

Citation: *R. v. Robinson, Robinson, Chalifoux, and Dutton*, 2012 YKTC 111

Date: 20121001
Docket: 09-08558
09-08559
11-04476
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Cozens

REGINA

v.

ALAN ROBINSON, JOHN ROBINSON,
DREW CHALIFOUX, and JAY DUTTON

Appearances:
Lee Kirkpatrick
Robert Dick

Ken Nowicki

Counsel for the Territorial Crown
Appearing for Accused Alan Robinson and
Accused John Robinson
Appearing for Accused Drew Chalifoux and
Accused Jay Dutton
(by telephone)

REASONS FOR SENTENCING

[1] COZENS C.J.T.C. (Oral): Alan Robinson has pled guilty to his offences under s. 113, s. 133(b) and s. 6 of the *Wildlife Act*, R.S.Y. 2002, c. 229, being Counts 1, 4, and 10 on the Information before the Court. John Robinson has pled guilty to having committed offences under s. 113 and s. 6 of the *Act*, Counts 6 and 10. Jay Dutton has entered guilty pleas to two offences under s. 6 of the *Wildlife Act*, these being Counts 9 and 10, and Drew Chalifoux to two offences under s. 6, being Counts 5 and 10 of the Information.

[2] The circumstances, and again I will only go into them briefly, is that Alan Robinson was on a hunting website and met Drew Chalifoux through this website. Both Robinsons are residents of the Yukon. Mr. Chalifoux is a resident of Alberta. Through their communication, Alan Robinson agreed to special guide Mr. Chalifoux in the Yukon. Mr. Chalifoux had a friend, Jay Dutton, who joined Mr. Chalifoux and, in the end, both Mr. Dutton and Mr. Chalifoux arranged to go on a hunt in the Yukon with Alan Robinson and John Robinson. On April 17, 2009, the special guide licences were obtained, where Alan Robinson would guide Drew Chalifoux, and where John Robinson would guide Jay Dutton. I note that on the back of the application for the special guide licence, there are a number of conditions and I will read the three that were mentioned by Crown counsel:

4. If a hunter commits a contravention of the *Wildlife Act* when guided by a Special Guide, the guide is legally required to mark the site [or] report the contravention as soon as practicable to a Conservation Officer. The guide is required to provide sufficient particulars to identify the place where the offence was committed, as well as other information the officer reasonably may require. Special Guides also have a reasonable responsibility for the proper care and handling of any wildlife killed by the person for whom they are acting as special guide.
6. Persons being guided under authority of a Special Guide Licence may only hunt big game of a species or type specified on the licence, and only in the [area] specified on the licence.
7. Special Guides must accompany their hunters at all times when hunting. "Accompany" means for a person to maintain sufficient proximity to the person being accompanied to be able
 - a) to observe the person and communicate to that person by unamplified voice,
 - b) to directly supervise and provide instruction to that person and to ensure his or her safety, and
 - c) to exercise reasonable control over the person in order to ensure that the person acts in compliance with the *Wildlife Act* while hunting.

[3] The hunt was scheduled to take place between September 15th and 30th. Both the Robinsons were on Polaris six-wheel vehicles, and Mr. Chalifoux and Mr. Dutton were on ATVs. One of the vehicles broke down right after the hunt started, and on September 16th, Alan Robinson went into Whitehorse to get parts to have the vehicle repaired. He did not return until September 21st. In the meantime, Mr. Dutton shot a moose on September 18th while he was not accompanied by John Robinson. His only company was Mr. Chalifoux. Then Mr. Chalifoux shot a moose on September 19th while he was unaccompanied by Alan Robinson. These are offences under s. 6 of the *Act*, and also constituted offences in respect of the Robinsons for not accompanying their hunters as per s. 113 of the *Act*.

[4] Alan Robinson, upon his return, and John Robinson then took Mr. Chalifoux and Mr. Dutton and they shot two bull caribou in Zone 10-6 where they were not allowed to do so, as a special permit was required and they did not have such a permit. The parties had attempted unsuccessfully to cross the Hoole River to hunt the caribou in a zone where they legally would have been able to do so, but were unable to do that and they then chose to illegally hunt the two bulls in an area clearly known to them to not allow such hunting. One of the caribou was retrieved approximately three hours later, and brought back to the camp; the other caribou was brought back the following morning. They were not gutted, and they were not field dressed. Alan Robinson informed the two Alberta hunters that it was his practice to bring the animals into the camp to do this, which, as Crown counsel points out, is not safe, as you are likely to attract bears to the camp, and it also increases the risk of any loss of the meat.

[5] Conservation officers attended the camp the morning of September 21st. They had had the Robinsons under surveillance based on information they had received earlier. They came into the camp, the two caribou were not yet gutted or field dressed, and in the end, the meat of these caribou was entirely wasted. Alan Robinson told Mr. Chalifoux and Mr. Dutton to say that the caribou had been shot across the Hoole River, which was an attempt to mislead the conservation officers. While this is what Mr. Chalifoux and Mr. Dutton originally told the conservation officers, they subsequently admitted to the truth and were cooperative with the investigation after that point.

[6] Thus, all four of the accused committed an offence under s. 6 of the *Wildlife Act* for illegally hunting the caribou. Alan Robinson committed the further offence under s. 133(b) for encouraging Mr. Dutton and Mr. Chalifoux to mislead the conservation officers in their investigation.

[7] There is a joint submission before me by counsel for Mr. Chalifoux and Mr. Dutton and the Crown that suggests a \$3,600 fine is appropriate, with respect to the illegal hunting of the moose, and a \$4,000 fine is appropriate for the illegal hunting of the caribou, to be followed by a six-year prohibition for the obtaining of any special guiding permits for hunting in the Yukon, and forfeiture of all the wildlife parts that are in the possession of the Crown. The other items, their firearms, the ATVs and the trailers, are to be returned.

[8] With respect to Alan Robinson and John Robinson, Crown is suggesting that the \$3,600 is an appropriate disposition for the illegal hunting of the moose, and is seeking \$8,000 for Alan Robinson and \$6,000 from John Robinson with respect to the

illegal hunting of the caribou. Crown is also seeking a further \$1,000 for the attempt to mislead the conservation officers by Alan Robinson.

[9] I will briefly repeat what Judge Schmidt stated in *R. v. Robinson et al.*, 2012 YKTC 43, where Alan Robinson and John Robinson were being sentenced for offences that were committed in 2007, but which did not come to light until after they had been arrested on the charges for which they are being sentenced today. A search warrant was executed at a residence and led to the uncovering of the evidence that resulted in the earlier charges. Judge Schmidt noted in paragraph 1 that:

...there are only 15 conservation officers in the vast area of the Yukon, and the catching of the persons violating the hunting regulations has to be taken extremely seriously to support those few officers in the field; secondly, to support the management efforts to ensure the survival in viable numbers of the various species of wildlife that are found in the Yukon.

[10] This Court has noted before that we have a vast area that provides tremendous hunting opportunities for Yukon residents and for individuals that come in from outside the Yukon to hunt. There are a number of outfitting companies and guiding companies that make their livelihood from hunting in the Yukon. We do not have a lot of conservation officers to cover this vast area, and so it is of critical importance that those individuals who hunt in the Yukon, and who guide others when they are hunting in the Yukon, obey the rules. Given the importance of the issue, and the need to rely on the ethical obligations on hunters and guides, when there are deliberate decisions made to break the law, the Court will deal with such actions in a manner that sends a message.

General deterrence, specific deterrence and denunciation are very important in dealing with these kinds of offences.

[11] Now, with respect to Mr. Chalifoux and Mr. Dutton, there is no indication that they have ever contravened the law with respect to hunting or, the Crown says, to anything that the Crown is aware of. This hunt of a lifetime has certainly become a hunt of a lifetime, in that the impacts of it are going to be felt by Mr. Dutton and Mr. Chalifoux for a long time. Certainly, while individuals that come into the Yukon and are guided in the Yukon are in a position where they lean on and trust, to some extent, their guides, they are certainly also responsible to know the rules themselves and to follow them, regardless of what their guides may or may not do. So while their role as the hunters being guided has less responsibility placed on it, they still have a significant responsibility.

[12] I find that the joint submission in their case is appropriate, and the one question, Madam Crown, I have is that you were seeking fines, not contributions; is that correct?

[13] MS. KIRKPATRICK: That's correct.

[14] THE COURT: Okay. Therefore, they shall each be fined \$3,600 with respect to the count of the illegal hunting of moose, and they shall each be fined \$4,000 with respect to the count of illegal hunting of caribou. It is significant, and recognizes their cooperation in the investigation and the indication very early on that they were prepared to enter guilty pleas, that the Crown has agreed not to seek forfeiture of all the items that they had. Otherwise, the impact on them could be even

greater, but this will still have significant impact on these individuals' lives with respect to their ability to hunt going forward.

[15] With respect to the Robinsons, the circumstances are somewhat different. Now, I recognize that the Crown has stated that there was no indication that the Robinsons were gaining anything monetarily from this hunt. It does not appear that it was a for-profit plan on their part, at least there is no evidence in that regard. I recognize that the offence for which they were sentenced in April is not a prior offence in the most aggravating sense, in that they did not commit this offence having already been convicted and sentenced for the prior offence. They did not commit this offence after having been charged for the prior offence. So at the time that they committed this offence, they were not in the legal position to have already had either a court sanction them for their prior commission of the offence, or in the position of knowing that, "well, you have already been caught allegedly breaking the law and you are doing it again." That said, it is clear that there has been, on at least this prior occasion, a blatant disregard of the requirements of hunters and guides under the *Wildlife Act* by these two individuals. It places them in a significantly different position than Mr. Dutton and Mr. Chalifoux.

[16] With respect to the moose hunting, the Crown's suggestion of the \$3,600 fine, which is not opposed by defence counsel, is within the range, and looking at this globally, is appropriate, and I think gives as much benefit to the Robinsons as possible. I will impose a \$3,600 fine on that count.

[17] With respect to the \$1,000 fine as suggested for encouraging Mr. Dutton and Mr. Chalifoux to mislead the officers, it is suggested for Alan Robinson - again, defence counsel does not dispute that - I will impose a \$1,000 fine, although in other circumstances a larger fine could easily be imposed for that offence, and I recognize that what is being suggested is in light of a global position. Again, noting the limited resources we have in the Yukon, misleading officers and sending officers - which, it did not occur in this case as far as I know, but which can occur - off to try to investigate further and incur additional expense, and take these officers away from their other duties, it is something that makes the offence of misleading officers quite serious, and something that needs to be clearly denounced by this Court.

[18] With respect to the higher fines being sought for the caribou hunting, defence counsel, while not disputing that those fines may, in and of themselves, be appropriate, says that his clients' financial situations put them in a different position and his submission is that the \$4,000 imposed on the others should be imposed on his clients. I have limited information about his clients' resources. I recognize that Alan Robinson is older and retired, and that - the submission of John Robinson - that he suffers from some physical disabilities and sensitivities. I do note, as Crown has pointed out, that notwithstanding these, he was able to go out and hunt and operate an ATV. So I am not particularly persuaded by those limitations. I am not saying I do not take into account that employment may be more difficult for him, and as a single parent he has responsibilities, but I do not find the argument of financial limitation particularly persuasive.

[19] These two individuals are clearly in a situation where their moral culpability and blameworthiness is higher than that of Mr. Chalifoux and Mr. Dutton. I recognize the Crown's submission that Alan Robinson, between the two, is more the leader of the two and that is why the higher fine is being sought. I have not heard anything different on that point from defence counsel and it would seem, in the circumstances, that that is likely the case. I note that he was the owner of the Polaris vehicles that were forfeited in the proceedings before Judge Schmidt. In this case, Crown is only seeking forfeiture of the Remington rifle and scope that were seized as there was little else left to forfeit. Crown is not seeking that the other items, such as the two hunting knives that were seized, be forfeited as well.

[20] Frankly, in these circumstances, the fines sought by Crown are definitely not in the higher end. Had there been a prior conviction before these offences were committed, the fines would, in all likelihood, be significantly higher. This is a serious set of offences, and, as Yukon residents, there is a significant onus on the Robinsons to act responsibly and legally when it comes to the hunting of big game, and they did not do so on this occasion and they have not done so on a prior occasion. I find that the position of Crown is reasonable, and I am not going to impose a fine that effectively places these two individuals in the same position as Mr. Chalifoux and Mr. Dutton; in fact the fines could have been higher.

[21] With respect to the hunting of the caribou, the fine for Alan Robinson will be \$8,000, and the fine on John Robinson will be \$6,000.

[22] Now with respect, as I may not have said it before, to Mr. Chalifoux and Mr. Dutton, there will be the six year prohibition for obtaining special guiding permits in the Yukon. For the Robinsons, there will also be, noting the five year prohibition that was in place in the case before Judge Schmidt on the hunting, and Crown is seeking an additional ten years here, what I am going to do is put at a 14 and a half year prohibition from today's date, which gets us within two weeks of fifteen years in total.

[23] MS. KIRKPATRICK: Which is with respect to Mr. Alan and John Robinson?

[24] THE COURT: Yes, this is Alan and John Robinson only.

[25] There are not going to be fine surcharges on any of these fines.

[26] There will be, as I indicated, the order of forfeiture with respect to the wildlife parts with respect to Mr. Chalifoux and Mr. Dutton, and there will be an order of forfeiture for the Remington rifle and scope from the Robinsons. All other items that were seized can be returned to both Mr. Robinsons. Those are the two hunting knives, I am not sure if there are any other items. Now, with respect to Mr. Chalifoux and Mr. Dutton, while those items can be returned to them, it is upon Mr. Dutton and Mr. Chalifoux making arrangements to come and pick them up. They will be incurring the cost of anything that is required for them to obtain possession of these items.

[27] Is there anything for --

[28] MS. KIRKPATRICK: Yes, the request by the Crown to have an order against Mr. Alan Robinson, that he not possess wildlife. The intention is that he

not possess wildlife in the field, not that he can't have a moose steak in his house or a bear rug in his house or something like that. It is essentially to prevent him from engaging in any similar activity, and we would ask that that run together with the 14 plus year hunting prohibition.

[29] THE COURT: There will be the order under s. 169(1)(a), I believe it is, that Mr. Alan Robinson not possess wildlife in the field for the 14 and a half years of the hunting prohibition.

[30] MS. KIRKPATRICK: Stay of proceedings with respect to the remaining counts, Your Honour.

[31] THE COURT: How much time will your clients need to pay? I mean, it is going to take a while, so.

[32] MR. DICK: I think so. I would -- given they already have another one, I would say 18 months, and they can ask for an extension if they --

[33] THE COURT: Yes, nothing has happened between this decision in April and today, correct?

[34] MR. DICK: I understand Mr. Al Robinson was attempting to get the funds together to pay it out, and I advised him that he is better off to make partial payments in the meantime.

[35] THE COURT: Any issue with the 18 months? Or should we have a -- no?

[36] MS. KIRKPATRICK: I have no issue with that.

[37] THE COURT: Eighteen months' time to pay with respect to both Robinsons. With respect to your clients, Mr. Nowicki, how long do they need to pay?

[38] MR. NOWICKI: Well, at least 30 days, because that's what the Crown and I had talked about, and this is going to take a little bit of time, but I would be content with 30 day, but if my learned friend would allow 60 it might be helpful at this time of year.

[39] MS. KIRKPATRICK: I certainly have no issue with even three months' time to pay.

[40] THE COURT: I think three months' time to pay, with respect to Mr. Chalifoux and Mr. Dutton, is appropriate.

[41] MR. NOWICKI: Thank you kindly.

[42] THE COURT: So there is a stay on the remaining counts. I think that covered everything off. All right.

COZENS C.J.T.C.