

Some time ago a Conservation Officer of Baldwin County came across a Negro man in the woods with a turkey hen. The Conservation Officer asked him what he was going to do with the turkey. "Mr. Game Warden, Ah aint rightly made up me mind." The Conservation Officer said, "Well, what ever you do to that turkey I am going to do to you. If you chop its head off, I am going to chop your's off. If you choke her to death, I am going to choke you to death." "Well, Boss, if you shoe you gaw'n do to me what I do to this turkey, I'se gaw'n kiss its rear end and turn it loose!"

That, Gentlemen, is what I am going to do—turn you loose, with a reminder that the Justice Courts are ready and willing to assist all law enforcement officers 24 hours a day when called on to do so.

## THE DUTIES OF THE PROSECUTING ATTORNEY IN GAME AND FISH CASES

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The manner in which the Prosecuting Attorney presents the State's case in game and fish violations probably has more effect towards respect for game and fish laws than most any other factor. If the prosecution is merely to punish the defendant then were it better that the prosecution was never begun. For out of the prosecution of any case, be it for game and fish violation, or any other type of prosecution, must come a willingness, not only on the part of the defendant, but from all game and fish sportsmen, to abide by the laws protecting our game and fish. They must be made to feel that the laws are for their own good.

Why is a prosecution ever begun? Obviously it is because some individual has failed to do some act required of him, or he has done some act prohibited by the game and fish laws. Regardless of whether the act is one of omission, or one of commission, the game and fish wardens has detected the violation and made an arrest. Of course, no individual gets any delight out of being arrested, even if he is permitted to sign his own appearance bond. So one of the first duties to be determined by the prosecuting attorney is whether the violation was knowingly or unknowingly committed. But this determination cannot always be easily ascertained. In most instances the defendant will not be available to talk to until he appears in court with his attorney for the trial. Therefore, the prosecuting attorney must get his facts as completely as possible from the arresting officer, who is usually a game and fish warden. It is from the game warden that the prosecuting attorney must lay the cornerstone for the State's case. Having ascertained whether the violation is one of omission, or commission, the prosecutor is then ready to take the next step in the prosecution, that of organizing his case for trial.

It makes little difference how much evidence the game warden has gathered, if the prosecuting attorney does not properly organize the facts in the case he will lose it. It is a fundamental rule that "out of the facts the law arises." If it appears that the alleged violation has come about through omission to perform a particular act, such as failure to mark a fish slap trap box, the prosecutor should be prepared to take a minimum penalty rather than insist on an all-out prosecution for the maximum sentence and risk losing the case entirely. Most violators will not resent a reasonable penalty for a first violation if the State's representatives, which include both the game warden and the prosecuting attorney, are reasonable in their demands. It is a pretty safe assumption that most all judges, whether Justices of the Peace, county judges, or Circuit or District judges, will go along with the State's recommendations. The prosecutor by all means should discuss such recommendations with the game warden before making his recommendations to the Court. It is his duty to take the game warden into his confidence.

The handling of those cases, however, where the violations have been wilfully and maliciously committed require considerably more preparation. It goes without saying that all facts must be carefully assembled. Usually these type of cases will require prosecution right to the bitter end so to speak. Seldom will the defendant be without legal counsel, who in turn will be prepared with both barrels. Having prepared his case in minute detail, and having reliable witnesses to back up the game warden's testimony as far as possible, the prosecuting attorney is ready for the real test of the game warden's case before the judge or jury.

If a jury is to try the case, it is most important to have jurors who believe in strict enforcement of the game and fish laws. This information should generally be known to the prosecutor well beforehand. The game warden should always be consulted before striking the jury, because he will know those individuals who have brushed against the game laws, and those who lend their support for observing the game and fish laws, and want others to do the same. Once the jury has been selected, we are ready to turn our attention to the presentation of the case to the judge or jury. This is one of the most important duties of the prosecuting attorney.

Experience by your speaker shows that the most successful procedure for presenting the evidence in game and fish violations is to do so in chronicle order. Only two witnesses to the same set of facts are needed. Too many witnesses may cause some jurors to get the idea that the State is merely trying to out-testify the defendant. Before putting on any witnesses, however, it is most important for the prosecuting attorney to go over the facts in the case with all of his witnesses together to insure that there will be no conflict in the testimony which is presented to the Court. If there is direct conflicting testimony then it is better to dismiss the case, particularly where it pertains to the essential elements of the case. In questioning the State witnesses the prosecuting attorney should be sure to bring out all relevant facts pertaining to the case. This is usually well done by permitting the witness to tell in his own words just what happened, after having first established where, and when the act took place, and who was involved. It is the duty of the prosecutor to carefully cross-examine the defendant and any witnesses who may testify in his behalf. The particular line of cross-examination to follow will usually not be known until the defendant and his witnesses take the witness stand. The questions posed by the prosecutor during cross-examination should clearly indicate to the judge or jury just what portion of the defense testimony is in question and the reasons why. In order to get the idea to the Judge or jury that the defendant, or his witnesses, may not be telling the truth to some material allegation in their testimony, it is good to ask simple, direct questions that will require a simple "yes" or "no" answer. Do not let the witness try to explain his answer. Any particular interest a defense witness may have for the defendant should be brought out in the cross-examination. Of course, if the defendant himself fails to take the witness stand not even an inference may be made by the prosecutor as to his failure to testify. Rebuttal witnesses may or may not be needed after the defense has presented its case. Nevertheless it is the duty of the prosecutor to be prepared with rebuttal witnesses if they are needed.

Of course, it is the duty of the prosecuting attorney to have all physical evidence, and exhibits, ready for presentation during the trial of the case. It is his responsibility to know that they are in the courtroom, and that their introduction fits into the web of evidence he expects to present against the defendant. For instance, if a 12-gauge shotgun is introduced, and there is testimony that some shells were found with the gun, the prosecutor should make sure any shell introduced fits into the same gun.

We have talked about offenses caused by acts of omission or commission. But there is a third category of offenses which usually present the most difficult problems. I speak of "attempts," such as "attempt to take, capture, or kill a bird or animal protected by the laws of the State between sunset and daylight of the following day." Laying beside the road the game warden observes a car of three men from an adjoining county turn off the paved road onto a two-trail dirt road at 9:00 p. m., and return to the highway about one hour later. It is generally known that the two-trailed dirt road is a dead-end road, and runs right through an area where many deer can usually be seen. One

shot is heard in the general direction that the automobile took before returning. The car is stopped and searched, and one shotgun, unloaded, is found on the back seat of the automobile. One man who was riding in the back seat was searched and three or four shotgun shells found in his pockets, some being buckshots. Two men are riding in the front seat, the one sitting next to the driver is found to have buckshot shells in his pockets. A very sharp knife is found in the glove compartment of the car, and a two cell flashlight is found on the front seat and a three cell one on the back seat; neither of these flashlights were seen being used. Each of the three men give a different account as to their business down the dirt road. In a situation like this it is obvious that the prosecutor should ascertain from each juror whether he believes in circumstantial evidence before striking the jury. Having eliminated all those individuals who do not believe in circumstantial evidence, the prosecutor's success will usually depend entirely on how well he organizes and presents the evidence he has. Certainly in those type of cases the game warden's reputation for fair play, impartiality, and the esteem in which he is held by the citizens of the county will go a long ways towards securing a conviction in these difficult cases.

From the foregoing, it is clear that the prosecuting attorney has a number of important duties to perform in prosecuting game and fish violations. He must be well versed in all statutes and laws concerning game and fish, and he should be well read on all court decisions affecting these game and fish cases. In order to keep the public informed of current game and fish activities he should furnish to the local newspapers news articles, such as a report at the end of each calendar year of the number and type of game and fish violations made during the year. The public is interested in results. And, as often as possible, the prosecutor should give short talks to civic clubs concerning protection and conservation of game and fish. These various forms of public relations will certainly create a greater respect for the game and fish laws.

Another duty of the prosecuting attorney is to insist that all defendants arrested be brought to trial. This will require positive action on his part, to contact all courts having jurisdiction to try game and fish violations, and insist that every defendant be tried. By all means, the prosecutor should make it his duty to see that political influence is not permitted to get charges dropped or changed for wealthy or political influential individuals. Under no circumstances should political influence be allowed to interfere with game and fish law violations, nor any other type of violation. Unless all individuals apprehended are prosecuted alike, there will be no respect for any of the laws.

As the nation's population continues to grow; as the work-week for most individuals grows shorter; as the roads leading to hunting and fishing sites are improved; as the acreage for game continues to become less and less; as more and more motors and boats become available to the people, it becomes the duty of all people, not just the game wardens and the prosecutors, to observe our game and fish laws so that all people may enjoy the pleasure of hunting and fishing during their lifetime.

In closing, I am reminded of the Negro who was a witness for the State in a hunting at night case. The defense lawyer, being unable to break the Negro's story, and having heard him testify that he had seen the defendant shoot the deer at night at a distance of two hundred feet, finally asked the witness just how far he could see at night. Studying intensely for a few moments, the old Negro finally looked up at the defense lawyer and said, "boss, caint say exactly, but I'de can see de moon, and how fur is that?"