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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY

NO. 287629

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM A. PAGE,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR FERRY COUNTY
The Honorable Allen C. Nielson

AMENDED APPELLANT'S SUPPLEMENTAL BRIEF

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I. ASSIGNMENTS OF ERROR

1. The Department erred when it defined the unit of prosecution as " per trafficking transaction".

2. The Department erred when it aggregated bear gallbladders from different animals to satisfy the value threshold for first-degree wildlife trafficking.

3. The Department failed to prove the value of each bear gallbladder.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. What unit of prosecution did the legislature intend as a punishable act under chapter 77.15 RCW? (Assignment of Error #1)

2. Does the statute permit a value aggregation of pieces of contraband to reach the value threshold required to support wildlife trafficking in the first-degree? (Assignments of Error #2 and #3)

III. STATEMENT OF CASE

The Department of Fish and Wildlife (Department) orchestrated *Operation Zepplin* to uncover illegal bear gall trafficking enterprises throughout the state. 11/9/09 RP 130; 11/9/09 RP 143. The Department targeted William Page (Mr. Page), a semi-retired meat shop proprietor and a known hound hunter, as a person of interest. 11/12/09 RP 66-67; 11/9/09 RP 130; 11/10/09 RP 64-65; 11/12/09 RP 81. The Department wanted to explore whether Mr. Page was willing to hunt outside of a Departmental DNA study permit for which he captured cougar. 11/10/09 RP 65.

As part of *Operation Zepplin*, the Department sent detectives, posed as hunters, to Mr. Page's meat shop, to sell bear gallbladders. 11/12/09 RP 66. Mr. Page purchased 1 bear gallbladder for $80 on September 15, 2007. 11/9/09 RP 142; 11/10/09 RP 136. A few days later on September 27, 2007, Mr. Page purchased 4 more bear gallbladders for $370. 11/9/09 RP 143. On November 16, 2007, Mr. Page purchased 1 bear gallbladder for $100 and another gallbladder for $100 on April 30, 2008. 11/9/09 RP 158-161; 11/10/09 RP 142-143; 11/9/09 RP 164-166. On June 17, 2008, Mr. Page purchased 7 bear gallbladders for $650. 11/9/09 RP 173; 11/9/09 RP 180-181. And on September 16, 2008, Mr. Page purchased 3 bear gallbladders for $300. 11/9/09 RP 179; 11/9/09 RP 182.

In all, Mr. Page purchased 17 bear gallbladders on 6 different occasions. 11/9/09 RP 158; 11/9/09 RP 164; 11/9/09 RP 172; 11/9/09 RP 181.

The Department charged Mr. Page with 6 counts unlawful wildlife trafficking pursuant to RCW 77.15.260. CP 176-181. As evidence, the Department introduced videotaped recordings of some of the transactions between Mr. Page and the undercover detectives as well as bank records, photographs, and bear gallbladders. CP 122-124; CP 359-361; 11/9/09 RP 145; 11/9/09 RP 159; 11/9/09 RP 165. However, the Department did not present any evidence to prove the value of any individual bear gallbladder was $250 or more as required under RCW 77.15.260 (2)(a) for first-degree

convictions.

A jury found Mr. Page guilty on all 6 counts. On count 1, the jury found Mr. Page guilty of unlawful wildlife trafficking in the second-degree. As to count 2, the jury found Mr. Page guilty of unlawful wildlife trafficking in the first-degree. The jury found Mr. Page guilty of unlawful wildlife trafficking in the second-degree for counts 3 and 4. And for counts 5 and 6, the jury found Mr. Page guilty of wildlife trafficking in the first-degree. 11/12/09 RP 178; CP 362; CP 363; CP 364; CP 365; CP 366; CP 367.

The court imposed financial obligations and sentenced Mr. Page to 1 year in jail to be stayed pending the outcome of an appeal. 12/18/09 RP 16; CP 432-441; CP 442; CP 454.

After Mr. Page's appeal was submitted for consideration, this Court published State v. Jason Yon, 159 Wash. App. 195, 246 P.3d 818 (2010). In State v.Yon, this Court clarified that the "the unit of prosecution" that the legislature intended under RCW 77.15.260 was "per animal" not "per trafficking transaction". In light of that, Mr. Page submits this supplemental brief.

IV. ARGUMENT

THE STATUTE REQUIRES EACH INDIVIDUAL ANIMAL UNLAWFULLY TAKEN OR POSSESSED IS A SEPARATE OFFENSE, THEREFORE THE DEPARTMENT IS PROHIBITED FROM AGGREGATING THE VALUE OF BEAR GALLBLADDERS FROM DIFFERENT ANIMALS TO SUPPORT CHARGES OF FIRST DEGREE WILDLIFE TRAFFICKING.

With respect to determining the proper unit of prosecution, this Court's review is de novo. State v. Ose, 156 Wash.2d 140, 144, 124 P.3d 635 (2005) (citing State v. Graham, 153 Wash.2d 400, 404, 103 P.3d 1238 (2005)).

When a person is convicted of violating a statute multiple times, the question becomes what unit of prosecution did the legislature intend as the punishable act under the statute. State v. McReynolds, 117 Wash.App. 309, 334, 71 P.3d 663 (2003) (quoting State v. Adel, 136 Wash.2d 629, 634-35, 965 P.2d 1072 (1998)). A unit of prosecution can be either an act or a course of conduct. State v. Tvedt, 153 Wash.2d 705, 710, 107 P.3d 728 (2005); see also Ex parte Snow, 120 U.S. 274, 286, 7 S.Ct. 556, 30 L.Ed. 658 (1887). It is the legislatively defined scope of the criminal act. State v. Yon, 159 Wash.App 195, 246 P.3d 818 (2010) (citing State v. Adel, 136 Wash.2d 629, 634, 965 P.2d 1072 (1998)).

The unit of prosecution issue is unique in that while the issue is one of constitutional magnitude on double jeopardy grounds, on other grounds the issue ultimately revolves around a question of statutory interpretation and legislative intent. Twice in Jeopardy, 75 Yale L.J. 262, 313 (1965).

When interpreting a statute, the court's fundamental objective is to ascertain and carry out the legislature's intent. State v. Jacobs, 154 Wash.2d 596, 600, 115 P.3d 281 (2005). To determine that intent, the court must first look to the language of the statute. State v. Armendariz,

160 Wash.2d 106, 110, 156 P.3d 201 (2007). If the plain language of the statute is clear and unambiguous, the court must give effect to the language as an expression of legislative intent. Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wash.2d 1, 9-10, 43 P.3d 4 (2002). In determining the plain meaning of a provision, the court must look to the text of the statutory provision in question as well as "the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." Jacobs, 154 Wash.2d at 600, 115 P.3d 281.

The court must also construe statutes so that all the language used is given effect, with no portion rendered meaningless or superfluous. Whatcom County v. City of Bellingham, 128 Wash.2d 537, 546, 909 P.2d 1303 (1996). Courts should interpret statutes in a way that avoids a strained or unrealistic interpretation. In re Pers. Restraint of Brady, 154 Wash.App. 189, 193, 224 P.3d 842 (2010) (citing State v. Tejada, 93 Wash.App. 907, 911, 971 P.2d 79 (1999)). Statutes on the same subject matter must be read together to give each effect and to harmonize each with the other. US W. Commc'ns, Inc. v. Utils. & Transp. Comm'n, 134 Wash.2d 74, 118, 949 P.2d 1337 (1997).

In State v. Jason Yon, 159 Wash.App. 195, 246 P.3d 818 (2010), this Court vacated two first-degree wildlife trafficking convictions under RCW 77.15.260 because the State failed to charge the defendant by the proper unit of prosecution. This Court found that in order to fully ascertain the legislature's chosen unit of prosecution under chapter 77.15

RCW, RCW 77.15.260 and RCW 77.15.030 must be read together.

RCW 77.15.260 provides in relevant part:

> (1) A person is guilty of unlawful trafficking in fish, shellfish, or wildlife in the second degree if the person traffics in fish, shellfish, or wildlife with a wholesale value of less than two hundred fifty dollars and: (a) The fish or wildlife is classified as game, food fish, shellfish, game fish, or protected wildlife and the trafficking is not authorized by statute or rule of the department; ... (2) A person is guilty of unlawful trafficking in fish, shellfish, or wildlife in the first degree if the person commits the act described by subsection (1) of this section and: (a) The fish, shellfish, or wildlife has a value of two hundred fifty dollars or more.

RCW 77.15.260.

It does not allow for aggregation of value. In fact, it specifically requires that an individual piece of contraband must be valued at $250 or more to support a charge of first degree wildlife trafficking.

While RCW 77.15.260 sets forth the elements of first-degree wildlife trafficking, RCW 77.15.030 defines the unit of prosecution. It specifically provides that "where it is unlawful to hunt, take, fish, possess, or traffic in big game or protected or endangered fish or wildlife, then each individual animal unlawfully taken or possessed is a separate offense. State v. Yon, 159 Wash.App. 195, 246 P.3d 818 (2010).

This Court read RCW 77.15.030 in harmony with RCW 77.15.260 and concluded that RCW 77.15.030 applies to trafficking charges brought under RCW 77.15.260. Consequently, when RCW 77.15.030 applies, the State is not allowed to aggregate the value of different animals to support charges in the first-degree. State v. Yon, 159 Wash.App. 195, 246 P.3d

818 (2010).

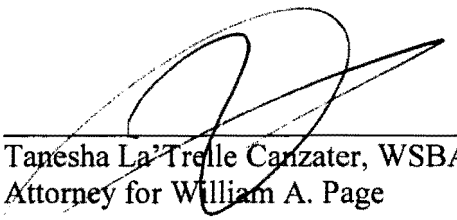
Mr. Page was convicted before Yon was published. However, the scenario in Yon is virtually identical to Mr. Page's case. Like in Yon, the Department here did not apply the legislature's chosen "per animal" unit of prosecution under RCW 77.15.030, but instead defined the unit of prosecution as "per trafficking transaction". Also, the State did not offer any evidence to prove that any of the 17 gallbladders purchased valued $250 or more. Instead, the State aggregated the value of different bear gallbladders to support the $250 or more threshold for unlawful wildlife trafficking in the first-degree.

Because the Department neglected to apply the chosen unit of prosecution and ultimately failed to prove that any of the 17 bear gallbladders purchased valued $250 or more, Mr. Page's first-degree unlawful wildlife trafficking convictions cannot stand.

V. CONCLUSION

In light of State v. Yon, Mr. Page respectfully asks this Court to vacate the first-degree convictions.

Respectfully submitted this 22nd day of March, 2011.



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