



---

---

---

---

---

---

---

---

**EVIDENCE IN FISH & GAME CASES**

- Generally the same as other cases (e.g., attention to details within theme of charge dictates what evidence you bring to court & jury)

---

---

---

---

---

---

---

---

**EVIDENCE IN FISH & GAME CASES**

- Particular to these cases:
  - Recodification of Title 87; charging decisions
  - Discovery practices
  - Handling of evidence
  - Jury instructions; verdict

---

---

---

---

---

---

---

---

## NEW CRIMINAL CHAPTER in Title 87

- Senate Bill 124 => now Chapter 258
- No substantive change in law
- Organization of all criminal offenses into one chapter => Chapter 6 within Title 87
- Effective October 1st

---

---

---

---

---

---

---

---

## OBVIOUS CHANGE IN CHARGING DOCUMENTS

- ✓ Don't cut and paste from prior docs without review
- ✓ Work with wardens to insure accuracy

---

---

---

---

---

---

---

---

Do you have a double jeopardy problem if you charge BOTH possession and other crimes related to the illegal take of the animal?

- State v. Williams, 2010 MT 58
  - Double Jeopardy claim based on charge of SIWC AS WELL AS Sexual Assault

---

---

---

---

---

---

---

---

**SUGGESTIONS**

- If you have a strong possession case, charge possession and state underlying illegalities, e.g. "On or about April 6, 2009, the Defendant purposely or knowingly possessed unlawfully-taken game animals, to-wit: one buck mule deer (M-1) and one bull elk (M-2). The animals were killed in violation of Mont. Code Ann. § 87-2-103, relating to hunting without a license, and/or Mont. Code Ann. § 87-2-511, relating to outfitter-sponsored licenses."

---

---

---

---

---

---

---

---

**SUGGESTIONS, Cont'd**

- Allow that you will prove the underlying illegalities beyond a reasonable doubt
- Consider the issue of whether the underlying illegalities are lesser-included offenses only if necessary during jury instruction considerations

---

---

---

---

---

---

---

---

**SUGGESTIONS, Cont'd**

- Consider carefully the facts related to the possession and the facts related to the underlying illegalities
- If the facts related to the possession are near in time, etc., to the underlying illegalities, a double jeopardy argument will be more compelling

---

---

---

---

---

---

---

---

## CHARGING FELONIES

- Amounts set in restitution statutes (87-6-906, 907) determine felony sale or possession
- Use your brilliant minds to make charges that will be fair and accurately represent the illegal behavior, e.g.,
  - One season of illegalities
  - One year of illegalities
  - One trip involving illegalities

---

---

---

---

---

---

---

---

## CHARGING DECISIONS AFFECT TRIAL PRESENTATION

- Like in all cases, the jury will be on your side if you are reasonable
- Like in all cases, the jury will be against a defendant that commits the same offense repeatedly
- Like in all cases, certain offenses are more egregious

---

---

---

---

---

---

---

---

Find the facts that establish why a jury (society) should care about the crime and bring to court that which proves your charge



---

---

---

---

---

---

---

---

## DON'T BE AFRAID

- To ask a warden why you should care about the case
- To ask a hunter what he/she finds most egregious in that community
- To consider any and all aspects of your audience (judge; jury; sportsmen/sportswomen generally)

---

---

---

---

---

---

---

---

---

---

## New statute numbers and offense names

COURT COPY		<b>NOTICE TO APPEAR AND COMPLAINT</b>		ISSUED BY <b>MONTANA FISH, WILDLIFE &amp; PARKS</b>		520A 198224	
<input type="checkbox"/> STATE OF MONTANA		DEFENDANT NAME		MIDDLE		LAST	
THIS DEFENDANT IS HEREBY GIVEN NOTICE TO APPEAR IN		STREET		CITY		STATE	
<input type="checkbox"/> JUSTICE <input type="checkbox"/> YOUTH		SEX		DATE OF BIRTH		LIC. STATE	
COURT OF		HT		NO.		DAY	
LOCATED AT		DL. NO.		DL. STATE		VEH. MAKE	
MONTANA ON OR BEFORE		HOME PHONE		EMPLOYER		VEH. MODEL	
THE _____ DAY OF _____, 20____		BUSINESS PHONE		VEH. YEAR		VEH. COLOR	
<input type="checkbox"/> ANSWER THIS CHARGE		TITLE ABOVE NAMED DEFENDANT IS CHARGED WITH VIOLATING		MONTANA CODE		LIC.	
ON THE _____ DAY OF _____, 20____ AT _____		SECTION NO.		MILITARY TARIFF		LIC. NO.	
RECEIPT OF THE FOLLOWING ARTICLES IS ACKNOWLEDGED:		IN THAT SAID DEFENDANT DID KNOWINGLY, PURPOSELY OR NEGLIGENTLY					
<p style="font-size: 2em; color: red; transform: rotate(-15deg);">VOID</p> <p style="font-size: 1.5em; color: blue;">VGL for training</p>		NAMED AT (LOCATION):		LONG:		<b>RECEIVED</b>	
		GIS COORDINATES - LAT:		LONG:		<b>\$ AS APPEARANCE BOND</b>	
		I checked <input type="checkbox"/> FEDERAL PRISONERS WILL BE FORWARDED		I checked <input type="checkbox"/> FEDERAL PRISONERS WILL NOT BE FORWARDED			
		I checked <input type="checkbox"/> FEDERAL PRISONERS WILL BE FORWARDED		I checked <input type="checkbox"/> FEDERAL PRISONERS WILL NOT BE FORWARDED			
		I hereby swear all information contained on this document is true and correct to the best of my knowledge.		SIGNATURE			
		BADGE NO. _____		OFFICER:			

---

---

---

---

---

---

---

---

---

---

## WRITING CITATIONS, Cont'd

- ◆ Statute, rule, regulation, or other provision of law that the defendant is alleged to have violated
- ◆ Time of the offense
- ◆ Place of the offense
- ◆ "[P]lain, concise, and definite statement of the offense charged"

---

---

---

---

---

---

---

---

---

---

State v. Spotted Eagle,  
2010 MT 222

- PFMA charge with no statute subsection
- Jury instructions used at trial changed State's theory, but more importantly, subsection of statute charged
- Conviction overturned
- Spotted Eagle cited in Norman case

---

---

---

---

---

---

---

---

**[Section 33] Unlawful use of equipment while hunting.**

(1) A person may not:

(a) hunt or attempt to hunt any game animal or game bird; by the aid or with the use of any snare, except as allowed in 87-3-127 and 87-3-128, set gun, projected artificial light, trap, salt lick, or bait;

(b) use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of wildlife, except predatory animals and those birds not protected by state or federal law;

(c) while hunting, take into a field or forest or have in the person's possession any device or mechanism devised to silence, muffle, or minimize the report of any firearms, whether the device or mechanism is operated from or attached to any firearm; . . .

---

---

---

---

---

---

---

---

**[Section 23] Unlawful procurement of license, permit, or tag** (1) A person may not:

(a) subscribe to or make any materially false statement, on an application or license. Any material false statement contained in an application renders the license issued pursuant to it void;

(b) purchase a hunting, fishing, or trapping license without first having obtained a wildlife conservation license pursuant to 87-2-201; or

(c) purposely or knowingly assist an unqualified applicant in obtaining a resident license.

. . .

---

---

---

---

---

---

---

---

## DISCOVERY ISSUES

What procedures do you have in place to handle the "We have never seen this" claim at trial?

- Have a set office procedure
- Document the office procedure
- In some cases, state in court documents that you have discovery procedures, including access to evidence via the warden; remember the key word "access" (see attachment)

---

---

---

---

---

---

---

---

## HANDLING OF EVIDENCE

As with other cases, decide:

- Type of evidence
- Visual impact of evidence; maximize impact
- Most efficient way to present
- What will/will not work with a particular judge

---

---

---

---

---

---

---

---

## TYPES OF EVIDENCE

- Seized evidence: animal parts  
electronic devices  
photographs  
documents
- Things you create: photographs  
maps  
tables

---

---

---

---

---

---

---

---






---

---

---

---

---

---

---

---

---

---

---

---

Montana Fish, Wildlife & Parks  
**2008 RESIDENT SHEEP LICENSE** 487

VALIDITY PERIOD	FROM MO DAY	TO MO DAY	NON TRANSFERABLE - NON REFUNDABLE	ISSUE DATE	ISSUE PLACE	ISSUE AGENT
180-D	09/15	09/15		09/15/2008	MT/28/1372 - BT	

SPECIAL REGULATIONS: SEE REGULATIONS FOR SPECIFIC DETAILS.

JUSTIN B. ALLEN  
 MT REG. 1799  
 HELENA MT 59401

*Justin B. Allen*  
 MT License # 1799

Every resident and nonresident must have obtained permission of the landowner, lessee or their agents before hunting tag game animals on private property.  
 TO REPORT VIOLATIONS: If you are unable to contact the local game warden or sheriff's office, call toll free 1-800-TIP-REPORT (847-6666).

**IMMEDIATELY UPON KILL**

Validate this tag by cutting out the month and the first and second digits of the date. These cuts are required to correctly validate this tag. Attach tag to animal carcass in a visible manner, evidence of sex and species required.

JAN > < JUL  
 FEB > < AUG  
 MAR > < SEP  
 APR > < OCT  
 MAY > < NOV  
 JUN > < DEC

DAY OF MONTH (BELOW)

1ST - DIGIT	2ND - DIGIT
0 1 2 3	0 1 2 3 4 5 6 7 9

---

---

---

---

---

---

---

---

---

---

---

---

**Extracted AOL E-Mail Message**

**From:** KurtNKyle  
**To:** casebeerjohn@hotmail.com  
**Date:** 11/15/2004  
**Internal Date:** Tue, 16 Nov 2004 02:59:00 +0000 UTC  
**Subject:** Re: FW: Takes Nerve to Wear These T-Shirts

Hey we just took another buck off the property.....5x5 it scores 191 6/8.

---

---

---

---

---

---

---

---

---

---

---

---

**Wardens are investigating various electronic devices and digital evidence; encourage . . .**

- discovery of digital devices (computers; cellphones; etc.) and digital evidence (internet usage; emails, etc.)
- questioning of any and all witnesses/suspects about usage
- correspondence with internet and cellphone providers regarding storage/maintenance of info

---

---

---

---

---

---

---

---

**POTENTIAL EXPERT TESTIMONY**

- Ballistics
- DNA
- Computer forensic analysis/retrieval
- Other specific/unique issues, e.g., uniqueness of antlers
- (Not expert, but use Boone & Crockett scorer to present measurements)

---

---

---

---

---

---

---

---

**State v. Wilmer, 2011 MT 78**

- Mineral County case involving waste of deer hanging outside on deck for many weeks
- Photos taken by warden three days after seizure (remained uncovered in back of truck)
- Issue regarding "fit for human consumption"; meat processor presented as expert (over objection); used photos as basis for opinion

---

---

---

---

---

---

---

---

## JURY INSTRUCTIONS AND VERDICT

- As with other cases, tied to charges as stated in complaint or information
- No stock instructions for statement of offense and elements
- If felony possession involved, special verdict necessary

---

---

---

---

---

---

---

---

## State v. Norman, 2010 MT 253

- Ravalli County case involving 3 felonies, total of 10 animals
- Conviction regarding all 3 felonies, 8 animals
- Appeal regarding verdict and instructions
- Lengthy opinion regarding verdict and instructions
- NOW USE SPECIAL VERDICT FORM

---

---

---

---

---

---

---

---

## Apprendi argument

- Felony penalties must be based on jury finding of extra facts
- Some analogies to felony theft
- Tied to presentation of trophy restitution amount and need for testimony re: measurements

---

---

---

---

---

---

---

---

## RESTITUTION FINDING

- Statute (87-6-905) requires that "the finder of fact at trial or the court upon entry of a guilty or nolo contendere plea shall find that the illegal killing or possession was done knowingly or purposely as defined in 45-2-101."

---

---

---

---

---

---

---

---