

R. v. STANDINGWATER AND STANDINGWATER

Saskatchewan Court of Appeal, Hall, Takkis and Vancise JJ.A., September 5, 1984

D. Murray Brown, for the Crown , appellant
J.R. Cherkewich, for the respondents

The accused were convicted of hunting at night with the aid of a light contrary to s. 37 of the Wildlife Act, S.S. 1979, c.W-13.1 (see [1983] 3 C.N.L.R. 156). The convictions were set aside by the Queen's Bench (see R. v. Horse, [1984] 2 C.N.L.R. 135 (Sask.Q.B.)). The Court of Appeal, following its decision in R. v. Horse, [1894] 4 C.N.L.R. 99, restored the convictions and upheld the Provincial Court Judge's finding that knowledge by the landowner that his land was being used for the purposes of hunting for food did not constitute implied consent for access to the subject lands.

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VANCISE J.A.: The parties agreed that the result of the appeal in Ernest Horse [see R. v. Horse, [1984] 4 C.N.L.R. 99] would determine the result of this appeal. There is however, one additional element in this matter which was not raised in the Ernest horse appeal. The agreed statement of facts contains the following additional paragraph:

9. The landowner was aware that from time to time his property was being used for the purpose of hunting.

It is argued that such knowledge constitutes an implied consent to enter the land for the purpose of hunting for food. Seniuk P.C.J., considered that submission and found as a fact that such knowledge did not constitute implied consent for access to the subject lands for the purpose of hunting for food [see [1983] 3 C.N.L.R. 156]. This court will not disturb that finding of fact.

The appeal is allowed and the conviction restored.