

Citation: *R. v. Arey and Meyook*, 2006 YKTC 105

Date: 20060926
Docket: T.C. 06-11068
Registry: Dawson City

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

**LARRY AREY and
JONAS MEYOOK**

Appearances:
Lee Kirkpatrick
Emily Hill

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): I am dealing with the matter of Larry Arey and Jonas Meyook. Both are from Aklavik. They have plead guilty to an offence contrary to s. 32(1) of the Yukon *Wildlife Act*.

[2] Very briefly, the circumstances are as follows: On April 9, 2006, Mr. Arey and Mr. Meyook took snowmobiles across the border to the Yukon Territory in the Richardson Mountains for the purpose of hunting. They spotted a ram, which they shot and wounded. The ram ran down the mountain and they were able to shoot it again and kill it. The ram was located in a fairly steep part of the mountain. They parked their snowmobiles some 150 yards up the mountain and went down and took the cape and

head of the sheep and, in effect, left all of the rest of the meat behind. A small amount of meat was initially taken but I was advised that even that small amount was later abandoned.

[3] It is important to note that the cape and head weighted approximately 35 pounds. I was advised that the edible meat on a sheep, a sheep being a relatively small animal, might total 70 pounds. They chose to take the cape out. They abandoned the meat.

[4] I am satisfied, based on all of the information provided, that the steepness of the grade did not preclude them from removing the edible meat. Yes, they might have had to make more than one trip to do it, but it was clearly within their ability and means. They chose not to do it.

[5] Photos of the sheep head and cape were entered as exhibits. It is clear that this was a very healthy, mature ram. When one considers that only the saleable portions of this sheep were taken and the edible amounts left, it is certainly open to this court to conclude that the intention all along was not to take the edible meat, that the intention all along was to leave the meat behind and to only take the saleable portions. That inference gains support when one considers that there was no information or evidence suggesting that any tarps or backpacks were taken along, or plastic, equipment that would normally be used to carry meat out.

[6] Nevertheless, while that evidence is compelling, I am not prepared to make that finding today, and, indeed, the Crown might very well have laid different charges or additional charges had it been persuaded that that was the case. I note, however, that the circumstances strongly point in that direction.

[7] I cannot say that the accused were initially cooperative with the Wildlife investigators. On the other hand, on this appearance here today, they have plead guilty and accepted responsibility at a relatively early stage of the proceeding. This is an important consideration in the sentence that I impose today.

[8] I am also satisfied that the range of dispositions for wasting meat in this Territory, depending on the animals taken, range from \$1,000 to \$10,000, depending on all of the circumstances. Madam Crown has placed before me several Yukon cases involving sheep. The fines were significant. I think it is fair to say that there were a number of mitigating circumstances in those cases, including the fact that at least some of the edible meat was taken. That is not a mitigating factor in this case.

[9] It is an aggravating fact that both individuals have a prior conviction for inappropriate hunting, although it is evident, from the fines imposed at the time, that these offences were not considered to be nearly as serious as the matters before the Court today.

[10] There are some mitigating circumstances. They pled guilty on a first appearance. They have expended considerable funds in travelling here, to be here in person today. I understood from the submissions that each individual spent approximately \$500 to attend court. Both individuals live a traditional lifestyle and have limited financial means to pay the substantial fine that is being asked for today.

[11] I think it is important to note that, in this particular case, we are dealing effectively with one animal, hunted by the two individuals. The total fine should be an appropriate response to the wasting of one animal.

[12] On the other hand, these same facts increase the moral responsibility of the accused. Two able-bodied individuals should have been able to carry the meat out had they decided to do so.

[13] I have mentioned the other aggravating factor and that is the “cultural breach of trust,” which, in my view, is a serious matter. I am going to address that as follows. I shall request that the Crown prepare a letter, directed to the Chief and Council in Aklavik, that sets out the circumstances of this conviction in relatively brief form, and the fact that these two individuals appeared in court and pled guilty to these charges.

[14] In Yukon communities where I sit, it would not be uncommon for elders or clan leaders to stand up at a sentencing like this and speak to the men who wasted meat and to speak to them in harsh terms. I trust that this issue will be addressed in their community as a result of that letter being sent to the Chief and Council.

[15] Let me say that what the Crown has asked for is not unreasonable. In fact, it is very fair. That amount, in my view, a total of \$6,000 as a response to this event, is not out of line. However, I have taken into account two additional factors and that is, the limited means to pay, which is an important factor, as well as the significant cost to the accused to travel to Whitehorse to deal with this matter.

[16] In all of the circumstances, taking into account these mitigating factors, I am imposing a fine of \$2,000 each, on both of you. I am giving you a period of nine months to pay.

[17] If you wish an extension, of the time to pay, you should contact the Court, and you can do that by telephone or by letter or by e-mail, and give the reasons why you need an extension and the Court will consider whether to grant you the extension. If the Court sees that you have made some effort to pay, you have made some payments, the Court is usually open to granting the extension. On the other hand, if you have made no payments, the Court will consider that a snub and probably look at it in a different way.

[18] You have also requested, in these circumstances, Madam Crown, that there be a forfeiture of the head and cape. I did not hear anything from defence counsel. I think that would normally go as a matter of course.

[19] MS. HILL: I didn't speak to the gentlemen about that. If I could just have a moment.

[20] THE COURT: Let me just say that it would be a very novel submission if you were to persuade me to the contrary.

[21] MS. HILL: It's no issue.

[22] THE COURT: There will be a forfeiture of the head and cape, and there will be a one-year prohibition pursuant to s. 173.

[23] MS. KIRKPATRICK: Right. And, Your Honour, the way that that reads is, basically, the Court can order that the person shall not possess, apply for, or obtain a licence or permit of the kind that is related to the offence, as specified by the Court.

[24] THE COURT: That the person not possess, apply for or?

[25] MS. KIRKPATRICK: Or obtain a licence or permit of any kind that is related to the offence. So perhaps Conservation Officer Meister can indicate the type of licence or permit that they would be prohibited from obtaining and most likely to obtain.

[26] OFFICER MEISTER: Yes, Your Honour, normally we would regard that as hunting licences, possibly special permit draws they wouldn't be eligible for, and any big game seals that come under a hunting licence.

[27] MS. KIRKPATRICK: And export permits, as well.

[28] OFFICER MEISTER: And export permits, trapping licences.

[29] THE COURT: All related to the Yukon Territory?

[30] OFFICER MEISTER: That's correct.

[31] MS. KIRKPATRICK: So we could just say any Yukon licence or permit issued under the *Wildlife Act*.

[32] OFFICER MEISTER: That's correct, that would cover it.

[33] THE COURT: That seems to make the prohibition Yukon based, and therefore would not apply to subsistence hunting.

[34] MS. KIRKPATRICK: No, that doesn't apply.

[35] THE CLERK: And fishing?

[36] THE COURT: No, does not apply to fishing.

[37] MS. KIRKPATRICK: The second part of that would be an order that the person shall not engage in any activity for which they would be required to hold a licence or a permit.

[38] THE COURT: Not engage in any activity for which they would be required to hold such a licence or permit. Seems to me to be somewhat overlapping or redundant. They really amount to the same thing as far as they are concerned.

[39] MS. KIRKPATRICK: Right. I think the second would allow for a charge, in the event that they purported to hunt without obtaining a permit, that it would not only be illegal hunting but contrary to this specific order.

[40] THE COURT: Well, there would be two charges flowing as opposed to one, but the activity would be prohibited; the consequences would result in two charges.

[41] Madam Clerk, if you need any assistance with that, I am sure Ms. Kirkpatrick will either provide you with a copy of the relevant legislation or assist you with the wording, but I think we are in agreement that this covers the activity and licensing in the Yukon.

[42] Is there anything else that I have not addressed?

[43] MS. HILL: That's fine.

[44] THE COURT: There will be documents for them to sign?

[45] THE CLERK: Yes.

[46] MS. KIRKPATRICK: I hadn't indicated to either Mr. Arey or Mr. Meyook that I would be seeking a victim fine surcharge so I think it would be appropriate that it be waived.

[47] THE COURT: I think they are going to have enough difficulty paying these fines, and I would rather the fines got paid and not worry about the surcharge.

[48] The documents will be done in about five minutes downstairs, so you do not have to worry about coming back in the morning.

LILLES T.C.J.