

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** R. v. Shatford, 2012 NSPC 75

**Date:** 2012-08-16

**Docket:** 1937487, 1937486

**Registry:** Bridgewater, NS

**Between:**

R.

v.

Daniel Shatford &  
Shatford's Lobster Pound Limited

**Judge:** The Honourable Judge James H. Burrill

**Heard:** August 16, 2012, in Bridgewater, Nova Scotia

**Written decision:** August 22, 2012

**Charge:** 33 Fisheries Act

**Counsel:** Josh Bryson, Federal Crown Attorney  
Alan Ferrier, Q.C., Defence Counsel

**Orally, by the Court:**

[1] This is a case where Mr. Shatford and his company, Shatford's Lobster Pound Limited, were jointly charged in an information that they did within the Province of Nova Scotia, between March 14, 2006 and May 25, 2007, inclusive, buy, sell or possess fish caught in contravention of the Fisheries Act or Regulations, contrary to Section 33 of the Fisheries Act.

[2] In respect of this matter, the Court heard substantial evidence over several days. It is clear that the Crown's theory of the case is that Mr. Westhaver and Mr. Shatford engaged in a deliberate scheme to assist Mr. Westhaver in the misreporting of halibut so that the halibut wouldn't be reduced from his quota, and so the halibut as well wouldn't, or the trips as well would not be subject to dockside monitoring.

[3] At the time Mr. Westhaver says, and even the fisheries officers didn't know for sure without checking, that Mr. Westhaver's trips would trigger 100 percent dockside monitoring if the total groundfish in the catch were over 5000 pounds, or if the halibut hauled were over 200 pounds. On several occasions during the

course of that time, Mr. Westhaver acknowledged that he snuck halibut in, misreported it, and ended up selling it to Mr. Shatford. He said it was with Mr. Shatford's complete knowledge, and that there was agreement that he'd either be paid in cash, or that the halibut would be reported as lobster on slips.

[4] With regard to the matter, I've reviewed carefully the evidence of Mr. Westhaver which supports the Crown's basic theory with regard to the case and with some regret I find the evidence of Mr. Westhaver to be unreliable. His evidence on its face may be true, however there are so many issues with his evidence that I find that I cannot rely upon it as the Crown seeks to establish the *actus reus*, and in fact the mental element of the offence as well.

[5] He talks of the arrangements to "mis-report" and "mis-document" the halibut by switching them to lobster, but yet no evidence exists of that. In fact it's the very slips produced by Shatford's that establish that the transactions were reported accurately, and the only evidence of a cash transaction is case of 114 pounds of halibut that were sold to the store and it doesn't seem to me in the circumstances that I've heard, that this was particularly unusual. It was a normal transaction. The store, taking the money out of the till to pay for the fish

and then it ending up being documented accordingly.

What was going on is that Mr. Westhaver was, clearly, acting illegally and he was charged as a result of these incidents. The Crown argues as well that the fact that a dockside monitor was not present should have alerted Mr. Shatford because a dockside monitor had been present on the first occasion, as it was referred to, because the poundage was over 5000 pounds of groundfish and because they weren't present on a subsequent time that should have alerted Mr. Shatford to illegality. However that argument does not hold water because acknowledged was the fact that monitoring was not 100 percent for every trip and the monitoring occurred only as per the conditions of Mr. Westhaver's license conditions, and would have been triggered if the catch were over 5000 or halibut was over 200 as I've already indicated. Now, what that means is that just because a person is buying fish at dockside and a dockside monitor isn't present it doesn't mean that there's necessarily illegality going on, on part of the fisherman because there wasn't 100 percent dockside monitoring at that time. Fisherman were, in certain circumstances, depending on their license conditions, allowed to off-load fish in such circumstances.

[6] In fact, it appears from the evidence that I've received, that the illegality here dealt with not fish caught in contravention of the Regulations, but dealt with in contravention of the Regulations after they were caught on board. Because Mr. Westhaver was a licensed fisherman, and that fact was well documented in the evidence by Mr. Westhaver himself, and would have been well known to Mr. Shatford because of his history with him over the years. Mr. Westhaver talked about how his relationship ended in 2007 with him and the evidence does not, of his explanation as to why that relationship ended does not seem to make sense as well, and that is another factor that I relied upon in determining that although his evidence may be true, his evidence is not something that the Court feels it can rely on as being accurate in this case.

[7] There's no question that Mr. Shatford and his company did end up possessing fish that were dealt with in contravention of the regulations from the point of the mis-hail. And the question arises because it is a strict liability offence, did the actions of Mr. Shatford and the company, did it result in committing an offence or are they able to exempt themselves from legal responsibility for possessing these fish by the exercise of all due diligence. Due diligence and mistake of fact are set out in 78.6 of the **Fisheries Act** and excludes liability for

strict liability offences if the person who's charged or the company charged are able to establish that they exercised all due diligence to prevent the commission of the offence or reasonably and honestly believed in the existence of facts that if true would have rendered the persons conduct innocent. Those are distinct defences, however they are distinct but intertwined, if that makes sense.

[8] In respect of that argument, I had queried the Crown as to why due diligence had not been exercised and the Crown's position is that Mr. Shatford did nothing, and essentially from his evidence that was his evidence that he bought from a licensed fisherman and that was all that he had to do in the circumstances. He didn't ask for log books, he didn't ask for license conditions, he didn't look at them. The Crown argued as well that he knew that he was buying fish in a regulated industry, and that he was on notice that he had to be diligent in the purchasing of fish because he knew from the lobster industry that he had to be diligent in relation to buying lobsters that had female eggs attached, short lobsters, and had to have measures in place. And there is no doubt that that's the law and that's the case right back from the Pierce Fisheries case that went to the Supreme Court of Canada back in 1970 that established the issue of strict liability offences. But there is the distinction, there is a distinction is that the product is then

delivered to the buyer who has the ability to check lobsters to see whether or not there are female eggs attached, whether they are short and has to take all due diligence. The Crown argues that he never asked for a log book, never inquired as to whether or not a dockside monitor had to be present, never asked to see the license conditions and the Crown suggested these are not onerous requirements. However in my view, the due diligence is established when an individual buyer is able to prove that they were buying from a licensed fisher and absent something in the circumstances surrounding the delivery or off-loading of the fish which were not present in this case. Absent something more, I find that there is no legal requirement to establish due diligence beyond ensuring that they are buying from a licensed fisher, something that Mr. Shatford did because of his knowledge and previous dealings with Mr. Westhaver who was a licensed fisher.

[9] It's apparent from the evidence that fishers fish within different groups. Fishers fish with different license conditions amongst themselves and they have the obligation of ensuring that their catch is legal, that they hail properly, that they off-load properly and deal with their fish properly.

[10] Because of the unreliability of Mr. Westhaver's evidence and my inability to rely on that, I find nothing in the circumstances here that would have alerted Mr. Shatford and/or his company to any issue of illegality in relation to the fish which were the subject matter of these charges. I find that because he bought from a licensed fisher he is able to establish, even without dealing specifically with the issue of whether or not it's fish caught in contravention of the Fisheries Act or Regulations, caught—seems as if they may not have been caught in contravention of the regulations, but that is not part of the Court's decision in that regard. I am satisfied that in this particular case Mr. Shatford has established the issue of due diligence and bought from a licensed fisher and because there was nothing in the circumstances, as I've said, that would have alerted him to any illegality on part of that licensed fisher, I find he and his company not guilty of the charges, charges as before the Court. Okay? Mr. Shatford in relation to that matter you are free to go. In relation to all the matters that we've been dealing with, I believe that brings the matter to a conclusion.