

MAR 02 2017

FILED

LOWER DISTRICT COURT OF WASHINGTON
COUNTY OF KITTITAS

STATE OF WASHINGTON

Plaintiff,

v.

TOD LYLE REICHERT

Defendant.

No. CC2016043 DFW

MEMORANDUM DECISION
GRANTING DEFENSE
MOTION

STATE OF WASHINGTON

Plaintiff,

v.

DAVID PERKINS

Defendant.

No. CC2016082 DFW

These cases involve the December 1, 2015 “harvest” of a multiple branch antler bull elk in GMU (Game Management Unit) 334 located in Kittitas County. Defendant Reichert was the holder of a big game raffle permit and was the individual who shot the elk with a “modern firearm.” Defendant Perkins was Reichert’s disable hunter hunting companion. This hunting

1 permit allowed Reichert to “harvest one additional any bull elk” plus a deer and bighorn sheep
2 ram from the period of September 1 through December 31, 2015. The permit allowed hunting
3 for the elk in any 300 or 500 series GMU “except those units closed to elk hunting” and those
4 units “not opened by the Fish and Wildlife Commission to branch antlered bull elk hunting.”
5 The permit allowed the hunter to “hunt with any legal weapon.”
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7 GMU 334 during the modern firearm general elk hunting season¹ allows for the harvest
8 of “true spike bull”. A “true spike bull” is defined² as a bull elk that has “both antlers with no
9 branching originating more than four inches above where the antlers attach to the skull.” A
10 “branch” is defined as “any projection off the main antler beam that is at least one inch long,
11 measured on the longest side, and longer than it is wide.”
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13 There is no specific definition in the regulations defining the phrase “branch antlered bull
14 elk.” The regulations do, however, provide the following additional definitions in addition to
15 branch: “visible antler” is “a horn-like growth projecting above the hairline”. A bull is a male.
16 “Elk” is the common term for the animal of the scientific name of “cervus canadensis.” RCW
17 77.08.030 Taking those terms together a “branch antlered bull elk” means a male elk with a
18 horn like growth that has any projection off the main antler that is at least one inch long and is
19 longer than it is wide. As such, a “true spike bull” restriction area is an area open by the Fish and
20 Wildlife Commission to branch antlered bull elk hunting, as long as there are no branches
21 originating more than four inches above where the antlers attach to the skull. As such, this court
22 finds that GMU 334 was an area that was “open” to branch antler bull elk hunting by the
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25 ¹ The court would note that previous motions by the defense have raised the question as to whether
26 language of the modern firearm general elk hunting season are even applicable since there is no specific rule,
regulation, or statute that makes that clear. The court has previously denied the defense motion on that basis.

² The definitions described by the court are found in WAC 232-28-358 (and the hunter’s pamphlet for that
hunting season on page 49) unless otherwise indicated.

1 | commission. As such the court finds that the harvest of the elk by the defendant was not in
2 | violation of the raffle permit.

3 | The elk that was harvested was clearly not a true spike bull elk. It had multiple branches
4 | originating more than four inches above the elk's skull. The issue before the court is not whether
5 | the elk was harvested consistent with the restrictions on elk hunting that would be generally in
6 | place for the GMU during the general modern firearm elk season. The issue is whether the GMU
7 | was open for this hunt pursuant to the regulations and permit. If DFW had wanted to adopt it
8 | regulations and issued its permits to provide such a limitation for this GMU it could have done
9 | so, but the regulations and permit as written do not contain that language and limitation.
10 |

11 | Big game hunting violations are a strict liability crime. Such a *malum prohibitum* crime
12 | stature and regulation must be strictly construed. See *State v Herr*, 151 Wash 623 (1929) The
13 | court reaches the conclusion that defense motions be granted. This result is reached following
14 | various alternative legal theories or approaches. The current motions before the court are 1)
15 | defense motion to dismiss on the basis that the regulations are void for vagueness as applied to
16 | the facts of this case. 2) Motion to dismiss for prosecutorial mismanagement, and 3) renewed
17 | motion to dismiss "*Knapstead*" motion. This court grants the defense motion to dismiss as void
18 | for vagueness and/or in the alternative motion to dismiss under *Knapstead*. The court denies the
19 | motion to dismiss for prosecutorial mismanagement.
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21 | Under a *Knapstead*³ motion the court is to take all facts and all reasonable inferences in
22 | favor of the prosecution. As noted above the court reads the regulations and permit as allowing
23 | the harvest of the elk in this case. There is no dispute about the type of elk or the location of the
24 | harvest or the GMU in issue. As such the defense is entitled to dismissal under *Knapstead*.
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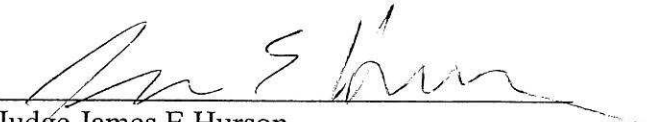
26 | _____
³ *State v Knapstead*, 41 Wn App 781 (1985)

1 As to the void for vagueness argument the defense takes the position that the phrase
2 "branch antlered bull elk" is undefined and is therefore void for vagueness as applied to the facts
3 in this case. As the court has noted above, however, the court believes that the phrase is
4 adequately defined and the charge is dismissed pursuant to the *Knapstead* motion. If, however,
5 the courts analysis regarding the meaning of the phrase is incorrect then the language of the
6 regulation and permit are void for vagueness. If the phrase doesn't mean what the court has held
7 it means then it is unconstitutionally vague as applied in this case. A defendant should not need
8 to guess what a statute or regulation was meant to mean. A statute is unconstitutionally vague if
9 the criminal offense is not defined with sufficient definiteness that ordinary people can
10 understand what conduct is proscribed. *State v Watson*, 160 Wn 2d 1 (2007) The regulation and
11 permit language are unconstitutionally deficient if the regulation was intended to proscribe this
12 conduct in this case.
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15 In the states most recent reply memorandum of February 24, 2017 that state has for the
16 first time taken the position that the harvest was illegal because the general hunting rules do not
17 have GMA 334 open for elk hunting on December 1, 2015. Apparently the state takes the
18 position that the raffle permit only allows for harvest of the elk from October 31 through
19 November 8, 2105 despite the language of the permit that says the permit is good from
20 September 1, through December 31, 2015. (see page 11 of the "Washington's 2015 Big Game
21 Hunting Seasons & Regulations" that states that the season dates for that permit are for Sept. 1 –
22 Dec. 31) This argument is without merit. It is not consistent with the previous position of the
23 prosecution, the language of the permit, and such an interpretation would be void for vagueness.
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1 The court grants the defense motion to dismiss under *Knapstead*. In the alternative the
2 court grants the defense motion to dismiss on void for vagueness grounds.

3 DONE IN OPEN COURT this 2nd day of March, 2017

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5 
6 Judge James E Hurson

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