Citation: *R.* v. *Candow*, 2006 YKTC 45 Date: 20060421
Docket: T.C. 05-05813
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Faulkner

REGINA

v.
ROBERT WAYNE CANDOW

Appearances:
Lee Kirkpatrick Counsel for Crown
Keith Parkkari Counsel for Defence

REASONS FOR JUDGMENT

[1] FAULKNER C.J.T.C. (Oral): In early October of 2005, Robert Candow went on a hunting trip in the Klusha Creek area of the Yukon Territory. Accompanying him were two friends, Mr. Lovell (phonetic) and Mr. Demchuk (phonetic). Both Mr. Lovell and Mr. Demchuk were successful in shooting a moose. The following day, Mr. Candow was hunting and was watching two moose; one rather small and the other a much larger, trophy-sized animal. Mr. Candow, not unnaturally, wanted the larger animal. However, it was the smaller moose that came into range and Mr. Candow shot it and affixed his tag to the carcass.

[2] Mr. Candow and his companions gutted the animal but were unable to transport it to camp that day. The following day, Mr. Candow returned to the kill site to deal with the moose he had shot. While he was there, the larger trophy moose appeared and came into range. Mr. Candow remembered that he had in his possession a moose tag that had been issued to his wife. He decided that, with the aid of the second tag, he could (as he later said in his statement to the investigating officer) "beat the system". He thereupon shot the second moose. Mr. Candow then removed his tag from the smaller moose and affixed it to the larger animal and placed his wife's tag on the smaller moose.

[3] Mr. Candow's hunting companions were very upset with what Mr. Candow had done and they refused to help Mr. Candow deal with the second, illegally shot moose and further refused to help him with the smaller moose, since it now had a fraudulent tag attached to it. To deal with the latter problem, Mr. Candow switched the tags again and was able to transport the smaller moose home. Later, he enlisted the help of another man, who was ignorant of what had occurred, to retrieve the trophy moose. Once he had both animals at home, Mr. Candow switched the two tags yet again.

[4] Conservation officers soon came calling. Initially, Mr. Candow told them that his wife had shot one of the moose, but on being given to understand that this story was untenable, he soon admitted what had occurred and signed a statement.

[5] In his submissions, Mr. Parkkari claimed that Mr. Candow was at least partly moved to shoot the second moose because he feared that the meat from the first moose had spoiled; secondly, through a desire to provide meat for others. I accept

neither of these assertions, which suffer from the twin defects of not being given in evidence and being entirely at odds with Mr. Candow's statement to the authorities. These assertions, in my view, are simply nothing but *ex post facto* justifications for what occurred.

[6] Subsequent to the events I have described, Mr. Candow was charged with killing a greater number of moose than was permitted at that time or place contrary to s. 15(1) of the *Wildlife Act*, R.S.Y. 2002, c. 229. As well, on Count 2, with using a punched or altered moose seal to provide false information contrary to s. 33(2) of the Wildlife Regulations.

[7] Mr. Candow has entered a guilty plea to both counts. However, he argues that as both charges arise from the same transaction or delict, I should enter a conviction on one count only.

[8] I disagree with this submission. The first charge relates to the killing of the trophy moose and nothing but. The second charge relates to Mr. Candow's attempt to cover up what he had done by using his wife's tag, which is an entirely separate, though admittedly, not entirely unrelated, action. Thus, in my view, it is appropriate to enter convictions on both counts and I do so.

[9] The real issue before me is the penalty to be imposed. As of 2002, the fines under the *Wildlife Act* have been increased to a maximum of $50,000, one year in jail or both. It is important to note that the *Act* provides even higher penalties of $100,000 and two years imprisonment for second offenders, for offenders whose offence was

committed for a commercial purpose and monetary gain, and for those whose offences were in relation to specially protected wildlife.

[10] The cases make it clear that there are a number of special considerations in sentencing for wildlife offences in the Yukon. Firstly, it is clear that wildlife in the Yukon have not only an intrinsic value in and of themselves but form a particularly valuable resource within the Territory. Secondly, the Yukon is very large and much of it is very remote, rendering overseeing of wildlife laws very difficult and, coincidentally, making the temptation to cheat all the greater. Thirdly, as previously indicated, the legislature has recently increased some five-fold the range of fines that may be imposed. This is an indication of the seriousness with which wildlife offences are viewed within this Territory.

[11] There is another consideration in all of these cases, and that is that offences of this kind are generally committed by persons, like the present defendant, who have made a conscious decision to act illegally in the calculated belief they can get away with it. In such circumstances, as courts in the Yukon and elsewhere have repeatedly noted, deterrence must be the primary focus of sentencing. I was referred to a number of previous cases from the Yukon and elsewhere dealing with fines imposed on individuals for wildlife infractions and infractions of similar enactments. While these precedents are helpful, they must always be viewed with some degree of caution.

[12] Obviously, the circumstances of the offence and the offender vary wildly from case to case. Moreover, comparison of monetary penalties can be difficult, as the maximum penalties that were in place when most of these cases were decided was less

than it is now. As well, if one looks at a case from 1980, for example, where a fine of $2,000 was imposed, account must be taken of the difference in the cost of living, and hence the bite or sting of a $2,000 fine then as opposed to now. Suffice it to say that penalties in the cases cited range from a low of $750 in the *R*. v. *Brenner* case, [2006] Y.J. No. 1, to a high of $10,000 in *R.* v. *Cartwright* (12 May 1997, Whitehorse 97-11009 T.C.Y.T). But even higher fines have been imposed on individuals as, for example, in *R.* v. *Van Mackelberg*, [1992] Y.J. No. 90, where fines totalling $12,000 were imposed.

[13] In fixing the quantum of sentence, I certainly take into account Mr. Candow's guilty pleas. I take into account that he has no prior record of any kind. I take into account that although he is steadily employed, he is a man of relatively modest means. I take into account that he has, as his counsel described, suffered considerable stress and embarrassment as a result of these charges. At the same time, one must not lose sight of the fact that this was a deliberate act, albeit one quickly decided on. I also take into account that in using his wife's tag, he risked involving his wife in this scheme. I take into account as well that he placed his hunting companions in a very difficult position. Fortunately, they acted throughout in a principled fashion and refused to become complicit in what had occurred.

[14] In my view, a fit penalty on Count 1 is a fine of $5,000. On Count 2, I impose a fine in the amount of $1,500. One half of each fine shall be paid to the Conservation Fund established pursuant to s. 186 of the *Wildlife Act*. The illegally taken moose is forfeit. Mr. Candow is prohibited from hunting for a period of two years and must successfully complete the Hunter's Education and Ethics course before applying for any further licences or permits under the *Wildlife Act*.

[15] Do you require time to pay the fines?

[16] MR. PARKKARI: I was discussing the matter with Mr. Candow. With giving up any luxury and just dealing with his necessities of life, he has an excess of about $500 per month. I would ask for one year time to pay.

[17] MS. KIRKPATRICK: I am not opposed.

[18] THE COURT: I will grant nine months time to pay on Count 1 and one year on Count 2.

[19] MS. KIRKPATRICK: Thank you, Your Honour.

[20] THE COURT: Thank you.

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FAULKNER C.J.T.C.