HB

159

"An Act relating to salvaging the edible meat of wild food animals."

3/12/75 JUDICIARY

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date 3-27-75

The Committee on Resources has had HB 151 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR HB 151 AND THAT CS FOR HB 151 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

File
HB159

March 20, 1975

Nels Anderson, Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Nels,

We the undersigned support your sponsored House Bill # 159. We also hope it can be amended to include that; 1) guides transporting trophy hunters be punished also (license suspended one year for the first offense and permanently revoked on the second offense) if the hunter is found guilty. 2) that the legislature provide adequate funding to provide for required check stations for all hunters and/or guides transporting horns to check in. Funds should include for an increase in protection officers and check station officers.

Also we would favor legislation to eliminate the mandatory overnight stay for subsistance hunters (hunters not transporting horns) for residents within or living adjacent to a hunting unit.

Thank you.

Sincerely,

Charles A. Gustafson

Lou Ann Nunn

Vern D. Lunkenheimer

cc: Ted Smith
George Hohman

Paul Davis

March 20, 1975

Ted Smith, Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Mr. Smith,

We the undersigned are opposed to your House Bill # 57. We are also opposed to any legislation placing the Wood River - Tikchik lake in any kind of park system under the current "Master Plan" for the system. Also, we are opposed to any legislation placing the Wood River - Tikchik lake systems in any kind of a park system allowing for any further development or expansion of lodges, trails, camp grounds, roads, airstrips, cabins, etc.

We hope you will amend your bill to include the above or campaign for its defeat and support a new bill to include the above and the requests heard at the public hearing held in Dillingham on March 13, 1975.

Sincerely,

Charlotte Gustafson
Lou Ann Nunn
Bill Crow

cc: Nels Anderson
George Hohman

AMENDMENT

OFFERED IN THE HOUSE: CS for BY: House Resources Committee

To: Amend HOUSE BILL No. 159

SENATE BILL No. _____

PAGE: 1 LINE: 24-25
25-26

Delete in the title By a Guide OR His Client"

After the word "animal" delete "by a guide licensed under AS 08.54 or his client while under a guiding contract"

A M E N D M E N T

TO: CS for House Bill No. 159 (Judiciary)

Page 1, lines 26 - 29 and page 2, lines 1 - 6: Delete all matter and insert the following:

Sec. 16.30.012. POSSESSION OF RAW HORNS OR ANTLERS. (a) It is unlawful to possess the raw horns or antlers of a wild food animal without its being accompanied by most of its edible meat unless

(1) most of its edible meat was salvaged in accordance with law;

(2) the horns or antlers were acquired by gift from another person after the associated meat was salvaged;

(3) the meat was lost due to circumstances beyond the possessor's control, including loss in the field to another animal, weather or other acts of God, or theft.

(b) If a person who possesses raw horns or antlers without its being accompanied by most of its edible meat raises a justification specified in (a)(1) - (3) of this section, additional corroborating evidence of that justification may be required by the department. In this section,

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99801

March 19, 1975

The Honorable Nels Anderson
Chairman
Committee on Resources
House of Representatives
State of Alaska
Juneau, Alaska 99811

Re: Opinion on CSHB 159

Dear Mr. Chairman:

This is in response to your request for an opinion from this department regarding certain provisions in the Committee Substitute for House Bill No. 159, dealing with waste of wild food animals. Specifically, your Committee has asked for a constitutional evaluation of proposed AS 16.30.012 (Section 2 of the bill), which would append to the existing waste control measure a presumption of unlawful waste where raw horns or antlers were not accompanied by most of the edible meat. Section 2 of the bill reads in part:

> Sec. 16.30.012. POSSESSION OF RAW HORNS OR ANTLERS. The possession of the raw horns or antlers of a wild food animal without its being accompanied by most of its edible meat creates a presumption of failure to salvage most of the edible meat under secs. 10 - 30 of this chapter. The burden of proof is on the possessor to overcome the presumption of failure to salvage most of the edible meat and it is not overcome until substantial proof is offered other than a personal statement, establishing the fact that it was not salvaged due to circumstances beyond control as set out in (a) of this section, or that the horns or antlers were otherwise obtained lawfully. * * *

Rebuttable presumptions, such as that contained in proposed sec. 12, are not uncommon. During the 1974 session, the Alaska Legislature approved at least two of them. See AS 11.20.350(b) (concerning receipt of stolen property) and AS 16.05.810 (pertaining to illegal possession of fish or game). However, not all presumptions are valid as a matter

of course. The Supreme Court of the United States has reviewed a number of statutory presumptions in criminal cases, usually in light of 14th Amendment due process claims, and has established some relatively firm guidelines on what is allowable and what is not.

The first and most often cited rule laid down by the Court was in Tot v. United States, 319 U.S. 463 (1942):

> Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience. This is not to say that a valid presumption may not be created upon a view of relation broader than that a jury might take in a specific case. But where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them, it is not competent for the legislature to create it as a rule governing the procedure of courts. [319 U.S. at 467-468.]

The Supreme Court later reaffirmed the "rational connection" test in United States v. Gainey, 380 U.S. 63 (1965), sustaining a jury instruction tracking a statute authorizing conviction for operating an illegal still based on mere presence at the still site. See also United States v. Romano, 382 U.S. 136 (1965). The Court, however, apparently recognized that "rational connection" might not be sufficiently explicit in determining the permissibility of statutory provisions which necessarily involved a considerable amount of subjective judgment by the legislative body. Subsequent to Gainey and Romano, the Supreme Court decided Leary v. United States, 395 U.S. 6 (1969), in which the defendant was subjected to a presumption of illegal importation of marijuana when all that was proved was possession. The Court pointed out that a substantial volume of illegally possessed marijuana is in fact grown in the United States, and that a presumption of illegal importation from simple possession was unjustified. An inference, the Court said, is "'irrational' or 'arbitrary', and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." 395 U.S. at 36. From this opinion originated the "more likely than not test". A similar evaluation appeared in Turner v. United States, 396 U.S. 398 (1970).

Paralleling the Court's consideration of the contents of a valid presumption was the effect of the presumption as it operates in criminal proceedings. At the hearing on CSHB 159, Representative Eliason raised the question of whether a statutory presumption changes the fundamental principle that a person is presumed innocent until proven guilty. The Supreme Court has pointed out clearly that a statutory inference is not a rule of substantive law, but rather a rule of evidence which may serve as a guideline for the court and the jury. This same line of cases shows that the presence of a presumption does not mean that the defendant is automatically convicted. Two very substantial hurdles must be passed before a presumption can operate to contribute to a conviction. First, as was stated in United States v. Gainey, supra, at 69:

> Our Constitution places in the hands of the trial judge the responsibility for safeguarding the integrity of the jury trial, including the right to have a case withheld from the jury when the evidence is insufficient as a matter of law to support a conviction.

Second, even if the judge decides that the existence of the facts supporting a presumption constitutes sufficient evidence to send the case to the jury, there is no requirement that the jury accept the presumption and render a guilty verdict. In United States v. Turner, supra, the Court emphasized that the presumption in that case (possession of heroin allowed a presumption that it was illegally imported since no heroin is manufactured in the United States) was merely one fact among many that the jury was to consider in rendering its verdict; that the jury was in no way obligated to rely upon the presumption; and that the jury was still required to find the defendant guilty beyond a reasonable doubt regardless of the existence or nonexistence of the presumption. Of course, verdicts based upon presumptions are subject to further review in the form of motions for judgment notwithstanding the verdict, and appeals to a higher court. Up through the 1970 Turner decision, however, the Supreme Court had not satisfactorily explained the relationship between the "more likely than not" test and the "reasonable doubt" standard applied to all criminal trials. In 1972, the Court handed down an opinion in Barnes v. United States, 412 U.S. 837, which re-evaluated and reaffirmed the earlier decisions and attempted to explain their import. In conducting its review, the Court stated as follows:

> What has been established by the cases, however, is at least this: that if a statutory inference

> submitted to the jury as sufficient to support conviction satisfies the reasonable-doubt standard (that is, the evidence necessary to invoke the inference is sufficient for a rational juror to find the inferred fact beyond a reasonable doubt) as well as the more-likely-than-not standard, then it clearly accords with due process.

The segment of the opinion containing the holding is also instructive with respect to CSHB 159:

> In the present case the challenged instruction only permitted the inference of guilt from the unexplained possession of recently stolen property. The evidence established that petitioner possessed recently stolen Treasury checks payable to persons he did not know, and it provided no plausible explanation for such possession consistent with innocence. On the basis of this evidence alone common sense and experience tell us that the petitioner must have known or been aware of the high probability that the checks were stolen. [Citations omitted.] Such evidence was clearly sufficient to enable the jury to find beyond a reasonable doubt that petitioner knew the checks were stolen. Since the inference thus satisfies the reasonable doubt standard * * * we conclude that it satisfies the requirements of due process. [412 U.S. at 845-846.]

CSHB 159 appears to operate similarly to the presumption approved in Barnes. If a person possesses horns or antlers which are "raw" in appearance (a term defined in the bill), and they are not accompanied by most of the edible meat (which, by definition, includes actual or constructive possession), then it is incumbent upon him to deliver a plausible explanation for the absence of the meat. As in Barnes, it is reasonable to expect the defendant to perform this duty since the facts surrounding the absence of meat are best available to the defendant. If he has no explanation "consistent with innocence", then it would seem reasonable for a jury to rely upon the inference contained in the statute as the basis for a guilty verdict, and that such a finding could be beyond a reasonable doubt. Under such circumstances, a conviction under proposed sec. 12 would appear to satisfy the due process prerequisites set forth by the Supreme Court.

We notice, however, one element of sec. 12 which may be objectionable. On page 2, line 4, of CSHB 159, the "explanation" which the defendant must come up with cannot includ a personal declaration. This provision may operate to prohibit the defendant from offering into evidence information which could prove his innocence. It is possible that such a presumption could be used in l'mited situations, but since the Committee has drafted this bill so that the presumption appies to the general public, it is probable that this requirement would violate due process. Consequently, it would be advisable to drop the phrase "other than a personal statement". A recent Supreme Court decision, Vladis v. Kline, 412 U.S. 441 (1972), strongly supports this interpretation. As a result, it would be well to delete similar language appearing in line 13 on page 1 of the bill.

Finally, in lines 5- 6 on page 2 of the bill, there appears the language "due to circumstances beyond control as set out in (a) of this section". Since there is no subsection (a) in sec. 12, we would presume this is intended to refer to subsection (a) of sec. 10, where the situations constituting circumstances beyond control are set out.

We hope that this opinion will be of assistance to you in your consideration of CSHB 159.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Geoffrey Haynes
Geoffrey Haynes
Assistant Attorney General

GH:md

M E M O R A N D U M

TO: Susan Andrews
EDP Coordinator
Division of Legislative Finance
Room 409
Capitol Building

FROM: Chief Clerk
House of Representatives

SUBJ: Legislation Identification CSHB159

Secretary of the Senate

The following information is transmitted for the bill or resolution named above:

1. KEYWORDS - Keywords are important words from the title or from the body of the legislation under which the measure will be listed in the alphabetic index.

Fish + Game
wildlife conservation

2. STATUTE REFERENCES - List sections of the statutes added, amended, repealed, or repealed and reenacted.

16.30.010(c) repealed & reenacted
16.30.013 added
16.30.020 amended
16.30.060(b) repealed

3. DEPARTMENTS - List departments or agencies referred to or principally affected by the legislation.

Fish & Game

The Board of Fish + Game
Shall establish (mandatory) check
stations, as needed, at locations
within the state to aid in the
~~regulation~~ and enforcement of fish
and game regulations. Persons who
encounter department personnel, when
requested to do so, shall produce
stamps, licenses, ~~and~~ tags, and
wildlife for inspection.

5.00 p.m.