

## REGINA v. MYRAN ET AL.

(1972), previously unreported

Manitoba County Court, Kerr J., 24 November 1972

(On appeal from judgment of Manitoba Magistrate's Court, **supra** p. 541)

KERR J.: Now, this is an appeal against the conviction of all four accused. The charge against all four accused was laid under s.10, s-s.(1) of the *Wildlife Act*, R.S.M. 1970, c.W140. The Crown, in order to prove their case beyond a reasonable doubt, must present evidence sufficient enough for the court to answer the following question in the affirmative: Did all the accused hunt without due regard for the safety of other persons in the vicinity at the time and in the place set out in the indictment? The burden of proof is on the prosecution to prove the guilt of all the accused beyond a reasonable doubt. Now, there are two issues in this charge. One is hunting, and the other is hunting dangerously, and I don't need to deal with the first issue as the evidence of the accused, both male accused, substantiates that part of the charge, that they were hunting. So the court is left then with the second issue as to whether or not the hunting was dangerous in accordance with the wording of s.10, s-s.(1). Now, I don't intend to go over all of the evidence, but very briefly here are some of the facts. We have the type of weapon used and the range of the weapon, close to two mile. We have the location of the apprehension of all four accused. We have the area and its population, and the evidence show that within the range of this weapon there are considerable farm homes, highways, railways, pasture land, a town, and a breeding station. We have the time of night when the shooting took place, which in my opinion is most important. This shooting took place just prior to midnight. We also have the evidence of the accused, Joseph Myran, where he says that he shot twice in a south-westerly direction and missed the deer both times. Now, I studied the demeanour of this witness very closely in the box, and I do not accept his evidence that he fired both shots in a south-westerly direction. The evidence clearly shows that the accused did fire Exhibit 5 twice just prior to midnight in the process of hunting for game. The evidence, in my opinion, shows that the four accused were engaged in this hunting as a joint venture, and fall directly within s.21 of the Criminal Code, R.S.C. 1970, c.C-34. I find that the manner in which the four accused hunted was without due regard for the safety of other persons in the vicinity, and I might say here for the purposes of the record that had I accepted the accused, Myran's, evidence that he did fire in a south-westerly direction, my finding would be the same, that he was still hunting without due regard for the safety of other persons in the vicinity.

Now, we come to the point of argument put forward by the defence, a good argument and an interesting argument. I commend defence counsel for putting it in. I don't intend to go over all of the argument, but it boils down to this - it I am correct in what counsel has put across to the court - and the argument is this, that the accused persons, because they are treaty Indians, can hunt for food without due regard for the safety of other persons in the vicinity, and my answer to that is that I do not accept that argument. My finding is that s.10(1) of the Wildlife Act, in so far as the part relating to the charge at issue, that is, hunting without due regard for the safety of other persons in the vicinity, applies to all persons, irrespective of status. So from all of the evidence I find that all four accused did hunt without due regard for the safety of other persons in the vicinity. My answer, therefore to the question is in the affirmative, and I find the four accuseds guilty as charged, and all four appeals are dismissed, and I affirm the conviction and sentence of each accused by the learned magistrate.