

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. SA – 40 – 2007
:
vs. : SUMMARY APPEAL
:
NICHOLAS SAMPSON, :
Defendant :

OPINION AND ORDER

Before the Court is Defendant's Appeal from his conviction of the summary offense of receiving, possessing or holding a specimen for another without a taxidermy permit. A hearing was held June 11, 2007, at the conclusion of which Defendant requested additional time in which to file a brief. Defendant was granted until July 1, 2007, to file a brief, and the Commonwealth was given ten days in which to respond. Defendant's brief was filed June 29, 2007. The Commonwealth did not respond.

The Commonwealth presented the testimony of Wildlife Conservation Officer Kristoffer Krebs, who indicated that inasmuch as Defendant's taxidermy permit had expired on June 30, 2005, he made several attempts to contact Defendant, finally contacting him on January 10, 2006, and when Defendant failed to renew his permit within the next day or so, he obtained a search warrant for Defendant's place of business. A search of that location led to the seizure of 282 items and Defendant was charged with 17 counts of possessing specimens without a permit in violation of the Game and Wildlife Code. 34 Pa.C.S. Section 2908(a)(1). Defendant has raised three issues: (1) lack of jurisdiction to continue the prosecution, (2) the previous holding of a permit authorized the actions involved, and (3) sufficiency of the evidence. These will be addressed seriatim.

The Game Commission was granted authority to issue various permits and to promulgate regulations with respect thereto by virtue of Section 2901 of the Game and Wildlife Code. 34 Pa.C.S. Section 2901(a) and (b). Section 2926 of the Code provided for taxidermy permits. 34 Pa.C.S. Section 2926. As of October 5, 2006, however, pursuant to House Bill 1528 of 2005, Section 2926 was deleted, and the Agriculture Code was amended to provide for

the licensing of taxidermists by the Department of Agriculture. 3 Pa.C.S. Sections 2701 *et seq.* Defendant argues that Wildlife Conservation Officers no longer have the authority to prosecute violations of the taxidermy provisions of the Game and Wildlife Code, that such violations should instead be prosecuted by the Department of Agriculture. While the Court would agree with Defendant had the alleged violations in the instant case occurred after October 5, 2006, as the violations are alleged to have occurred on January 12, 2006, Defendant's argument is without merit.

Next, Defendant argues that since he had a permit prior to June 30, 2005, his possession of the items in question was lawful under the expired permit, pointing to the language of Section 2926 which provides, in pertinent part, that the holder of a permit may "receive any bird or animal that has been legally or accidentally killed, keep the specimen or any part thereof in possession indefinitely and mount the specimen or any part thereof". The Court believes Defendant takes this wording too literally, however. Section 2927(c) allows a taxidermist to accept a protected specimen and, after notifying the Game Commission, hold it without the necessary "protected specimen mounting permit" for a period not exceeding 60 days. The Court believes that by using the term "indefinitely" in Section 2926, the legislature merely meant to indicate there was no set time within which the specimen had to be mounted. Defendant's suggestion, that his continued possession of specimens after his permit had expired is lawful, while his mounting of those specimens would be unlawful, is contrary to the presumption that the legislature does not intend a result that is absurd. 1 Pa.C.S. Section 1922(1).

Finally, with respect to the sufficiency of the evidence, the Court finds the evidence sufficient to convict on all but two of the charges. At the time of the hearing, the Court granted Defendant's demurrer to the charge of possessing an antelope belonging to one George Lamond, and that charge will therefore be dismissed. The Court also finds a lack of proof with regard to the antelope cape alleged to belong to one Anthony Campana. Mr. Campana testified that all of the animals or parts of animals which he took to Defendant for taxidermy work were returned to him save two turkeys. The Court cannot, therefore, find that Defendant possessed an antelope cape belonging to Mr. Campana, and will find Defendant not guilty of that

particular charge. The Commonwealth has otherwise, however, convinced the Court beyond a reasonable doubt that Defendant possessed specimens received from other persons without having the required permit and thus will find him guilty of the remaining fifteen charges.

ORDER

AND NOW, this 16th day of July 2007, for the foregoing reasons, Defendant's appeal of Nos. NT-14-07, NT-15-07, NT-16-07, NT-17-07, NT-18-07, NT-19-07, NT-20-07, NT-21-07, NT-22-07, NT-23-07, NT-24-07, NT-25-07, NT-26-07, NT-29-07, and NT-33-07 is hereby overruled and the judgment of the magistrate is hereby affirmed. Sentence imposed by the magistrate is affirmed.

Defendant's appeal of Nos. NT-30-07 and NT-32-07 is hereby sustained and those charges are DISMISSED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
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Collections Office
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Hon. Dudley Anderson