Citation: *R.* v. *Tarr*, 2006 YKTC 39 Date: 20060407
Docket: T.C. 05-06003
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Lilles

REGINA

v.
BEVERLY KAREN TARR

Appearances:
Noel Sinclair — Counsel for Crown
Beverly Tarr — Appearing on her own behalf

REASONS FOR JUDGMENT

[1] LILLES T.C.J. (Oral): Ms. Beverly Tarr is before the Court charged with the following three offences:

> Count 1: On or about the 17th day of August 2005, at or near Carmacks, Yukon Territory, did unlawfully commit an offence in that: she did, by angling, catch and retain, in one day, more fish of species as set out in Column 1 of an item of Schedule IV, to wit: salmon, from the waters, set out in Column II of that item, Yukon River at Tatchun Creek than the daily catch limit set out for that species of fish in Column II of that item, contrary to Section 7(2) of the Yukon Territory Fishery Regulations.

Count 2: On or about the 17th day of August 2005, at or near Carmacks, Yukon Territory, did unlawfully commit an offence in that: she being the holder of a Salmon Conservation Catch Card, did in relation to every salmon caught by the holder, whether it is retained or released, fail to immediately record in the appropriate section of the Card, the date and location the salmon is caught, the species and sex of the salmon, the presence or absence of tags and an adipose fin, and the gear type with which the salmon was caught, contrary to Section 7(18)(a) of the Yukon Territory Fishery Regulations.

Count 3: On or about the 1st day of December 2005, at or near Carmacks, Yukon Territory, did unlawfully commit an offence in that: she being the holder of a Salmon Conservation Salmon Catch Card, did fail to submit the Card to the Department no later than November 30 of the year of issue, contrary to Section 7(18)(c) of the Yukon Territory Fishery Regulations.

[2] Ms. Tarr entered a guilty plea to Count 2, the failing to immediately record in the appropriate section of the salmon conservation catch card the date, location of the salmon caught, along with other prescribed information. She entered not guilty pleas to Counts 1 and 3. She is self represented.

[3] The relevant provisions regulating salmon fishing in this area are found in the Yukon Territory Fishery Regulations, C.R.C., c. 854, as amended. Section 7(2) reads:

> No person shall, by angling, catch and retain, in any one day, more fish of a species set out in Column I of an item of Schedule IV, from the water set out in Column II of that item, than the daily catch limit set out for that species of fish in Column III of that item.

I add that Schedule IV Column III prescribes a daily catch limit of one Chinook salmon.

[4] Subsection (16) reads:

> Subject to subsection (17), no licence holder shall angle for salmon or possess salmon caught by angling without a Salmon Conservation Catch Card, issued under subsection 4(2).

[5] Subsection (18) reads:

> Every holder of a Salmon Conservation Catch Card shall
>
> a) in relation to every salmon caught by the holder, whether it is retained or released, immediately record in an appropriate section of the Card
>
> i) the date and location the salmon is caught,
>
> ii) the species and sex of the salmon,
>
> iii) the presence or absence of tags and an adipose fin, and
>
> iv) the gear type with which the salmon was caught;
>
> b) produce it to a fishery officer or fishery guardian on request; and
>
> c) submit the Card to the Department no later than November 30 of the year of issue.

[6] As all three charges arise from the same fact situation, I will set out the circumstances of the August 17, 2005 incident briefly. On August 17, 2005, Ms. Tarr was fishing in the Yukon River at Tatchun Creek with several other individuals, including her mother Doris, her 15-year-old son Robbie, a young daughter, and an older

gentleman, I believe her uncle. On that day, Yukon conservation officers were conducting a surveillance of the area in response to complaints received from members of the public with regard to over-fishing. Ms. Tarr was observed fishing by Conservation Officer Katherine Pelletier, who was in a hidden position a hundred yards away using a 20 to 60 variable spotting scope.

[7] Officer Pelletier observed Ms. Tarr catch and land a Chinook salmon at 12:39 p.m. Her son Robbie hit the fish on the head and took it away to clean it. Later, at 14:19 hours or 2:19 p.m., she observed Ms. Tarr land another Chinook salmon by dragging it over to the shore. Her mother, Doris, hit the fish over the head with a mallet. Again, her son Robbie removed the fish.

[8] Conservation Officer Henri Ragetli was advised by radio that Ms. Tarr had caught and retained a second Chinook around 2:20 p.m. He went to the area in plain clothes and undercover and positioned himself near Ms. Tarr, posing as a fisher person. He overheard a number of comments made by persons in Ms. Tarr's fishing party. Some of these comments were clearly hearsay and are not admissible. As a result, I will not repeat them here and place no weight on them.

[9] He did overhear Ms. Tarr at one point call out to her son Robbie, "Go fish for Grandma," to which he responded, "I already am." This comment is noteworthy for two reasons. First, it confirms Ms. Tarr's belief, which she expressed to the Court at the beginning of the trial, that members of her fishing party can catch fish for other persons who have a permit and have not caught or yet caught any fish. Secondly, this exchange took place after she caught the second salmon at 2:19 p.m., referred to

earlier. It appears that she did not consider the second salmon as belonging to her mother because she asked her son to catch a fish for her mother.

[10] Officer Ragetli had seen Ms. Tarr's mother fishing with her own rig earlier in the day. She had not caught any fish. Ms. Tarr testified that because of her mother's age, arthritis and mental condition, she could only fish for short periods of time and needed assistance from time to time.

[11] Ms. Tarr's vehicle was stopped by the conservation officers shortly after leaving the Tatchun Creek area. She had a valid licence and a catch card, which she produced for the officers. The catch card was not filled out for any of the fish she had caught. She indicated to the Court that she intended to fill it out when she returned home.

[12] Officer Sjodin testified that he was involved in stopping Ms. Tarr's car and detaining her. He told her that she would be charged because she had been spoken to about the need to fill out the catch card immediately on a previous occasion. Ms. Tarr was not advised of her Charter rights, nor did she receive any warnings. She was asked a number of questions and she had a considerable discussion with the officers. The two fish that she caught were seized.

[13] Officer Sjodin also testified that he met with the licensing officer who kept track of all of the conservation catch cards. He reported that this officer did a computer search and a manual search of his files, or her files, and that this officer told him that Ms. Tarr's card had not been submitted by November 30, 2005, as required.

Findings

[14] The charges before the Court are strict liability offences. Once the *actus reus* of the offence has been proven by the Crown, the defendant, in order to escape liability, must establish that she:

> a) exercised all due diligence to prevent the commission of the offence, or
>
> b) reasonably and honestly believed in the existence of facts that, if true, would render the person's conduct innocent.

[15] I will deal first with Count 1. Conservation Officer Pelletier, observed Ms. Tarr catch and land two Chinook salmon on August 17th at 12:39 p.m. and 2:19 p.m. Her son Robbie clubbed the first salmon and her mother, Doris, clubbed the second. Ms. Tarr initially expressed the view that she was entitled to catch a second salmon and record it on her mother's catch card. Her position then changed, asserting that she was merely assisting her elderly rheumatic mother catch fish. Finally, she asserted that while she had caught the second salmon, she had not intended to retain it. She called for her son Robbie to attend to release the fish, but before he arrived from the trail between the parking lot and the river, her mother, Doris, intervened and clubbed the fish stating "That's my fish." In other words, her position is that her mother had retained the fish, not Ms. Tarr. Ms. Tarr, therefore, did not catch and retain the second salmon as defined in the regulations.

[16] These explanations by Ms. Tarr, in my opinion, are not credible but rather reflect a rationalization on her part to escape liability on the facts of this case. I do not accept them. The evidence is clear that Ms. Tarr was not merely assisting her elderly mother fish. Her mother had her own tackle and was fishing on her own account. She spent

some of the day fishing herself, but because of her age she did not fish all day. Ms. Tarr was using her own tackle for fishing. She caught the fish; she landed the fish. If anyone assisted anyone, it was her mother assisting Ms. Tarr by clubbing the fish. In my opinion, that fish was caught and retained by Ms. Tarr. Ms. Tarr has not established that she exercised due diligence to prevent the commission of the offence. If she was mistaken about her right to claim the second fish on her mother's catch card, this was a mistake of law, not of fact. I find Ms. Tarr guilty of Count 1.

[17] Ms. Tarr entered a guilty plea to Count 2. She admitted that she had intended to fill out the catch card when she got home. The regulations require her to fill out the card immediately, not later when she got home. The facts support her guilty plea. I find her guilty of Count 2.

[18] Ms. Tarr will be acquitted of Count 3. Officer Sjodin's evidence that he met with the licensing officer who searched the records and reported to him that Ms. Tarr had not filed her catch card was inadmissible hearsay evidence. Officer Sjodin did not conduct the search himself. He was merely reporting what someone else told him. Ms. Tarr, being self represented, did not know enough to object to its admission. In response to the inadmissible evidence, she did make some incriminating admissions, but I am satisfied that she would not have done so if Officer Sjodin's evidence had not been led and presented in court.

[19] I will indicate to counsel that when I reviewed my notes with respect to Count 3, there was some issue as to the clarity of my notes. As a result, I obtained the tapes of

Constable Sjodin's evidence and reviewed those tapes in my chambers prior to coming to my decision as to the admissibility of this evidence.

[20] In my view, the Crown should have called the licensing officer directly to give evidence and then that officer could also have been subject to proper cross-examination. Alternatively, the Crown could have filed a certificate with proper notice as required by the business records provisions of the *Canada Evidence Act.* As indicated, Ms. Tarr will be acquitted on Count 3.

[21] During the Crown's case, I raised the issue of the failure of the conservation officers to provide Ms. Tarr appropriate Charter warnings when she was detained in her car by the roadside. Counsel and I had a brief discussion about this issue during the trial. Officer Sjodin indicated that it was policy not to provide Charter warnings until the matter reached a "higher level." He did not explain what that meant. I note that in *R.* v. *Wigglesworth*, [1987] 2 S.C.R. 541, the Supreme Court of Canada stated:

> The rights guaranteed by s. 11 of the Charter are available to persons prosecuted by the State for public offences involving punitive sanctions, i.e., criminal, quasi-criminal and regulatory offences, either federally or provincially enacted.

[22] *R.* v. *Kooktook et al.*, [2004] 10 W.W.R. 186, is a Northwest Territories fisheries case which establishes the right to full Charter protection when fisheries officers interview suspects.

[23] I would rule all the statements made by Ms. Tarr at the time of her detention on the roadside inadmissible. As I indicated during the trial, however, there is ample other evidence to convict Ms. Tarr on Counts 1 and 2. Of course, there was nothing said at

the roadside that would have pertained to Count 3, Count 3 being a matter that arose post November 30th.

[24] Crown counsel also submitted that possibly s. 61(4) of the *Fisheries Act*, R.S., 1985, c. F-14, required the defendant to provide information to the officer on request and therefore Charter warnings were not necessary. Section 61(4) reads:

> A person referred to in subsection (1) shall, on the request of any fishery officer or fishery guardian, provide the officer or guardian, or any authority designated by the officer or guardian, with any information relating to a matter mentioned in subsection (2) that the officer or guardian may request.

In other words, this subsection creates a statutory obligation to cooperate with fisheries officers.

[25] I note that similar provisions exist in other legislation across the country, and most notably in the *Motor Vehicle Act,* requiring drivers of motor vehicles involved in accidents to provide a report to the police. A number of cases have held that statements made under legislative compulsion are inadmissible in prosecutions against the declarant because their admission would violate the principle against self-incrimination as guaranteed by s. 7 of the Charter. See some of the following cases: *R.* v. *White*, 174 D.L.R. (4th) 111, S.C.C.; *R.* v. *Lee*, [2005] B.C.J. No. 2778, B.C. Provincial Court; *R.* v. *Bond,* [1990] Y.J. No. 115, Yukon Territorial Court. I would note that this principle was also applied in the Fisheries case referred earlier, *R.* v. *Kooktoot et al*.

[26] I want to be clear. In my view, there may be a breach of the Charter, notwithstanding provisions such as s. 61(4) of the *Fisheries Act*, when officers detain

and interrogate suspects without providing the appropriate warnings. Subsection 61(4) may require a defendant or a suspect to turn over catch cards and other similar licensing information. But, in my view, different principles apply when the officers actually engage the suspect in interrogation while the suspect is detained. Such interrogations do not fall within the scope of s. 61(4).

[27] So in the result, Ms. Tarr is convicted on Counts 1 and 2, is acquitted on Count 3.

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LILLES T.C.J.