IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. Sanford, 2003 NSPC 64

Date: 20031215
Docket: 1273288
Registry: Kentville

Between:

Her Majesty the Queen

v.

Jason Glen Sanford

Judge:	The Honourable Judge Alan T. Tufts
Heard:	November 3, 2003 at Windsor, Nova Scotia
Written Decision:	May 14, 2004
Counsel:	William Fergusson, Q.C., for the Crown Paul Walter, Q.C., for the Defence

By the Court: (orally)

[1] The defendant is charged under s. 13(1) of the **Hunter Education Safety and Training Regulations**, and particularly it is alleged he failed to wear a shirt, vest or coat which is of a hunter orange while hunting. The impugned regulation reads as follows:

> 13(1) Subject to subsection (3), no person shall take, hunt or kill wildlife or attempt to take, hunt or kill wildlife or accompany any person who is hunting unless that person wears a cap or hat and a shirt, vest or coat which shall be exposed to view in such a manner as to be plainly visible from all directions and the colour of which is solid hunter orange.

[2] The defence maintains that the defendant was not hunting, killing or taking wildlife or attempting same. Hunting is defined in the **Wildlife Act**, subsection 3(1)(ad), which reads as follows:

> (ad) "Hunting" means chasing, driving, flushing, attracting, pursuing, worrying, following after or on the trail of, searching for, trapping, attempting to trap, snaring or attempting to snare, shooting at, stalking or lying in wait for any wildlife whether or not the wildlife is then or subsequently captured, killed, taken or wounded, but does not include stalking, attracting, searching for or lying in wait for any wildlife by an unarmed person solely for the purpose of watching or taking pictures of it.

[3] The facts are undisputed. The defendant entered the woods to hunt. It was in an area known for hunting. The defendant was taking a break or leaving the woods and was about to have lunch and to relieve himself. The defendant wore a back brace which was required to be removed in order to

remove or lower his trousers. He was wearing his hunter orange vest until that time and he needed to remove it to disengage the back brace. He put the hunter orange vest in his knapsack after removing it.

[4] It was at this time that the wildlife officers made contact with the defendant. The defendant was walking down a path or woods road. He had either eaten his lunch or was about to do so, but had not yet relieved himself. He was carrying a loaded rifle. He did not want to lay it down for safety reasons. There had been a significant amount of snow on the ground at the time.

[5] The defendant worked for the Department of Natural Resources. The issue is whether the defendant was a person who did take, hunt or kill wildlife or attempt to do so.

[6] The defence maintains that the defendant had taken a hiatus from hunting; that is he was not doing any of the descriptive actions included in the definition of hunting. Notwithstanding his rifle was loaded he says he was not searching out wildlife and that he was to have his lunch and was thereafter exiting the woods.

[7] The Crown argues that the defendant could not be doing anything other than hunting given all the circumstances, particularly when he was carrying a fully operational firearm. The Crown points to the **Firearm and Bow**

Regulations which require a transport permit to carry a firearm in a wildlife habitat unless lawfully hunting.

[8] Section 95 of the **Interpretation Act** provides as follows:

> Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters
>
> (a) the occasion and necessity for the enactment;
>
> (b) the circumstances existing at the time it was passed;
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> (c) the mischief to be remedied;
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> (d) the object to be attained;
>
> (e) the former law, including other enactments upon the same or similar subjects;
>
> (f) the consequences of a particular interpretation; and
>
> (g) the history of legislation on the subject.

[9] In my opinion the defendant was attempting to take, hunt or kill wildlife and was obliged to wear hunter orange. In my opinion the act of hunting continues from the time that the hunter enters the woods, if not before, until he exited the woods and makes his firearm inoperable. Even though a person has taken a hiatus or has given up actively looking for game in deciding to leave for the day the actions described in the definition of "hunting" are continuous actions, in my opinion, which begin as I indicated when the hunter enters the woods and does not cease until he/she has finally exited the woods and broken down the firearm. Any other interpretation would not give any effective meaning to this phrase in the regulations. The interpretation suggested by the defence would mean that hunters would be literally starting and stopping hunting every time they momentarily and actually stopped searching for game. This would render the regulation meaningless.

[10] Here the defendant was walking in the woods with a fully operational firearm. This was part and parcel of the continuous action I described above, notwithstanding he may not have specifically been chasing or searching for wildlife at the very moment. In my opinion he was hunting.

[11] Having said this, the defence of due diligence is available to the defendant. To succeed the defendant must show on a balance of probabilities that he did everything possible to avoid committing the offence.

[12] I am satisfied that he did. He had his hunter orange with him - I accept he wore it until he was required to remove it in order to disengage the back brace which was necessary for him to relieve himself. The only reasonable inference is that he would have donned it again after he relieved himself before leaving the woods.

[13] Given his unique back ailment and these very unusual circumstances and the fact that the defendant must have been aware of his obligation to wear the hunter orange, I can only conclude that he removed the orange vest out of necessity, but otherwise did everything to comply with the regulation. Because of this the defence of due diligence succeeds and he is found not guilty.

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ALAN T. TUFTS, J.P.C.