Wells.

6 On September 27 - 28, 1994 the appellant broke camp, as it was the end of the season. The trial judge, following a detailed consideration of the evidence about that event, made certain findings of fact. He found that, in the course of clearing camp, two of the appellant's employees, Lucas and Unland, were instructed to dispose of certain meat remaining in camp, away from the campsite. Although certain witnesses described this meat as scraps or trimmings, the trial judge found that that discarded meat included a hind quarter with only some prime cuts taken from it. He found that the employees dumped this meat beside a pond some distance from the appellant's camp along the Canol Road where it was discovered several hours later by Ken John, a wildlife officer. Mr. John testified that it was his observation that the meat had been freshly deposited there, and was partly frozen and in excellent shape. In his view the meat was suitable for human consumption.

7 At trial the appellant advanced a defence of due diligence. The trial judge examined the evidence on this point and found that the appellant had failed to take steps to prevent wastage of this meat. He found that the appellant could have easily taken this meat to a nearby camp or to the nearby wildlife officer for proper disposition. The appellant did not satisfy the trial judge that it had indeed been diligent in its efforts to prevent wastage of this meat. He found that the appellant merely dumped the meat at the side of the road, in the process of clearing out of camp, as a matter of convenience.

8 On this appeal the appellant argues that the trial judge made three errors:

(1) in finding that the meat was fit for human consumption;

(2) in concluding that it was the appellant's employees who had abandoned this meat;

(3) in finding that the appellant failed to exercise due diligence.

9 My function on this appeal is to determine whether any of the findings or conclusions of the trial judge were not supported by the evidence before him, or were unreasonable, or were wrong in law. s.686(1) and s.822(1) C.C.; *R v Gold Range Investments Ltd.* [1995] N.W.T.R. 264 (C.A.).

10 I have considered the oral and written submissions of the appellant's counsel respecting the alleged errors, and have reviewed carefully the transcript of the evidence before the trial judge and am of the view that the trial judge's conclusions and findings were reasonable and amply supported by the trial evidence. Further, in making his decision he correctly stated the applicable legal principles. No decision during the trial was wrong in law.

11 A properly-instructed jury which had heard the evidence in this case, acting judicially, could have reasonably convicted the appellant. I find therefore that there is no merit in any of the grounds mentioned. I will discuss further only the first of those grounds.

12 The main focus of the appellant's argument is on the sufficiency of the evidence on the issue of fitness of meat for human consumption. The trial judge relied primarily on the testimony of Mr. John, the wildlife officer. After hearing submissions from trial counsel on the point, the trial judge allowed Mr. John to give an opinion as to whether the meat that he observed and seized was fit for human consumption.

13 Mr. John had been a wildlife officer and conservation officer for over twenty years. He had worked as a big game guide for a number of years. Throughout his adult life he had eaten solely wild meat to the exclusion of commercially available meat. He had prepared wild meat for consumption by himself and others for over twenty years. The trial judge found that Mr. John had a familiarity with wild meat far beyond that of the ordinary lay person. The trial judge made no error in receiving Mr. John's opinion evidence on the point. There is no requirement of formal training or professional qualification in one who offers opinion evidence. Mewett, Witnesses, at p.10 - 16. In *Rice v Sockett* (1912) 8 D.L.R. 84 (Ont. C.A.), Falconbridge C.J. quoted the following explanation:

> "The derivation of the term 'expert' implies that he is one who by experience has acquired special or peculiar knowledge of the subject of which he undertakes to testify, and it does not matter whether such knowledge has been acquired by study of scientific works or by practical observation; and one who is an old hunter, and has thus had much experience in the use of firearms, may be as well qualified to testify as to the appearance which a gun recently fired would present as a highly educated and skilled gunsmith".

14 The appellant submits that it was not open to the trial judge to make a finding of fitness in the absence of scientific evidence, e.g., laboratory analysis of the meat in

question. The statute contains no such requirement as a prerequisite to a finding of fitness. Counsel has not provided any case authority for such a proposition. I find no merit in this submission.

15 It was for the trial judge to weigh the sufficiency of the evidence regarding fitness and he did so. It has not been established on this appeal that the trial judge made any error in that determination.

16 For these reasons, the appeal from conviction is dismissed.

Sentence Appeal:

17 The Crown has appealed the sentence imposed upon the appellant following its conviction.

18 The appellant was convicted of an offence contrary to s.57(1) of the *Wildlife Act*, i.e., wasting or abandoning big game meat that is fit for human consumption. No specific punishment is provided for a s.57(1) offence.

19 The general punishment provisions are contained in s.91:

> 91. Every person who contravenes a provision of this Act or the regulations for which no specific punishment is provided is guilty of an offence and liable on summary conviction to a fine not exceeding $1,000.00 or to imprisonment for a term not exceeding one year or to both.

20 The Act also provides for a further form of punishment, i.e., the suspension or cancellation of an outfitter's licence, in s.12.

> 12(1) Where a person is convicted of an offence under this Act or the regulations, the justice making the conviction may
>
> (a) cancel any licence or permit held by that person,
>
> (b) suspend any licence or permit held by that person for the period that the justice thinks fit, and
>
> (c) prohibit the issue or renewal of any licence or permit to that person within the period of time, not exceeding five years, that the justice may direct.

21 In the present case, the trial judge imposed a fine of $1,000.00. He declined to suspend or cancel the appellant's licence. In the course of imposing sentence, he stated that in his view the maximum fine provided by the statute was inadequate. He considered the circumstances of the case, including the amount of meat involved. He stated that he would have imposed a fine well in excess of $1,000.00 if the statute allowed him to do that. He was of the view that this particular offence, committed by this particular offender, called for a fine but not a suspension or cancellation of the licence. I cannot see that in that determination he made any error in principle or in the exercise of his discretion.

22 The trial judge says the maximum fine is too low. I agree. The Crown agrees. But it is for the legislature in its wisdom to increase, or not, the maximum fine.

23 The Crown submits that in these circumstances the trial judge should have, in addition to or in substitution of, imposing a maximum fine of $1,000.00 , suspended or cancelled the appellant's licence. The trial judge declined to do so, even after taking into consideration this offender's record of previous convictions under the *Wildlife Act.* One of those earlier convictions was also for wasting edible meat. The trial judge properly noted that the prior convictions had occurred subsequent to September 1994, the date of commission of the present offence.

24 Upon weighing the facts of this case, in particular the amount of meat involved, and the principles of sentencing, I cannot say that the sentence imposed is unfit. Accordingly, it is not for me to interfere with it. s.687, s.822 C.C.

25 I agree with the trial judge that it would have been improper for him to suspend or cancel the appellant's licence merely because he disagreed with the level of maximum fines established by the legislature.

26 The appeal from sentence is dismissed.

J. E. Richard

J.S.C.

Dated at Yellowknife, Northwest Territories
this 7th day of August, 1996.

Counsel for the Appellant: Austin Marshall

Counsel for the Respondent: John Donihee

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