

EXHIBIT 2
DATE 2/3/2011
HB 369

- Hot Topics:
- Montana groundhog
- Megaloads
- Rulon Gardner
- Cop attacked
- Gun rights
- Warm January
- Hypertension
- Video: Burger challenge
- DUI 7

Home / News / State and Regional News / Montana News

Acquittal rendered in bighorn sting case

- Story
- Discussion

Acquittal rendered in bighorn sting case

Associated Press The Billings Gazette | Posted: Saturday, July 3, 2010 10:34 pm | (11) Comments

Font Size:

Default font size

Larger font size

- 1
- Recommend [Sign Up to see what your friends recommend.](#)

FORT BENTON — A Chouteau County jury has acquitted a Whitehall taxidermist who was charged with trespassing and unlawful outfitting after an undercover game warden shot a huge bighorn sheep.

The jury returned the verdict at 10:30 p.m. Friday after deliberating about three hours, finding John Lewton not guilty of two misdemeanor counts of hunting without landowner permission, felony unlawful possession of a game animal and misdemeanor outfitting without a license.

Prosecutors alleged that Lewton didn't have a license, was using two-way radios and was crossing private land without permission while taking an undercover game warden on a bighorn ram hunt in September 2008.

The warden, Justin Gibson, shot the trophy bighorn ram in the Missouri River Breaks south of Big Sandy in 2008 so he wouldn't blow his cover after intentionally missing several times.

The ram scored 204 inches under the Boone and Crockett record scoring system, a fraction below the current Montana record bighorn.

In closing arguments Friday, Lewton's defense attorney, Jack Morris, called Gibson the "trigger man" and a "trained liar, trained to deceive and entice people into committing crimes."

The prosecutor, Assistant Attorney General Barb Harris, told jurors it shouldn't matter how they felt about the death of the sheep, and she reminded them of testimony she said showed Lewton broke

the law, arguing that

Lewton provided services to Gibson.

Lewton has said he did not charge Gibson for outfitting but accompanied him on the hunt to videotape it.

In other court action surrounding the shooting of the bighorn, a Jefferson County jury acquitted Lewton in March of illegally buying the sheep from Gibson.

Lewton had been charged last August with felony unlawful purchase of a game animal after he paid \$5,000 for the ram's head and cape.

Late last month, Lewton sued Montana Fish, Wildlife and Parks seeking the return of the head and cape of the trophy ram seized in the case.

Lewton's civil suit filed in District Court in Helena also seeks more than \$100,000 in attorney fees.

The bighorn sheep

cape and horns are being held by the state's wildlife agency.

In Blaine County, Lewton still faces a charge of felony possession of a game animal.

Lewton argued that the charges in separate counties amounted to double jeopardy and sought to have some of them dismissed, but a judge ruled that the charges, while stemming from the same incident, dealt with different actions in each county.

Authorities said they began investigating Lewton in 2005 after other outfitters complained about him.

Copyright 2011 The Billings Gazette. All rights reserved. This material may not be published, broadcast, rewritten or redistributed.

Posted in Montana on *Saturday, July 3, 2010 10:34 pm* | Tags: John Lewton, Acquittal

Share This Story

Print Email ShareThis

Other Stories

- Roundup Memorial Hospital begins search for new CEO with help from Billings Clinic
- Red Lodge man gets prison for cocaine dealing
- East Helena man arrested for DUI; blood alcohol tests at .436
- Medical marijuana repeal draws 3 times the opponents as supporters
- Draft proposes allowing biotech crops on National Wildlife Refuge System
- Environmental law in crosshairs at Legislature
- Bill to repeal medical marijuana law gets hearing
- Analysis: Montana Senate matchup biggest in years

Sponsored Links

1 Tip For Stomach Fat

Lose 14lbs In 13 Days With This Simple Trick.
LifestyleDietPlan.com

Super Cheap Car Insurance

Get Super Cheap Auto Insurance Quotes - You Won't Believe the Rates!
www.usinsuranceonline.com

1.25-1.45% Apply Online!

With AA+ Rated GE Capital Corp. Not An Offer Of Securities For Sale.
GEinterestplus.com

Ads by Yahoo!

SAVE UP TO \$30

on FLECTOR[®] Patch, a prescription patch for acute pain due to minor strains and sprains.

CLICK FOR SAVINGS

Flector[®] patch
(diclofenac epolamine topical patch) 1.3%

puts FLECTOR[®] Patch in their mouth, seek medical help immediately. Children should not use FLECTOR[®] Patch.

Please click here for full Prescribing Information and Medication Guide, including boxed warning.

[Important Safety Information](#) [Prescribing Info and Med](#)



COLUMN

Big Horn Sheep Killing: A Betrayal of Trust

The story of a 204-point ram, an undercover agent and what it all says about Montana's Fish Wildlife and Parks department.

By Allen M. Jones, 8-31-09

I like to hunt, and I like to fish, and I like to do them in good conscience. This means, first and foremost, that I do my best to obey the rule of law, toe the line in the interests of, among other things, preserving the resource. As a hunter and fisherman, I want people to think well of me. I bristle at stereotypes, I wince at photos of 300 pound rednecks on ATVs proudly holding up forkhorns they shot under a jacklight. Aware of the public relations disaster that is too often the image of hunters viz the city folk, I dig it when the bad guys get their comeuppance.

I should be pleased, then, to see a few more ne'er-do-wells taken off the playing field in Montana.

Charges were recently filed in state district court against James Reed (Rexberg, Idaho), Blake Trangmoe (Glendive) and John Lewton (Whitehall). Lewton received the majority of the charges, including felony unlawful sale of a game animal, felony unlawful possession of a game animal, two misdemeanor counts of hunting without landowner permission, and a misdemeanor count of outfitting without a license.

Indeed, I should be pleased to see these guys caught. But...

Lewton and his buddies were arrested in an undercover sting operation during which an agent for Montana's Fish, Wildlife & Parks shot and killed a bighorn sheep that scored over 204 points, Boone and Crockett. A new state record. According to recently released court documents, the undercover agent approached Lewton saying he had a bighorn sheep tag for Hunting District 680 (Montana's Missouri River Breaks). Lewton scouted from an airplane on the agent's behalf, used walkie-talkies during the hunt (both potentially illegal activities for which he wasn't charged), and then, with the agent in tow, crossed private ground without permission prior to showing the agent the animal. The accused watched while the agent shot the sheep.

According to court documents, the investigation began in 2005, and was seeded in the fact that Lewton was "with a number of bighorn sheep tag holders in Montana during the last 10 to 15 years when they were hunting for bighorn sheep." His continued proximity presumably helped arouse suspicion that he was outfitting without a license. The agent, identified in court documents only as J. G., first approached Lewton on July 29, 2008. Lewton specifically told J. G. he could not charge for helping him as Lewton was not an outfitter. He went on to say that he would be scouting and flying the area for another hunter, and could do the same for J. G. for \$1,000. By my reading of the court documents, these are the only monies Lewton received prior to the shooting of the sheep.

Again according to court documents, during the hunt the men passed through a small piece of private property conspicuously marked no trespassing. Lewton asked the agent if he minded trespassing and the agent responded that he did not.

The first day of the hunt, agent J. G., shot at the ram and purposefully missed. The next day, September 19, with radio guidance by Lewton and his two companions, J. G. shot at the ram and purposefully missed again. They pursued the ram further. The ram was then "chased with two others into a steep-sided coulee." According to documents, "It was clear that J. G. must shoot the ram, which was now in close proximity to the hunters, or reveal his true identity."

After the hunt (in October), Lewton bought the ram from the agent for \$5,000.

The prosecution, by my read, hinges on two elements. The first and apparently least in question, that Lewton (and the investigating officer) crossed private ground to reach the animal. The second, that Lewton accepted \$1,000 for scouting and flying the territory. It's questionable, to my mind, if this last constitutes "outfitting," but he apparently did accept payment. The crossing of private ground prior to taking an animal, however, is illegal, which in turn would seem to make the taking of the animal itself illegal, leading to the other charges (unlawful possession, etc.) Given that the agent J. G. agreed to cross the private ground, he participated in the crime.

The court documents do not address the tag itself, mentioning only that the undercover agent approached Lewton saying he had a tag for district 680. Given that the chances of legitimately drawing a tag are miniscule (typically under 2 percent), it seems likely that the agent was either given a tag outside the traditional channels (depriving a Montana hunter of his own tag) or was using a fraudulent tag.

I don't know Lewton and his cohorts, nor am I privy to all the circumstances behind the sting. (Jim Kropp, Chief of Law Enforcement for the FWP, when approached for comment, didn't feel, and quite appropriately so, that it would be in good conscience to discuss the matter pre-trial.) It may be that Lewton has a history of wrongdoing such that the FWP wanted to prosecute him by any means possible – the equivalent of sending Al Capone up on tax evasion. But even if there are extenuating circumstances, as a sportsman in Montana, I find myself offended. As a hunter and conservationist, and according to the information I have available, I must say that the greatest wrongdoing here wasn't committed by the folks who are being charged.

Every year, a Montana "governor's sheep permit" is sold at auction during a banquet held by the Foundation for North American Wild Sheep. The permit holder is given statewide access to Montana's bighorns. The funds generated by these auctions are earmarked for species conservation and management. This tag, given the quality of Montana's trophy sheep hunting, regularly goes for more than \$200,000. These are monies that benefit the animals, not to mention the thousands of Montana hunters who annually apply by lottery for their own sheep tag, rolling the dice for a chance at one of these huge rams. The governor's permit for this coming fall sold for \$245,000. If this year's permit holder kills a ram that exceeds 190 points he will no doubt consider himself lucky indeed. And a 200 point ram? Among avid sheephunters, this is the equivalent of a four minute mile, it's like winning a big election, it's like playing the slots in Vegas and seeing the machine come up sevens. The sirens go off, the balloons come down.

To remove the emotional element (I won't talk about the hordes of local hunters who would have given a pinky toe for even a chance at this animal), and just by crass calculation, this

sting operation cost the state of Montana, and by extension our population of bighorn sheep, tens and perhaps hundreds of thousands of dollars. Given the money that goes into these auctioned permits, the sheep in any given area are typically scouted well before hand. The largest rams are usually known by nickname. Photos of the rams often circulate at FNAWS (Foundation for Northern American Wild Sheep), helping drive up the price of the governor's tag at auction. If it was known that a new state record was in a given area, the tag would certainly be worth an additional . . . what, twenty-five thousand dollars? Fifty thousand? Perhaps more.

Not to diminish the crimes of Lewton and his buddies (if guilty, they should certainly be prosecuted), but by intentionally removing a significant amount of money from the state's conservation coffers, I would argue that Montana's FWP has stepped outside its own charter, has contradicted its own *raison d'être*. They are an agency who "provides for the stewardship of the fish, wildlife, parks, and recreational resources of Montana." By taking the largest ram from a population that has added millions of dollars to regional conservation based only on its reputation for large rams, it doesn't seem unreasonable to assume they have damaged the state's ability to manage its population of bighorn sheep. It's hard to see how this falls under the aegis of "stewardship." Any crimes committed or potentially committed by the guy from Whitehall would have to be serious indeed to warrant this kind of draconian enforcement.

Furthermore, I've always been vaguely uncomfortable with certain aspects of Montana's undercover sting operations. On one side, there are those stings wherein game wardens place a dummy (often animatronic) game animal next to a road and then watch to see who pulls over and shoots it. It's the equivalent of a speed trap, and nicely sifts the bad minnows from our pond. But too often the agents participate in the crime itself, as they did in this case. Soliciting potential criminals, creating a scenario such that the suspect is actively encouraged to commit a crime (allowing peer influence and cajoling to come into play, which surely rigs the board a bit), and then the undercover agent himself pulls the trigger, playing out the scenario to a believable (if, to my mind, immoral) end. I would use the word entrapment, but I'm not sure the courts would agree. Instead, I'll just make the point that the issue is one of moral authority, and the lack of it. This might sound like a small point, but I consider it significant indeed. You have caught a criminal, but at what cost?

Consider: Implicit within this sheep scenario is the notion that the field agent is, himself, beyond the law. If I work for the Fish, Wildlife & Parks, I can apparently commit any fish and game crime I want so long as I'm doing it in order to position someone else for prosecution. I'll commit a greater crime (taking an illegal ram) and then charge you for a lesser crime. No one should be above the law. No one should be beyond a certain kind of accountability.

But the most troublesome aspect of this scenario isn't the financial loss, nor is it necessarily the specific wrongdoing committed by agent J. G., it's the fact that a law enforcement agency ostensibly acting on my behalf has, to my mind, betrayed my trust. Members of law enforcement (whether FBI, state patrolmen, city cops, sheriffs, or game wardens), insofar as they are representatives of the people, insofar as they are acting not in their own interests but in ours (they are our agents), have an obligation toward a higher standard of behavior. Indeed, it's a sacred duty. I need to know that the people who are acting with the authority of my republic are worthy of that authority. When a field agent illegally and without repercussion kills a noble animal of demonstrable value to the state, what does this say about him? What does it say about his agency?

Consider this opinion piece a call for an investigation. Either Montana's Fish, Wildlife & Parks needs to do some serious soul searching and rearranging of its law enforcement methods or the state Attorney General needs to do it for them. As a sportsman, as a Montana landowner and tax payer, as the public for whom these people work, I need to have my faith in Montana's FWP restored.

Allen M. Jones is the author of, among other books, *A Quiet Place of Violence: Hunting and Ethics in the Missouri River Breaks.*

[End of article]

Comment By Dewey, 8-31-09

Disgusting...at every level.

Comment By Mad, 8-31-09

I've dealt with the FNG and they are an embarrassment. Maybe not all the time but there have been some really bad eggs through the years. For example when the game warden in Ennis caught a griz thinking it was a black bear and then had to shoot it because it charged him upon release. You and I would have paid a huge fine, jail time, loss of hunting privileges etc. but this clown got to keep his job. Unbelievable. Now we are shooting not just big rams but the biggest ram in the state as an undercover operation. Hopefully this will never happen again but seeing as how we are here, an example needs to be made out of Lewton. Have the lost monies come from him and his business and have the FNG change policies on shooting record animals undercover. Not sure who is worse here but anyone with Lewton's style of ethics needs to never hunt or fish in the US and Canada again. Once again the law abiding hunter loses.

Comment By Bill, 8-31-09

huh? These guys are crooks, plain and simple. I support the officer that literally put his safety if not his life on the line to bring them to justice. He brought a criminal to justice, did his best to protect the resource, and didn't even have to torture anyone to do it. I say kudos to FWP.

Comment By Michael Gregston, 8-31-09

Suckass apologists for FW&P;aside, this story stunk from the get go and everybody who hunts and loves the breaks knows it. Thanks for having the courage to say so.

Comment By Michael Gregston, 8-31-09

Allen, where can I get a copy of your book?

Comment By Martin Johnson, 8-31-09

Hi Allen Jones

This was a very well written Article.

I do know all three of these men and have hunted with them in the past and I know they are conscientious law-abiding sportsmen. I am not aware of any previous game violations. To correct you on a couple of points in your article, it is NOT illegal in Montana to spot game from an airplane as long as the game is not pursued the same day as airborne. Their flying

greatfalls**tribune**.com

GREAT FALLS, MONTANA

TV show featuring wardens may not have had federal filming permit

The Associated Press • January 23, 2011

BUTTE — The U.S. Forest Service is investigating the filming of a reality television series featuring Montana game wardens because it appears at least one segment was filmed in the Bitterroot National Forest without a permit, Northern Region spokesman Brandon Schulze said.

The issue was raised after a Whitehall man who had been acquitted of state charges, including outfitting without a license, was charged last month with two federal counts of filming bighorn sheep hunts on public lands in 2008 without a permit.

The state charges were filed against John Lewton after an undercover investigation in which a state game warden shot a trophy bighorn ram. Lewton's defense was that he was filming the hunts.

Helena attorney Jack Morris said it appeared the state was bent on getting a conviction against Lewton and questioned whether Department of Fish, Wildlife & Parks wardens might have been involved in illegal filming during the taping of the television series called "Wardens" now airing on The Outdoor Channel.

Steve Puppe, owner of Muddy Boot Productions, filmed the episodes that highlight the work of state game wardens. He said that he had all the permits for state lands, where the majority of the show took place, but given the nature of the show, he never knew where he and the warden he was following would end up.

"We don't have a problem doing it," Puppe said. "We just don't know in advance where we're going to be."

Puppe said he was seeking the permit to resolve the issue.

Bitterroot National Forest lands program manager Roylene Gaul said she spoke with Puppe on Wednesday and he did not know about the permit requirement for national forest lands.

"It's not OK to get the permit after the fact," she said. "If he is filming to sell his films as a commercial

photographer, he has to have a permit on national forest land."

FWP spokesman Ron Aasheim said the agency understood that Puppe had all the needed permits for national forest lands in western Montana.

The filming permits cost \$150 per day plus a \$110 application fee.

Puppe said it was unrealistic to expect him to get permits in advance for every day of filming when he may never end up on Forest Service land.

"I couldn't go and buy one and say I'll need it for 365 days," he said. "I couldn't afford that."

Advertisement

Kodak

Bring in any old printer to
 and save an additional
\$50 off any new Kodak Printer

WWW.BESTBUY.COM/KODAKSWAPFORSAVINGS
 1.888.BEST.BUY

OFFER EXPIRES 2/19/2011

Print Powered By 