IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Hartt, 2005 NSPC 47

Date: 20050311
Docket: 1451187, 88, 89
Registry: Kentville

Between:

Her Majesty the Queen

v.

Abner Reid Hartt

Judge:	The Honourable Judge Alan T. Tufts
Heard:	February 25, 2005
Charge:	39(2) Wildlife Act 80(1) Wildlife Act 86(1) Wildlife Act
Counsel:	Richard Hartlen, for the Crown Defendant for self

By the Court: (orally)

[1] This is the matter of Regina v. Abner Reid Hartt. Mr. Hartt is charged with three offences under the **Wildlife Act**. First, it is alleged that he on or about the 1st of February of 2004, at or near Bog Road, Hants County, Nova Scotia, did hunt wildlife during the closed season, contrary to s. 39(2) of the **Wildlife Act**. Secondly, it is alleged that he transported or possessed a firearm in a wildlife habitat on Sunday contrary to s. 80(1) of the **Wildlife Act**, and finally, discharge a firearm within distances prohibited by the regulations from dwelling contrary to s. 86(1) of the **Wildlife Act**.

[2] The defendant and another man, Jason Keddy, were approached by a gentleman travelling on the trails in the woods near Bog Road, Hants County, Nova Scotia. They were in the process of loading a deer which was shot onto an ATV. It was Sunday, February 1, 2004. Jason Keddy then rode the ATV out of the woods to a trail and the defendant followed on foot.

[3] The deer was clearly shot that day, as it was warm and the blood was draining from it as it was loaded onto the ATV. Two 30-30 gun shells were found the next day by wildlife officers, however, no gun was observed on that Sunday when the defendant and Jason Keddy were seen loading the deer onto the ATV.

[4] The defendant testified. The other man, Jason Keddy, did not. The defendant, who is a truck driver by profession, said he had returned earlier that day from a trip to Montreal. He was at his home in the Three Mile Plains area of Hants County, Nova Scotia, sleeping, when his wife asked him to accompany her to her parents' home on the Bishopville Road, which is near the Bog Road. The defendant again went back to sleep when entering his in-laws home when he was awakened by his wife's half-brother, Jason Keddy, who apparently wanted him to assist him in retrieving a deer he had located in the woods.

[5] Mr. Keddy was travelling on an ATV. The defendant followed in his motor vehicle, a Jeep and met up with Mr. Keddy on the Bog Road near the power line trail. They then travelled a short distance up the trail and then into the woods where the deer was located. It was there that they had encountered the gentleman, Mr. Wilson, which I referred to earlier.

[6] During this encounter the defendant made it clear to Mr. Wilson that he and Mr. Keddy were going to take the deer and they were not going to be deterred by

Mr. Wilson's obvious disapproval of their action. The defendant said, “This is my f- - -ing deer.” While the defendant denied in his testimony using the expletive f-word, it is clear he did when during the heated exchange with the Crown attorney during cross-examination he in fact used the very same expression, ie. the f-word, albeit followed by an immediate retraction and apology.

[7] Although not a great deal turns on this it is quite clear that the defendant's denial of using the expletive language is simply not credible. This does, however, raise some concern about the defendant's credibility generally. However, the defendant adamantly denies he shot the deer or was present when the deer was shot or assisted in any way with the killing of the deer. He maintains he does not know who shot the deer. He says he was simply helping his brother-in-law retrieve a deer, a dead deer, in the woods.

[8] He further explains that he travelled back to his wife's parents' residence where Mr. Keddy returned to some time later, but without the deer. The two then went to the home of the defendant's wife's grandparents a short distance away to repair a tire. It was then that they were contacted by the police who mistakenly were looking for another gentleman in connection with the same matter. No deer or remnants thereof were observed by the police.

[9] The changing of the tire is completely unrelated to this matter, however, when the wildlife officer located the ATV the vehicle was “wiped down” and the plate was removed. The plate number had been noted by Mr. Wilson and used to eventually track down the ATV. This amounts, in my opinion, to some evidence that there were efforts made to disguise the ATV and hide the fact that the vehicle was involved in this matter.

FINDINGS OF FACT

[10] I find as a fact that the defendant was called out by his brother-in-law to help him as he described. His movements earlier relative to his truck travels could easily be verified and could contradict his evidence if investigated and found to be untrue. There was no gun seen by Mr. Wilson and given the length of time he was in contact with the defendant and Mr. Keddy, clearly there was no gun. There is simply no evidence that the defendant either shot the deer, nor was he there when the same was shot. I accept that his involvement directly with the deer was limited to the actions he described.

[11] Whether the defendant knows more about who shot the deer and whether the deer was eventually taken by Mr. Keddy, or where the deer was taken by Mr. Keddy, is not clear. I have some great difficulty accepting that the defendant does not know more about where the deer was taken and how it was shot. I cannot accept his denials regarding further knowledge, however, I cannot conclude that he knows nothing.

[12] The Crown argues the following:

1) That the defendant's actions constitutes "hunting" as defined in s. 2(ad) of the **Wildlife Act;**

2) The defendant was in possession of the deer, which by virtue of s. 103(1) and (2) is *prima facie* evidence that the deer was killed in contravention of the **Act**, and further, that his possession is *prima facie* evidence that he killed the said deer. It is argued that the defendant has not rebutted the *prima facie* evidence, and finally, and alternatively,

3) The defendant was a party to the offence by virtue of s. 104 of the **Act**.

[13] It is not necessary for me to recite the sections alluded to, including s. 3(2) of the **Act**, which gives the definition of "possession", they are all set out in the **Act** and I need not repeat those here.

[14] Given the definition of "hunting" in s. 2(ad) I cannot conclude based on the findings of fact made that the defendant was hunting. He did not pursue or seek out, shoot or trap the animal, nor did he do any of the other descriptive actions included in the definition. He was not hunting.

[15] The defendant was in possession of the deer, see s. 3(2) and hence this is *prima facie* evidence that he killed or possessed the deer contrary to the regulation. The deer was illegally killed it can certainly be inferred.

[16] *Prima facie* evidence is not a presumption. It does not <u>require</u> an inference to be made. The phrase "*prima facie* evidence" simply <u>allows</u> the trier of fact to make a permissible inference that the defendant killed the impugned animal. The

possession of the animal is by statute, evidence on its face, of the killing of the deer by the person in possession.

[17] While this rule of evidence does allow an inference to be drawn, the Court is still required to conclude that the defendant killed the deer and committed the other offences as alleged beyond a reasonable doubt. It is still open to the defendant to point to evidence or lack of evidence which raises a reasonable doubt on this issue.

[18] In my opinion that doubt exists for the following reasons. I believe the defendant's evidence about his involvement which limits it to the loading of the deer. Also, no gun was found and no remnants of the killed deer was ever located or linked to either the defendant or Jason Keddy.

[19] Finally, the Crown relies on s. 104 which provides that if the defendant assisted, in this case Jason Keddy, at the time Jason Keddy committed an offence, the defendant would be a party and guilty of it. While the defendant clearly assisted Jason Keddy in removing the deer, this is not an offence, if there is such an offence. The assistance must be "at the time when the other person," *i.e.* Jason Keddy, "committed the offence." There is simply no evidence that the defendant did anything when the killing occurred, whether it was by Jason Keddy or someone else. He is not party to the offence.

[20] Before concluding I would like to point out that s. 103 does not create an offence. It simply creates a rule of evidence. Whether there is an offence of possessing a "killed deer" or not, the defendant was not charged with that. If there is not such an offence it is up to the legislature to address this. Simply possessing a deer under the circumstances proven here does not conclusively establish the offence as charged. It might be desirous to create offences of possessing deer killed in the circumstances here, or create some obligation on an individual whose possession under these circumstances exists, but this is a job for the legislature and one that may need to be investigated and not for the Court to create.

[21] There is no evidence that the defendant committed the offences and there is at least a reasonable doubt that he did so. He is accordingly found not guilty of all three offences and acquitted.

ALAN T. TUFTS, J.P.C.