

Citation: *R. v. Leef, McHale, and Ruby
Range Outfitters*, 2009 YKTC 23

Date: 20090226
Docket: 08-04344
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Barnett

REGINA

v.

RYAN KENNETH LEEF, GREGORY MCHALE
and RUBY RANGE OUTFITTERS (1989) LTD.

Appearances:
Zebedee Brown
Nicholas Weigelt

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] BARNETT T.C.J. (Oral): Ryan Leef and Gregory McHale, and the corporation Ruby Range Outfitters (1989) Ltd. are jointly charged in this Information with offences under the *Wildlife Act* and the Regulations.

[2] Mr. Leef is an outfitter, and Mr. McHale is a guide. When I use those words, I am talking about within the meaning of the *Wildlife Act* and the Regulations. Mr. Leef, the outfitter, is, as I understand it, a director involved in the corporation Ruby Range Outfitters, which holds the concession, giving it the exclusive right to guide hunters, that would be non-resident hunters, in an area on the east side of Kluane Lake. It is known as Outfitting Concession 12. All of the game management subzones in that area are within Game Management Zone 5.

[3] There are two counts in the Information. Count 1 has been dismissed, but I am going to say a little about Count 1. It reads that on the 31st day of October, 2007, Leef and McHale used a vehicle, that would be an all-terrain vehicle, for the purpose of hunting or transporting wildlife within Game Management Subzone 5-34.

[4] The Wildlife Regulations do provide that no person shall use a vehicle for the purpose of hunting or transporting wildlife within Subzone 5-34, except on a defined road within that subzone.

[5] So in late October, Mr. Leef and Mr. McHale were engaged in hunts for two clients, a Mr. Phil Phillips from Colorado, U.S.A., and a Mr. Dwight James from somewhere in Ontario. Mr. Phillips got his ram, because that is what they were hunting for, on the 28th of October. The season ended on the 31st of October, and on the 31st of October Mr. Leef and Mr. McHale were out with Mr. Phillips (sic), hoping to get, and they did get, a ram that day. They had been camped --

[6] MR. BROWN: Excuse me, sir. You said Mr. Phillips. I think you meant Mr. James, on the 31st of October.

[7] THE COURT: I am sorry. It was James who was looking for a ram on the 31st of October, and if I mentioned Mr. Phillips on the 31st, that was simply a mistake.

[8] The camp that they were based in was called the Cove camp, and that is in Management Subzone 5-31. There is an ATV; there are a couple of ATVs at the camp. No problem; no prohibition about using the ATVs in that subzone, but the Regulations

do restrict the use of ATVs in Subzone 5-34. It is pretty clear from the evidence that I heard that somebody made a complaint to the conservation officers in Haines Junction, and the complaint, pretty clearly, had to do with what somebody thought they knew about the presumed wrongful use of an ATV. Mr. Osborne had a duty to investigate the complaint.

[9] It is also pretty clear to me that Mr. Osborne, the conservation officer, interprets the regulation somewhat differently than does Mr. Leef, who used to be a conservation officer and also an RCMP officer. I sense that the difference of opinion that these two men had may have to do with the prohibition against hunting using an ATV in Subzone 5-34, and I sense that Mr. Leef would say whatever use might have been made of an ATV that day in 5-34, it was not hunting.

[10] That is my sense of things, but Count 1, as I say, has been dismissed. But there was that complaint that had to be investigated, and you have not heard me express any opinion about whether the complaint was well-founded or not. If they were not hunting or transporting wildlife in 5-34, there was not an offence, and it was not an offence to use the ATV in 5-31, but that is how Mr. Osborne got involved.

[11] Perhaps the complaint was made because there are tensions between outfitters and resident hunters. Perhaps it was made by somebody who thinks that too many sheep are hunted in the Ruby Range area. I did hear evidence that suggests that some people think that the guiding should be cut back in that area, or the hunting generally should be cut back. I do not know, but what I do know is that Mr. Osborne properly had to investigate the complaint that he received.

[12] The active charge on this Information is Count 2, and that is the count that says that on the 2nd of November, 2007, here in Whitehorse, Mr. Leef and Mr. McHale (sic) provided information under the *Wildlife Act* --

[13] MR. WEIGELT: Your Honour, it's not my usual habit to interrupt the Court --

[14] THE COURT: Mr. Leef and Ruby Range Outfitters --

[15] MR. WEIGELT: Thank you.

[16] THE COURT: -- provided information under the *Wildlife Act* that was, and I am quoting from the Information, "false." So, a non-resident hunter is required to provide certain information under the *Wildlife Act* after a hunt, whether successful or not, and they do this on a form. Forms are issued carefully, numerically sequenced, to outfitters, and conservation officers keep track of these forms. When the form is completed, it has to be signed by the non-resident hunter. The normal practice is that it gets signed by the guide also, Mr. McHale in this case, and it has to be signed by the outfitter, Mr. Leef.

[17] These forms have a real purpose. There is a very proper need to monitor, to track where different wildlife is being hunted in the Yukon, and how many animals are being successfully hunted by hunters generally, in particular by non-resident hunters. I am not a judge from the big city prone to making the kinds of mistakes I have seen made in some cases by judges, perhaps who do not know the difference between a deer and a caribou or a black bear and a grizzly bear, or do not think it is a big deal if

you say that you hunted the animal in one location, where really you hunted it hundreds of kilometres in a different location. There is a real purpose to requiring these forms, and they have to be filled in and filed within a rather few days after the end of the hunt.

[18] Mr. Phillips hunted his ram on the 28th of October in Subzone 5-31. He was guided during his hunt by Mr. McHale, and Mr. Leef, of course, was the outfitter. They stayed in camp. While Mr. Phillips was just staying around camp, but Mr. James was out getting his ram.

[19] They tried to leave in the evening on the 31st of October, take the boat across Kluane Lake, down Talbot Arm, cross the lake to Destruction Bay, and the weather was just too severe. They had to turn back. They were not able to leave the next day, the 1st of November, although they made a number of tries. They were, with some difficulty, able to get out on the 2nd of November. By that time, I believe it was Mr. James who had already missed his plane, but they were hoping to get into Whitehorse, get on the plane, that would be Mr. Phillips and Mr. James, on the late flight out, but before they could do that, both Mr. Phillips and Mr. James had to go to the game office in Whitehorse to have the rams measured up and approved for export. So some paperwork had to be done.

[20] Mr. James's OHE form, the one that gets signed by the hunter, the outfitter and the guide, had been in the camp and it had been completed. So there was not quite as much paperwork for him to have done at the game office in Whitehorse as there was for Mr. Phillips, but Mr. Leef had not taken, quite understandably, Mr. Phillips' form to the hunting camp with him. That was back at wherever he was residing; I think in Haines

Junction. They did not stop and pick up that form on the rushed trip into Whitehorse, assuming that they could get a replacement form at the game office in Whitehorse and complete it there. Normally, Mr. Leef says that he, as the outfitter, completes the information in the form and then it gets signed by the hunter, by the guide and by himself, all certifying it to be correct.

[21] They were rushed, and when Mr. Leef completed the form, that is the form in the book, Exhibit 1, and these are sequentially numbered forms and in Mr. Phillips' case the number was 2672, Mr. Leef wrote in that the ram hunted by Mr. Phillips had been killed in Subzone 5-36. It had actually been killed in 5-31. He made a mistake. He testified and he said, "It was a human error on my part. I was in a rush. I looked at the map there in the game office and I wrote down the wrong number." You might think that he would have known, almost without having to look at the map, but back then, in 2007, that was not quite the case. I am sure that if it were to happen again he would not need to look at the map. He knows the zones better than anybody else, probably, now. But he wrote in the wrong number and he says it was simply a mistake, a human error. The right zone, the animal was hunted in Ruby Range concession area, but the wrong subzone.

[22] Mr. Osborne had an investigation underway, properly so. He meets up with Mr. Leef again in the Whitehorse office on the 15th of November, 2007, not even two weeks later. He tells Mr. Leef that he wants to talk to him when he is free. Pretty much, pretty quick he asks Mr. Leef to show him on a map where Mr. Phillips hunted his ram and, without any hesitation, Mr. Leef takes the map and he shows on the map where it was that the Phillips ram was hunted, and he showed him correctly, the correct location in 5-

31. It is on the basis of those essential facts that Mr. Leef and the corporation are charged, not Mr. McHale - thank you, Mr. Weigelt, for pointing that out - but the charge is that Mr. Leef provided false information. I would not expect somebody in Mr. Phillips' situation to look at that form and say to Mr. Leef, "Oh, are you sure it was in 5-36 not 5-31?" You know, he knew he was hunting in a certain concession area but he did not testify about any knowledge that he might have had about the boundaries of the various subzones, and I would be frankly very surprised if he did know where the various subzones were in a particular sense although he, Mr. Phillips, was an experienced hunter.

[23] But in any event, he did not pick it up. Mr. McHale did not pick it up. Mr. McHale, he is not charged, but he was a little careless, too. And Mr. Leef, who made the mistake, obviously did not pick it up before he signed it, and now he is charged.

[24] In my view, this case can be decided by referring to the provisions of the *Wildlife Act*, and in particular s. 118(1) which talks about misleading information or false information. In this case, it is alleged to be false information. I do not think that anything turns on s. 180 in this case. I have gone back and quickly read the decision of Mr. Justice Dickson, the Chief Justice of the Supreme Court of Canada, in a case that is well known to Mr. Weigelt and Mr. Brown. That is *R. v. Sault Ste. Marie (City)*, [1978] S.C.J. No. 59. It goes back to 1976. It deals with the difference between criminal cases in a full sense, absolutely strict liability offences, and offences that fall somewhere in between. There are the strict liability ones, and the others at the far end are absolute liability offences.

[25] At page 1325, paragraphs were not numbered back in 1978, but just quoting from Mr. Justice Dickson:

... while the prosecution must prove beyond [a] reasonable doubt that the defendant committed the prohibited act, the defendant [must] only establish on the [basis] of probabilities [that he has a] defence of reasonable care.

It is also said that in these cases it is up to the accused person to demonstrate that he took all reasonable care.

[26] Then I have looked up in The New Shorter Oxford dictionary the meaning of the word "false". The definitions are not short, but I think even without looking it up in the dictionary, a false statement is something more, in the minds of most persons, than a statement which is incorrect but falls short of being false. I am satisfied on the evidence that I heard that Mr. Leef did not knowingly, deliberately, make an untrue and false statement. He certainly made an incorrect statement.

[27] When I say that the evidence satisfies me that his statement was not false, there are some particular areas of the evidence that I take into account. First, on the 15th of November, when Mr. Osborne asked Mr. Leef to show him using the map where the Phillips ram was hunted, Mr. Leef did that and correctly located the kill site.

[28] Second, Mr. Phillips was not your ordinary hunter. Mr. Phillips is the host of a TV hunting show, a hunting show that attracts pretty large audiences. On his hunt, his cameraman was there recording the hunt, and the film was shown on the Outdoor channel, I am told, at least six times, and I gather it can be viewed here in the Yukon if you have a satellite, as many people do.

[29] So it is simply inconceivable that Mr. Leef was trying to fool anybody and conceal the actual hunting location. Mr. Osborne was able to look at the photograph of the hunt, the kill site, and he knew just almost exactly where that was. Mr. Leef made the sort of mistake that I am sure he regrets, but I think it was he who said, or it might have been Mr. Weigelt, that to err is human. None of us are perfect. We got rid of the last person who some thought was perfect a couple of thousand years ago. Mr. Leef made what was perhaps fairly characterized as a sort of “dumb mistake” in the hurry of the late afternoon, but not the sort of mistake which a judge can, in my view, properly censure him for by finding him guilty, and Count 2 is dismissed.

[30] You have not heard me say anything that would suggest, I think, that the requirements of the *Act* and the Regulations are to be trivialized. They are important requirements. You have not heard me say anything that would suggest I think Mr. Osborne did anything other than act correctly, and his boss, Mr. Russell, said he had total confidence in him. But Count 2, if I understand matters correctly, and I am pretty certain I did, was the subsidiary coming along as Officer Osborne investigated the original, what I am going to call, main complaint. I would not want anybody to think that I sense that charges such as this are to be trivialized, but Count 2 is dismissed.

[31] Thank you, Mr. Brown. Thank you, Mr. Weigelt.

BARNETT T.C.J.