

SUMMARY STATEMENT

State v. Brian Calder Kerr

Docket No. 44740

Brian Calder Kerr was cited for trespassing onto private land to retrieve a trophy bull elk. After Kerr pled guilty before a magistrate to trespass to retrieve wildlife, the Idaho Department of Fish and Game confiscated the elk, claiming Kerr had unlawfully taken it. Kerr requested that the magistrate reconsider the confiscation issue, arguing that the confiscation statute, I.C. § 36-1304(b), was being misinterpreted and misapplied. The magistrate reasoned that an unlawful taking had occurred because Kerr committed an unlawful act, namely trespass, in order to possess the elk, with “possession” falling under the I.C. § 36-202(i) definition of “take.” The district court, sitting in its appellate capacity, affirmed the magistrate’s decision.

On appeal, Kerr renewed his argument that the confiscation statute was being misapplied, focusing on the definition of the term “take.” Kerr contended that a person could not take an animal more than once, asserting that he took the elk when he shot it and, therefore, could not have taken it again when he trespassed to retrieve it. The Idaho Court of Appeals held that the definitions statute, I.C. § 36-202(i), unambiguously provides multiple methods by which an animal may be taken, with some of these methods being prerequisite steps to fulfilling other methods. Accordingly, the Court affirmed the decision of the district court.