



State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Wildlife Resources

MICHAEL D. FOWLKS
Division Director

March 21, 2019

Erik D. Van Woerkum



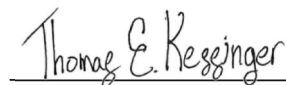
Re: Case No. 2018-000032

Dear Mr. Van Woerkum,

The attached Decision and Order announces the outcome of the administrative proceeding held to consider the suspension of your wildlife privileges. If you have any questions about future legal wildlife activities, please contact an attorney or the Division of Wildlife Resources for assistance.

This letter also contains a Notice of Right to Appeal, which explains your right to appeal this decision to the Utah Wildlife Board. Please read it carefully because your appeal, if any, must comply with the time limitations stated.

Sincerely,
UTAH DIVISION OF WILDLIFE RESOURCES



Thomas E. Kessinger
Hearing Officer &
Assistant Attorney General

Enclosures.



STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WILDLIFE RESOURCES

In the matter of: Erik D. Van Woerkum's license and permit privileges to harvest protected wildlife in the State of Utah.	DECISION AND ORDER Case No. 2018-000032
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I. OVERVIEW

This Decision and Order announces the result of an informal administrative proceeding held before the Division of Wildlife Hearing Officer. The proceeding addressed the suspension of Respondent Erik D. Van Woerkum's privileges to harvest protected wildlife in Utah. The Utah Division of Wildlife Resources ("Division") alleges that Mr. Van Woerkum committed two counts of trespassing during wildlife related activities and that Mr. Van Woerkum did so intentionally, knowingly, or recklessly.

The Division recommended suspending Mr. Van Woerkum's Big Game license and permit privileges for two years. After considering the facts and law as set forth below, the Hearing Officer finds that the Division met its burden of proof and a suspension of twenty-two (22) months is warranted.

II. JURISDICTION AND COURSE OF PROCEEDINGS

The Hearing Officer has authority to hear this case and jurisdiction to issue this order under the Wildlife Resources Code, Utah Code § 23-19-9, and the Division's Rules, Utah Administrative Code Rules 657-26-1 to -6.

This proceeding was initiated through the proper means. The Division designated an Assistant Attorney General as the independent Hearing Officer. *See* Utah Code § 23-19-9(8). The Hearing Officer issued a Notice of Agency Action to Mr. Van Woerkum, which commenced this informal adjudicative proceeding under Utah Code section 23-19-9 and Utah Administrative Code Rule

657-26-3. Mr. Van Woerkum requested a hearing within the appropriate time and participated in a hearing held on March 5, 2019. At the hearing, Jerry Schlappi and Douglas Messerly represented the Division. Mr. Van Woerkum was represented by John Flitton. Kevin Adamson appeared on behalf of the Hi-Ute Ranch.

III. FINDINGS OF FACT

Between September 17, 2017 and September 27, 2017, Mr. Van Woerkum entered the Hi-Ute Ranch near Park City, Utah (the “Ranch”) on at least two separate occasions, without previously securing permission from the landowner to hunt for, and attempt to harvest, a bull elk (the “2017 Hunt”).

Mr. Van Woerkum is an avid hunter. To document his pursuits, he hired a videographer to film a portion of the 2017 Hunt.¹ The video depicts Mr. Van Woerkum tracking and shooting a large bull elk over the course of several days (beginning on Sept. 17, 2017 and continuing for several days thereafter). Eventually, Mr. Van Woerkum shot and wounded the elk. He then tracked the wounded elk but was unable to locate and harvest it. At the close of the video, Mr. Van Woerkum states he is not giving up on finding the elk.

On September 27, 2017 Mr. Adamson was hunting on the Ranch with his sons. That evening they encountered Mr. Van Woerkum. Mr. Van Woerkum stated that he was tracking an elk that he had shot. Mr. Adamson stated to Mr. Van Woerkum that he was on private property and he must leave. Mr. Van Woerkum complied with Mr. Adamson’s request, gave him his phone number, and told him to call if he found an elk on the Ranch.

The video of the 2017 Hunt was posted to youtube.com and viewed by Mr. Adamson. Mr. Adamson stated that as soon as he saw the video, he knew it was filmed within the Ranch. In addition, the man he encountered on Sept. 27, 2017 on the Ranch was the same person as in the video. Mr. Adamson filed a report

¹ The video is no longer available on youtube.com but a copy of the video is maintained in the Division’s case file.

with the Division, which he reiterated at the hearing, stating that the 2017 Hunt video depicted Mr. Van Woerkum hunting within the Hi-Ute Ranch.

The Hi-Ute Ranch is comprised of approximately 2,000 acres of land in Summit County, Utah near Park City, Utah. The Ranch is properly posted; boundaries of the Ranch, as well as the entrances into the Ranch, are marked by “no trespassing” signs, as well spray paint indicating the boundary. Mr. Adamson is intimately familiar with the Ranch. He is friends with the landowner and has – with permission from the landowner – hunted on the Ranch for 20 years. At the hearing, Mr. Adamson described how the Ranch was marked with no trespassing signs and that he was personally responsible for posting of the property.

Mr. Van Woerkum testified at the hearing that he is familiar with, and uses a mapping app called onX maps. That app allows a person to see whether they are on private or public land. It is designed for hunters to determine where they may and may not lawfully hunt. Mr. Van Woerkum uses onX, but stated he was not using it at the time of this violation. He stated that he could have downloaded a map of the area prior to hunting but chose not to do so. Using the app, Mr. Van Woerkum would have been able to determine where public land ended, and private land began.

Mr. Van Woerkum was cited by the Division for trespassing on the Hi-Ute Ranch in 2015. The site of the 2015 trespass was at a different location than when Mr. Adamson encountered Mr. Van Woerkum in 2017. Mr. Van Woerkum previously had his hunting privileges suspended in 2007.

The State of Utah charged Mr. Van Woerkum with two counts of trespassing during wildlife related activities, a class B misdemeanor, in Case No. 1812000067.

IV. ANALYSIS AND CONCLUSIONS OF LAW

For the Hearing Officer to suspend Mr. Van Woerkum’s Big Game privileges, the Division must prove by a preponderance of evidence that Mr. Van Woerkum: (A) was convicted—or had some similar outcome—in a court of law for violating the Utah Wildlife Resources Code; and (B) committed the underlying violation with an intentional, knowing, or reckless state of mind. Utah Code § 23-19-9(2).

A. Conviction in a Court of Law

To suspend Mr. Van Woerkum's privileges, the Division must prove that a court of law sentenced Mr. Van Woerkum for violating the Wildlife Resources Code. *Id.* § 23-19-9(2)(a). A conviction, a guilty plea, a plea in abeyance, or a plea of no contest all satisfy the triggering statute. *Id.* For clarity, this order uses the broad term "sentenced" to include all of the similar possibilities noted above.

Here, Mr. Van Woerkum was sentenced for two counts of trespassing during wildlife related activities in the Summit County Justice Court, Case No. 1812000067 (June 19, 2018). Therefore, the Division proved the first element of this suspension action.

B. State of Mind

To suspend Mr. Van Woerkum's privileges, the Division must also prove that Mr. Van Woerkum acted intentionally, knowingly, or recklessly in the commission of the underlying offense. *Id.* § 23-19-9(2)(b) (referring to the mental states as defined under the Utah Criminal Code, Utah Code § 76-2-103). In this action, the underlying violation was for trespassing during wildlife activities under Utah Code § 23-20-14. Therefore, the Division must prove that Mr. Van Woerkum entered properly-posted private property during a wildlife related activity, and did so either intentionally, knowingly, or recklessly.

Mr. Van Woerkum actions were intentional. In this context an intentional act is one in which it is the actor's conscious object to bring about a desired result. The Hi-Ute Ranch is properly posted because its boundaries are clearly marked either with spray paint, or with "no trespassing" signs. Mr. Van Woerkum acted intentionally each time he entered the Ranch during the 2017 Hunt to hunt for, and later determine, the location of a wounded bull elk. In other words, Mr. Van Woerkum did not enter the Ranch by accident; on or around Sept. 17, 2017 he was purposefully tracking an elk, and on Sept. 27 he was purposefully looking for the wounded elk.

At the very least, Mr. Van Woerkum's actions were reckless. A reckless act is one in which a reasonable person is aware of a risk and then consciously

disregards that risk. Mr. Van Woerkum was aware of the risk of entering private property for two distinct reasons. First, he received a citation in October of 2015 for trespassing on the Hi-Ute Ranch. Granted where he trespassed in 2017 was at a different location than in 2015, it nonetheless supports the conclusion that Mr. Van Woerkum was aware of the *risk* of trespass in that area. Second, at the hearing Mr. Van Woerkum described an app he uses on his cell phone to determine whether he is on private property, or public lands. The app requires a map to be downloaded to the device either using cellular data or a wi-fi connection, but maps can be downloaded prior to going out into the field and accessed without cell service. Mr. Van Woerkum stated at the hearing that he could have downloaded a map of where he was hunting, but he chose not to do so. In this sense he acted recklessly because he was aware of the risk that he may enter private property, but disregarded that risk when he chose not to download the map in advance to confirm he was on public lands.

In sum, the Hearing Officer finds that the Division met its burden of proving that Mr. Van Woerkum was sentenced for the underlying offense and that he committed the offense with the required mental state. Therefore, the Hearing Officer has the authority to suspend Mr. Van Woerkum's privileges to harvest protected wildlife.

V. LENGTH AND TYPE OF SUSPENSION

Subsection 23-19-9(4) of the Utah Code places upper limits on any suspension ordered by the Hearing Officer. In this matter, the underlying sentence was for a class B misdemeanor, which allows a suspension of up to three years. *Id.* § 23-19-9(4).

Regarding the type of suspension, the Hearing Officer may suspend the privileges "most closely associated with the activity for which the person was participating in when the violation occurred." Utah Admin. Code R. 657-26-5(5)(b). Under most circumstances, this means that a Big Game violation results in the suspension of Big Game privileges (but not fishing privileges, for instance).

In addition to the statutory and regulatory limits, the Hearing Officer must “take into account any aggravating or mitigating circumstances when deciding the length of a suspension period.” Utah Admin. Code R. 657-26-5(7). Neither the Wildlife Resources Code, the Division’s Rules, nor the Division’s guidance documents illuminate what circumstances might, or might not, be considered under this balancing test. Therefore, the Hearing Officer will consider any factors that bear on the equity of this administrative process.

A. Aggravating Circumstances

The Division argued that the following factors are aggravating circumstances in this case:

- (1) Mr. Van Woerkum previously had his license suspended in 2007.
- (2) The Division previously cited Mr. Van Woerkum for trespassing on the Hi-Ute Ranch in 2015 (though the site of the trespass was at a different location).
- (3) Mr. Van Woerkum is an avid hunter.

Though not rising to the level of a pattern of unlawful behavior, his previous suspension and then the trespass citation do show some disregard of the Wildlife Code. As an avid hunter, it is Mr. Van Woerkum’s duty to hunt lawfully and responsibly. Finally, if Mr. Van Woerkum’s livelihood, in part, depends on his skillset as a hunter, then he should endeavor to be in firm compliance with the Wildlife Code and Rules. Here, there were actions Mr. Van Woerkum could have taken that would have ensured he was not trespassing, namely using the onX app, or contacting the landowner to receive permission to hunt. Taken together, these factors make Mr. Van Woerkum’s conduct more blameworthy and warrant a strict suspension.

B. Mitigating Circumstances

Mr. Van Woerkum made a convincing plea for leniency and asked for forgiveness of his mistakes. At the hearing he was visibly remorseful for what transpired in September of 2017. He has a young family, one that he supports through his passion and expertise as a hunter. Without his hunting license, Mr. Van Woerkum may have a harder time making ends meet. Mr. Van Woerkum

took responsibility for his actions. Though these actions do not make his conduct less blameworthy per se, they do favor a shortened suspension.

VI. CONCLUSION AND ORDER

On balance, the Hearing Officer finds that the mitigating circumstances slightly outweigh the aggravating circumstances in this case. Therefore, the Hearing Officer orders that Mr. Van Woerkum's Big Game privileges be suspended for twenty-two months starting March 26, 2019 and ending on January 26, 2021.

ORDERED on March 21, 2019.

DIVISION OF WILDLIFE HEARING OFFICER

A handwritten signature in cursive script that reads "Thomas E. Kessinger". The signature is written in dark ink and is positioned above a horizontal line.

Thomas E. Kessinger
Hearing Officer
Assistant Attorney General
Utah Attorney General's Office

YOUR RIGHT TO APPEAL

1. This Order may be appealed to the Utah Wildlife Board. **Any appeal must be received within thirty calendar days of the date of this order.** The appeal must be made in writing to the Chairperson of the Wildlife Board, 1594 West North Temple, Suite No. 2110, Salt Lake City, Utah 84114-6301. A copy of the appeal must be mailed to the Hearing Officer at the address listed above. The appeal must be signed by the Respondent, state the grounds for appeal, the relief requested, and the date on which the appeal was mailed.
2. After receiving notice of appeal, the Wildlife Board will schedule a hearing date at its earliest convenience. Notice of the hearing will be provided to all parties. The Wildlife Board will require that all parties attend the hearing. Respondent may bring counsel to appear on his or her behalf. Upon hearing from both parties and reviewing the evidence the Wildlife Board may take no action, vacate or remand the decision of the Hearing Officer, or amend the Order.
3. For additional information regarding the Wildlife Board Review process, please refer to Utah Code sections 23-19-9(12), 63G-4-201 to -206, and Utah Administrative Code Rule R657-26-8. You may also contact the Division of Wildlife Resources.

THE EFFECTS OF THIS ORDER


4. During the suspension period, Respondent must not participate in the activity for which the privilege has been suspended. He or she must not obtain or try to obtain a license or permit to participate in that activity. Any license or permit obtained or possessed for the activity during this suspension period is invalid.
5. During the suspension period, Respondent must not obtain or try to obtain any bonus points or preference points. Any points obtained during the suspension will be invalid; however, points acquired before the suspension remain valid during and after the suspension.
6. Subsequent violations occurring within the suspension period may result in a doubled suspension period. Furthermore, subsequent violations may result in the suspension of all hunting and fishing privileges.
7. Under the Wildlife Violator Compact, Title 23, Chapter 25 of the Utah Code, the Division may report to other states a suspension of wildlife privileges, which may lead to reciprocal suspensions in at least 45 different states. Respondent should verify his or her status before trying to obtain wildlife licenses in other states.
8. If a court has already suspended Respondent's privilege(s), this suspension may run consecutively with the court suspension. Utah Code Ann. § 23-19-9(6)(c).

VII. CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing DECISION AND ORDER and NOTICE OF RIGHT TO APPEAL DECISION was served by certified mail, return receipt requested, this 22nd day of March, 2019 to:

ERIK D. VAN WOERKUM

Utah



Jamie Martell
Executive Secretary
Law Enforcement Division
Utah Division of Wildlife Resources