R. V. DANIELS, DESJARLAIS, SINCLAIR AND BUNN

Manitoba Court of Appeal, Monnin C.J.M., Matas and Huband JJ.A., November 27, 1984

C.M. Sinclair, for the appellants
M.J. Conklin, for the respondent

The appellants appeal from the judgment of the Manitoba County Court ([1984] 4 C.N.L.R. 76) convicting them of hunting with the aid of a light contrary to s.12(1) of the Wildlife Act, S.M. 1980, c.73 (W140). The appellants were hunting with a light on reserve land. The hunt continued onto a municipal road where the appellants proceeded to shine a spotlight on either side of the road onto private property.

Held: Appeals dismissed; sentences affirmed.

Per HUBAND J.A. for the Court

1. Shining a spotlight, from an area from which Indians have a right to hunt, onto private property in furtherance of an intention to shoot game constitutes hunting on private property.

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HUBAND J.A.: The four accused, all of whom are Indians, were hunting at night on reserve land, using a spotlight to locate potential prey, and having done so, to attract and confuse the animal by the light so that it would stand still and be an easier target. They were in a truck; one was driving, one handled the spotlight, and they had two rifles among them.

What they were doing on the reserve was not an offence, but they proceeded beyond the boundary lines of the reserve. They continued along a gravel road at a slow rate of speed f or about three-quarters of a mile beyond the reserve boundary, then turned a round and began a slow return , when they were apprehended . During this slow journey the spotlight was shone onto adjacent farmland on both sides of the roadway.

The accused were charged with a violation of s.12(1) of the Wildlife Act, S.M. 1980, c.73; C.C.S.M., c.W-140, which prohibits what is known as "nightlighting". A trial took place before Lismer P.C.J., who acquitted the accused. An appeal on the record was then heard by Kennedy C.C.J., who reversed the learned trial judge and convicted the accused and imposed fines upon them [see [1984] 4 C.N.L.R. 76]. The accused now bring this further appeal before this court.

It is common ground that treaty Indians have the right to hunt by nightlighting on reserve land. The learned trial judge concluded that the right extended to the right of way of a municipal roadway outside the reserve, and that was the basis upon which he acquitted them. Kennedy C.C.J., concluded that, even if the right to hunt in this manner extended to the municipal roadway, what they were doing constituted hunting on private property on which the searchlight was being trained. Before Kennedy C.C.J., and again in this court , the Crown was content to argue its case on the assumption that treaty Indians enjoy the right to hunt on a municipal roadway similar to their rights on the reserve itself. That is an issue that can be considered in the context of some other case.

The fact is that the searchlight was being shone on the private farmlands in furtherance of an intention to shoot deer if they could be located and attracted by the light. That inference was drawn by the learned trial judge, and confirmed on appeal by Kennedy C.C.J., and it is confirmed once again by this court.

Counsel for the accused argued that shooting at the game is a necessary component of the actus reus of the offence. Not so. The use of the spotlight with the intention to shoot the game once located is enough.

[The following opinions were filed with respect to the appeals as to sentence.]

HUBAND J.A. (MATAS J.A. concurring): As to the accuseds' appeals on sentence, we see no reason to interfere with the sentence imposed by Kennedy C.C.J.

MONNIN C.J.H.: We unanimously dismissed the appeals as to convictions.

On the matter of the sentences, Kennedy C.C.J. imposed a fine of $200.00 on the accused Bunn who was convicted and fined $50.00 for the same offence on May 11, 1982, thus six months before this offence. A fine of $200.00 is totally inadequate. I would impose a fine of $500-00.

With respect to the other three accused, Daniels, Desjarlais and Sinclair, Kennedy C.C.J. imposed a fine of $50.00. They are first offenders. I also think that a fine of $50.00 is totally unfit and inadequate. I would impose a fine of $200.00.