

Citation: *R. v. Wilson*, 2003 YKTC 44

Date: 20030708  
Docket: T.C. 02-11437  
Registry: Dawson City

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Chief Judge Lilles

R e g i n a

v.

David Wilson

Appearances:  
Zebedee Brown  
David Wilson

Counsel for Crown  
Appearing on his own behalf

**REASONS FOR JUDGMENT**

**Introduction**

[1] Mr. David Wilson is charged with failing to produce a hunting licence as requested by a conservation officer. This is an offence pursuant to s. 136 of the *Wildlife Act*, R.S.Y. 1986, c. 178, as amended. That section provides as following:

136(1) For the purposes of ensuring compliance with this Act or to enforce any provision of this Act, a conservation officer may signal or otherwise direct the operator of a vehicle or boat to stop it or move it to a place and stop it and the operator shall immediately comply with the conservation officer's signal or direction and shall not proceed until such time as is reasonably necessary to enable the officer to conduct any lawful inquiries.

(2) The operator and any occupants of a vehicle or boat stopped under subsection (1) shall promptly produce for inspection any wildlife, firearm, licence, permit or other thing requested by the officer relating to this Act.

(3) For the purposes of subsection (1), signals to stop include intermittent flashes of red or blue light, a hand signal, an audible request, a siren, or other sign to stop.

## **Facts**

[2] On November 24, 2002, conservation officer, Trevor Castagner and federal wildlife officer, David Irvine, were conducting hunting inspections near mile 100 of the Dempster Highway. Mr. Irvine, although a federal wildlife officer, is also designated as a territorial conservation officer.

[3] At this time of year, caribou migrate through this area and can be found near the highway. Hunters drive up the Dempster Highway to gain access to the caribou, although it should be noted that the *Wildlife Act Regulations*, O.I.C. 1982/089, s. 4(3) as amended by OIC 2002/77 prohibits hunting for big game within 500 metres on either side of the highway. Officers Castagner and Irvine had been in the area for five days checking licences, tags and monitoring harvesting of caribou. Although the Dempster Highway connects the Yukon with the Northwest Territories, and the town of Inuvik in particular, the ferries crossing several rivers were not operating and the ice bridges had not yet been constructed. In the result, the Dempster Highway was not a through road and there was no obvious reason to be in the area except for hunting.

[4] Although they had not set up a formal "check stop", Officers Castagner and Irvine were checking all the vehicles in the area. As they were dealing with another party, they observed a truck with an all-terrain vehicle pass them headed north. (It is common ground that this was a Chevrolet Silverado registered to and driven by the defendant, David Wilson). A short time later they observed the same pick-up truck returning, driving south, and stopped it.

[5] The officers stopped the vehicle because they believed that the occupants of the vehicle were hunting. This belief was based on the following facts:

- The road to Inuvik was not open, so there was no reason for non-hunters to be in the area;
- The most logical reason to be in the area was to hunt caribou;
- They had stopped and checked some 20 hunting parties already;
- There was an ATV on the back of the truck, and they were concerned that the ATV might be used for hunting.

[6] They stopped Mr. Wilson's vehicle for the purpose of inspecting his hunting licence and to advise him that the use of ATVs was not allowed in the Dempster corridor. When the vehicle stopped, they observed Mr. Wilson driving and an unidentified passenger beside him.

[7] Officer Irvine went to the driver's side of the vehicle and Officer Castagner approached the passenger side. Officer Castagner asked the passenger if he was hunting. That person replied in the negative, that he had forgotten his licence but pointed to the driver indicating that Mr. Wilson was hunting. At that point, Officer Castagner heard arguing on the other side of the vehicle. He went over to the driver's side, overhearing only the end of a conversation. He overheard Mr. Wilson telling Officer Irvine: "This is bullshit" and "I am fucking leaving". Mr. Wilson then accelerated the vehicle and sped away from the scene.

[8] When Officer Irvine approached the driver's side of the vehicle, he observed a rifle scabbard in the back of the truck. Officer Irvine reported the conversation with Mr. Wilson as follows:

Irvine: "How are you doing"?

Wilson: "Are you guys pulling everyone over now? Why are you pulling me over"?

Irvine: "All-terrain vehicles are not allowed".

Wilson: "I'm not packing the fucking meat out. This is fucking bullshit – we are out of here".

[9] At this point, Mr. Wilson abruptly drove away.

[10] Some 10 to 15 minutes later, as the officers were driving south, they encountered the Wilson vehicle pulled over at the side of the road. Officer Castagner approached the driver and asked him if he had a hunting licence. Mr. Wilson was belligerent, saying “You won’t fucking go away”, “You have no authority to pull me over” and “I wasn’t hunting”. Officer Castagner explained that he was merely checking licences and that he would not interfere with Mr. Wilson’s day. Mr. Wilson did not produce a licence, but did reaffirm that he was not hunting. Officer Irvine, in the meantime, approached the back of the truck and brushed the dust off the licence plate (I presume, for the purpose of assisting with the identification of the driver). Mr. Wilson, having observed Officer Irvine’s actions, stated: “I saw that you fucking prick” and, again, drove away.

[11] Although the officers did not see Mr. Wilson again, they were later able to identify him and to determine that he did, in fact, hold the required hunting licences and tags.

[12] Mr. Wilson gave evidence. He said that he had just purchased a “three wheeler” and took it up the Dempster to use it to hunt. Mr. Wilson discovered that there was not enough snow to use it and that the Blackstone River could not be crossed, as it was not yet frozen. As Mr. Wilson could not use the ATV, he decided to go home, and on the way, was stopped by Officers Castagner and Irvine. On cross-examination, he indicated that he had his licence and the required tags with him, and that if the conditions were better, he would have used his ATV to hunt. Mr. Wilson acknowledged that at the time he did not know that he couldn’t use an ATV to hunt in this area, but that he subsequently learned of this restriction when he read the fine print on a hunting brochure.

[13] Mr. Wilson was clear in his evidence, namely that the officers had asked for his licence, that he told them he was not hunting, that he believed that he was obligated to produce the licence only if he was hunting and out of his vehicle and that he refused to accede to their request because the officers were acting outside their jurisdiction.

[14] Although he was not clear on this, Mr. Wilson suggested that he may have had some concern for his personal safety when stopped by the officers and that although they were in full uniform, he wasn't sure they were wildlife officers. Mr. Wilson said, "I didn't expect these people, their approach scared me; I wanted out of there". I do not accept this evidence. I am satisfied that Mr. Wilson knew that Officers Castagner and Irvine were wildlife officers. Mr. Wilson was upset with them, not fearful. Mr. Wilson's belligerent attitude was inconsistent with fear and lack of recognition. To the contrary, considering Mr. Wilson's conduct, Officers Castagner and Irvine had reason to be fearful of Mr. Wilson.

### **Issues**

[15] Since the *Wildlife Act, supra*, is a regulatory statute, I find that it is a strict liability offence and is governed by the principles set out in *R. v. City of Sault Ste. Marie* (1978), 40 CCC (2d) 353 (SCC). The evidence is undisputed that Mr. Wilson was stopped, that a request was made to produce his hunting licence and that he refused to produce his licence. Moreover, Mr. Wilson departed before the officers could complete their enquiries. This occurred on two separate occasions. The *actus reus* of the offence has been made out. Mr. Wilson has not suggested that he took reasonable care or was duly diligent. Rather, he took the position that as he was not hunting, he was not obligated to produce his hunting licence.

[16] Section 136(1) provides a legal basis for conservation officers to stop vehicles or boats for the purposes of ensuring compliance with this *Act* or to enforce any provision in this *Act*. When stopped, the driver is required to "not

proceed until such time as is reasonably necessary to enable the officer to conduct any lawful inquiries”. Section 136(2) requires the operator or occupants of a stopped vehicle to “promptly produce for inspection any wildlife, firearm, licence, permit or other thing requested by the officer relating to this *Act*”.

[17] There is nothing in the wording of s. 136 that restricts the authority of conservation officers when enforcing the *Act* to dealing only with individuals who are actually hunting. To limit their authority to stopping vehicles of individuals who are actually hunting would make nonsense of s. 136, as using vehicles to hunt is prohibited by s. 20 of the *Act*:

A person shall not use a vehicle to chase, drive, flush, exhaust or fatigue wildlife for the purpose of hunting or to assist another person hunting.

[18] In addition, the *Wildlife Act Regulations, supra*, establish a 500 metre no-hunting corridor in the relevant area along the Dempster Highway. Moreover, it would be impractical, if not dangerous for conservation officers to go into the field to conduct checks of hunters in the act of hunting. I conclude that the intent of the legislation was not to limit conservation officers when enforcing the *Wildlife Act, supra*, to dealing only with individuals engaged in actual hunting.

### **Conclusion**

[19] Mr. Wilson acknowledged that he drove out on the Dempster Highway for the purpose of hunting caribou. After exploring the area, he concluded that the conditions would not allow him to use his ATV which was on the back of his truck. Mr. Wilson changed his mind about hunting and was on his way home when he encountered the conservation officers. I also heard that the Dempster Highway was not drivable over the rivers at this time of the year, and only hunters would normally be in the area. On these facts (and in the absence of any argument to the contrary), I find that the conservation officers were acting reasonably in approaching individuals and/or stopping vehicles to check on

hunting licences.

[20] In conclusion, the conservation officers were acting within their mandate prescribed by s. 136(1) of the *Wildlife Act, supra*, when they stopped and approached Mr. Wilson's vehicle. The conservation officers were entitled to ask him for his hunting licence. Under the legislation, Mr. Wilson was obligated to produce it. Although he had a licence, he refused to produce it. Mr. Wilson drove away before the officers could complete their enquiries. I find Mr. Wilson guilty of the offence contrary to s. 136 of the *Wildlife Act, supra*.

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Lilles C.J.T.C.