

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
vs. : CHESTER COUNTY PENNSYLVANIA
: CRIMINAL
SANDRA REYNOLDS : NO. M0551-03

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Bradley C. Bechtel, Esquire, on behalf of Commonwealth of Pennsylvania,
Pennsylvania Game Commission
C. Richard Morton, Esquire, on behalf of Defendant

OPINION

This "exotic"¹ matter has been before me twice. The first time, the issue was whether to quash a search warrant of Defendant's property. It appeared that some agents of the Pennsylvania Game Commission had come to the property of Defendant Sandra Reynolds and seized some "exotic animals" from her, on the basis that she did not have a license for them. These animals included four (4) serval cats, two (2) fennic foxes, three (3) ringtail lemurs, three (3) kinkajous, and one (1) wallaby. None of these animals can be legitimately claimed to be indigenous to the Commonwealth of Pennsylvania.

I upheld the search by Order dated September 11, 2003. The Game Commission thereupon proceeded with its prosecution of Ms. Reynolds, and she was found not guilty by District Justice Harry Farmer. Although there is some contention between the parties

¹ "exotic ... 1: introduced from another country, 2 *archaic*: OUTLANDISH, ALIEN, 3: strikingly or excitingly different or unusual." Webster's Seventh New Collegiate Dictionary. I suppose I use the term at this point in the sense of meanings 2 and 3.

about the significance of that finding of not guilty, it does appear to have been rendered after a full hearing on the facts, and not on some technicality.

Ms. Reynolds has now petitioned under Rule 588 of the Rules of Criminal Procedure to have her seized property returned. The Commonwealth declines to return it, contending that the animals are contraband, and returning them would simply put Ms. Reynolds back in the untenable position of being in violation of the State Game and Wildlife Code, 34 Pa. C.S.A. § 102 et seq. After all, argued the Game Commission's attorney, if a drug dealer were found not guilty, I would not feel obliged to return his drugs, would I?

Ms. Reynolds advances a double-barreled argument: First, Judge Farmer's verdict of not guilty operates to settle the issue of whether or not Ms. Reynolds requires a permit for these animals, either by the doctrine of double jeopardy, or collateral estoppel, or some other exotic (I use the term hesitantly) legal argument. Secondly, these animals do not meet the definition of "exotic wildlife", as that definition is set forth in 34 Pa. C.S.A. § 2961.

Although there appear to be no end of interesting legal issues which leap to my mind in this case, i think that I will rest my decision on the question of definition of terms. In the above-referenced statute, "exotic wildlife" is defined as "including, but not limited to, all bears, coyotes, lions, tigers, leopards, jaguars, cheetahs, cougars, wolves, and any cross-breed of these animals which have similar characteristics in appearance or features. The definition is applicable whether or not the birds or animals are bred

reared in captivity or imported from another state or nation".² I am told by a witness from the Game Commission that servals are cats, fennic foxes are dogs, lemurs are primates, and kinkajous are related to raccoons. The wallaby is a marsupial, but, sadly, it died after being seized by the Game Commission. Ms. Reynolds informs me that all of these animals are rather small, none weighing more than twenty-five (25) pounds, if memory serves.

In my view, none of these animals appear to be bears, coyotes, lions, etc. or cross-breeds of them. But wait, says the Game Commission. The definition of exotic wildlife in the Pennsylvania Code (58 Pa. Code § 147.2) includes members of the family felidae (cats) and canidae (dogs) (except for house cats and licensed dogs). I note in passing that, neither the statute nor the Code makes any reference to primates or raccoons.

I would guess that the Code definition of exotic wildlife was intended to flesh out the statutory definition which says that it includes "but is not limited to", all those various large and destructive breeds which I have already enumerated. That means that I must now turn to the well-established legal principal of "ejusdem generis"³ to determine whether or not the Game Commission's expansion upon the statutory definition meets legal muster.

² Because the statute and the Pennsylvania Code have their own definitions, I don't need to decide whether these animals are "exotic" under the dictionary definition given above.

³ "Under our statutory construction doctrine ejusdem generis (of the same kind of [sic] class), where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated": *Shier v. Workmen's Compensation Appeal Board*, 828 A.2d 441, 444 (2003) (citations omitted).

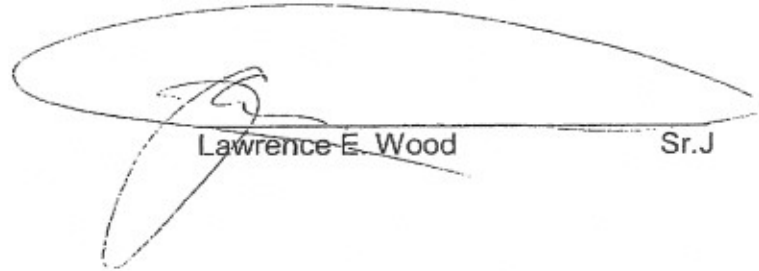
In my view, the Game Commission's regulations stretch the definition of "exotic wildlife" beyond permissible boundaries: Compare for example, the regulations involved in *Summit House Condominium v. Commonwealth*, 514 Pa. 221, 523 A.2d 333 (1987). The Game Commission would have all cats and dogs (with the exception of house cats and licensed dogs) considered "exotic wildlife", whereas the statute goes to the trouble of spelling out only animals which, to my untutored eye, appear to be generally considered large and dangerous in their wild state. In addition, some of the animals that were seized were not in fact cats or dogs, but were rather other breeds or species or whatever the proper term is.

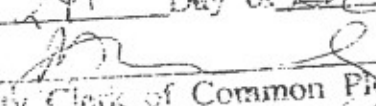
The long and the short of it is that I cannot even say that these animals of Ms. Reynolds were "exotic wildlife", let alone that they were or now are "contraband". For that reason, I am at a loss to know why they should not be returned to their rightful owner.

ORDER

AND NOW, Dec. 23, 2003, Defendant's motion under Pa. R.Crim.P. 588 is GRANTED, and the animals in question, that is four (4) serval cats, two (2) fennic foxes, three (3) ringtail lemurs, and three (3) kinkajous, are to be RETURNED to Sandra Reynolds.

BY THE COURT:


Lawrence E. Wood Sr.J

Certified From The Record
This 24th Day of Dec 2003

Deputy Clerk of Common Pleas Court