

COURT OF APPEALS
DIVISION II

10 NOV 30 PM 12:44

STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

No. 40547-4-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

JASON A. STOKEN,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE F. MARK McCAULEY, JUDGE

BRIEF OF RESPONDENT

H. STEWARD MENEFEE
Prosecuting Attorney
for Grays Harbor County

BY: *[Signature]*
KRAIG C. NEWMAN
Senior Deputy Prosecuting Attorney
WSBA #33270

OFFICE ADDRESS:
Grays Harbor County Courthouse
102 West Broadway, Room 102
Montesano, Washington 98563
Telephone: (360) 249-3951

PM 11-29-10

T A B L E

Table of Contents

STATEMENT OF THE CASE 1

ISSUES 3

 1. The jury was properly instructed as to the
 crime of Hunting While License Revoked or
 Suspended in the First Degree. 3

 2. The State need not prove that the appellant
 was not performing as a wildlife official at
 the time of this crime 4

 3. Evidence was sufficient to establish that
 the defendant was guilty on Count 1. 4

CONCLUSION 6

TABLE OF AUTHORITIES

Table of Cases

State v. Barrington, 52 Wn.App. 478, 484, 761 P.2d
632 (1987) rev. den., 11 Wn.2d 1033 (1988) 5

State v. Carmillo, 115 Wn.2d 60, 71, 794
P.2d 850 (1990) 5

State v. Joy, 121 Wn.2d 333, 338, 851
P.2d 654 (1993) 5

State v. McCollum, 98 Wn.2d 484, 488,
656 P.2d 1064 (1983) 5

State v. Salinas, 119 Wn.2d 192, 201, 829
P.2d 1068 (1992) 5

STATUTES

RCW 77.15.010 4
RCW 77.15.670(1) 3

STATEMENT OF THE CASE

The appellant was charged by Information with the crimes of Unlawful Hunting of Big Game in the Second Degree and two counts of Hunting While License Revoked or Suspended in the First Degree. The charges were based on unlawful hunting activities that occurred in 2006, 2007 and 2008. The appellant was taken to trial and convicted on Count 1 and Count 3, but was acquitted on Count 2. Count 2 being a charge of Hunting While License Revoke or Suspended in the First Degree that allegedly occurred in 2007.

To establish the appellant's guilt on Count 1 the State elicited the testimony of Kimberly Brigden. Brigden is the on again/off again paramour of the appellant. She explained that she had witnessed a hunting violation on the part of the appellant that occurred in April of 2008. She witnessed the appellant butcher an animal on a river bar in Grays Harbor County then packed the meat and leave with it. (RP 34). Prior to seeing Mr. Stoken butcher this animal, she heard a gunshot and witnessed the appellant in possession of a firearm. *Id.* After she head the firearm go off the appellant carried her across the river and showed her a dead animal. (RP 35).

After the appellant left her campsite she reported this incident to the authorities. *Id.* The authorities confiscated a piece of meat that the appellant had given Brigden. Fish & Wildlife officers also observed the carcass of the wasted animal. (RP 135). Officer Brian Alexander described the animal as a yearling blacktail deer that he found concealed at the base of an alder tree. The officer also testified that it was illegal to kill such an animal at that time of the year. (RP 135). The officer testified that hunting season did not start until September of that year. *Id.* Meat was taken from this animal for testing.

On a April 29, 2008, Fish & Wildlife officers served a search warrant on the appellant's home. (RP 142). Among other things they found a bag of jerky located in the kitchen. *Id.* Genetic testing associated the meat found in the field and that obtained from Brigden to the jerky found in the appellant's kitchen. *Id.* This testing also proved that the animal was, in fact, a deer. *Id.*

During the execution of the search warrant officers located numerous teeth and antler racks from elk. (RP 143). Also located was packed meat in a freezer that was located in the shop attached to the appellant's residence. *Id.* All of these items were taken as evidence. Among these racks taken was a Roosevelt elk rack that had a particular characteristic based on Alexander's opinion made it unique. (RP 171). A photograph was also introduced taken with the appellant posed with the dead animal in the field. *Id.*

Genetic testing associated the rack with teeth and meat found at the defendant's residence. The teeth and meat were labeled to indicate the year that it was killed. (RP 97).

The State offered documents to prove that the appellant had his license revoked in the year 2006.

ISSUES

- 1. The jury was properly instructed as to the crime of Hunting While License Revoked or Suspended in the First Degree.**

The appellant correctly states the criminal code that establishes the crime of Unlawful Hunting While License Revoked or Suspended in the First Degree and correctly stated to the jury instructions. A close reading of the statute reveals that the jury instruction does, in fact, conform to it. The appellant argues that RCW 77.15.670(1) requires that a person is guilty if his license is suspended by the Department and one of three options. He incorrectly states that (c) "the violation involves hunting, taking, or possession of fish or wildlife classified as endangered or threatened or big game." The appellant argues that this sentence stands for the proposition that the State must prove that the animal is endangered or threatened, but the correct reading is that the statute also includes when the

animal is big game. In this case the State proved for conviction on Count 3 that the appellant was revoked at the time he killed the animal and that the animal was, in fact, big game. There was a jury instruction given at the conclusion of the case stating the elk are by law big game.

2. The State need not prove that the appellant was not performing as a wildlife official at the time of this crime.

The appellant argues that RCW 77.15.010 offers no authority whatsoever that this is an element of the charged crime.

This would be a defense to the crime and as such must be raised by the defendant at some point in the trial and then rebutted by the prosecution. In this case the defendant did not raise such a defense, therefore, he cannot complain that the prosecution did not disprove it.

3. Evidence was sufficient to establish that the defendant was guilty on Count 1.

The appellant argues the State is required to present evidence as to the open season times of Fish & Wildlife Commission had established in this case. The State did establish this through the testimony of Brian Alexander. He stated that it was not legal to kill a deer at that time of year and that the hunting season began in September.

Due process requires that the State bear the burden of proving each and every element of the crime beyond a reasonable doubt. *State v. McCollum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983). The applicable standard of review is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). Also, a challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Barrington*, 52 Wn.App. 478, 484, 761 P.2d 632 (1987) rev. den., 11 Wn.2d 1033 (1988). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted more strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In considering this evidence, "credibility determinations are for the trier of fact and cannot be reviewed on appeal." *State v. Carmillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

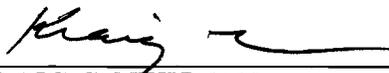
The appellant offers not explanation as to why the officer's testimony as to the closed season is not competent evidence that it was unlawful to hunt blacktail deer at the time the appellant was accused of killing the animal. He states that is a "legal opinion," which is not true. Closures of hunting is a matter of fact, and as such is in the province of the jury.

CONCLUSION

For the reasons state above the Respondent asks the court to deny
the appellants claims of error

DATED this 29 day of November, 2010.

Respectfully Submitted,

By: 
KRAIG C. NEWMAN
Senior Deputy Prosecuting Attorney
WSBA #33270