

NEW SOUTH WALES
TO WIT
LIGHTNING RIDGE

IN THE COURT OF PETTY SESSIONS
LIGHTNING RIDGE

BEFORE J.L. McMAHON
STIPENDIARY MAGISTRATE
15th AUGUST, 1978

FREELAND v BDEKOVIC & SAVESKI

BENCH: By consent of all parties two informations have been heard and will be determined together. The first information laid by the informant, Ian David Freeland an Inspector of Mines with the New South Wales Department of Mines, alleges that on or about the 18th January, 1978 at Lightning Ridge Stephen Bedekovic did mine for a mineral to wit opal otherwise than under and in pursuance of a claim of which he is the registered holder, or a mining lease authorising him to mine for that mineral or a coal lease granted under the Coal Mining Act 1973 which applies to that mineral by reason of a direction given by the Minister under Section 72 (3)(a) of that Act. The second information laid by the same informant is against Angelo Saveski alleging that when the other defendant Bedekovic mined for the opal contrary to the law, Saveski did aid and abet the commission by Bedekovic of that offence.

The facts which are agreed are that on 18th January, 1978 about 10 o'clock in the morning Constable Barry Terrence Traynor went to registered claim no. 6185 in the company of two other men, namely Walter Elliot Anderson and Gary Holm. Anderson subsequently gave evidence swearing that he had the authority of the registered holder of claim no. 6185, Gregory Phillips who was absent in the Northern Territory, to act in relation to that claim. When the police officer and Messrs. Anderson and Holm arrived at claim 6185 a green Holden Kingswood sedan was parked on it and there was a rope ladder suspended from a log of wood hanging down a mine shaft within the area of that claim. They descended the rope ladder and found the two defendants, Bedekovic holding an opal pick and Saveski a carbide lamp. Saveski also had another torch over his right shoulder. There was also found in the possession of the defendants a white canvass bank bag containing certain opal stones.

From the ensuing conversation conducted among the police officer, Mr. Anderson and the two defendants and bearing in mind the circumstances in which the two defendants were found in the shaft I am satisfied to a point beyond reasonable doubt that they were mining the earth within the area of claim 6185.

The conversation which is also undisputed went as follows :

Anderson said to Saveski "What is your name?" Saveski said "Angelo".

Anderson said to Bedekovic "Are you gouging here?" and Bedekovic replied "Yes I have permission from the owner".

Anderson said "What is the owner's name?" Bedekovic replied "Denis that works in the butcher's shop".

Anderson said "That is impossible, the owner is up in Darwin".

The conversation continued, this time Constable Traynor addressed the defendants and said "Are you the registered holder of this claim?" Bedekovic replied "No". The Constable asked "How long have you been mining in this claim?" and Bedekovic replied "2 days". Both defendants were then warned and said that they understood. Whereupon the Constable asked "Did you find anything?" and Bedekovic replied "Only those nobbies in the bag, you can search me if you like."

Again to interpose, I take judicial notice that nobbies are clods of earth which might contain opalised crystal which are peculiar to the Lightning Ridge area and that large black nobbies were found in the white cloth bag which was tendered as an exhibit before me.

Constable Traynor continued this conversation and asked "Do you have permission to mine here?" and Bedekovic replied "Yes Denis from the butcher's shop is the owner he gave me permission". Constable Traynor asked "You mean Denis Bettini?" and Bedekovic replied "I do not know his other name." Constable Traynor asked "Did you check that this is Denis' claim?" and Bedekovic replied "No." Constable Traynor said "Did you make any inquiries at the mining office to ascertain the correct location of Denis' claim and the claim number?" Bedekovic replied "No I did not." Constable Traynor asked "How long have you been engaged in opal mining in Lightning Ridge?" Bedekovic replied "7 or 8 years." Constable Traynor said "Are you familiar with marking out the boundaries of mining claims?" Bedekovic replied "Yes." Constable Traynor asked "Are you able to ascertain these boundaries when you are working underground?" Bedekovic replied "Yes." Constable Traynor said "Are those nobbies in the white bag the only nobbies you have mined?" Bedekovic replied "Yes."

Later the same day both defendants were interviewed at the Lightning Ridge Police Station. They were asked whether they wanted to make a statement, appropriately warned and both men indicated that they understood. Bedekovic added "I don't want to make a statement but I will say this, I thought it was Denis' claim and it was an honest mistake." Constable Traynor asked Bedekovic "Do you consider yourself to be a very experienced opal miner?" and Bedekovic replied "Yes." He was asked "Do you consider yourself reasonably familiar with the laws and regulations pertaining to opal mining in the Lightning Ridge area?" Bedekovic replied "Yes." He was asked "You told me earlier that you did not check to see if you were in the correct claim, is that correct?" and Bedekovic agreed that that was correct. Constable Traynor said to Bedekovic "I have spoken to Ron Krause and he told me that he drew you a rough map showing you where the claim was. Is that correct?" and Bedekovic replied "Yes." He was asked "Yet you still claim you were intending to gouge on Denis Bettini's claim. Is that correct?" and Bedekovic replied "I must have gone down the wrong hole." He was asked "Did you do any mining in any of the adjoining claims?" and Bedekovic replied "No only that one." He was asked "Did you see any one else mining in those adjoining claims?" Bedekovic replied "No." The defendant Saveski was then asked whether he wished to say anything and he replied "No not if Steve's saying nothing." Both men were then informed that the matter would be reported to the Department of Mines.

As can be seen from the conversation above set out the defendant Bedekovic claimed that a man called Denis from the butcher's shop had given them permission to enter upon a claim and that it was their belief that the claim that they were on was that one the subject of the permission. During their defence both defendants adhered to these statements, claiming an honest mistake. They also called as witnesses, firstly Mr. Ronald Krause and secondly Mr. Denis John Bettini. In fact Bettini is the registered holder of claim 6620 which has a common boundary with claim 6185. Both Bettini and Krause gave evidence to the effect that some time prior to the 18th January, 1978 they had given the defendant Bedekovic permission to mine on claim 6620, Bettini originally giving that permission to Krause and Krause because of other employment giving that permission to Bedekovic.

The defence therefore was one of honest and reasonable mistake bearing in mind the proximity between Mr. Phillip's claim 6185, being looked after by Mr. Anderson, and Mr. Bettini's claim 6620.

It is clear on the evidence from Mr. Vincent Gee, Mining Occupations Officer at Lightning Ridge, an employee of the New South Wales Department of Mines, that both claims were well numbered with metal tags and marking boundary posts were in position. In my view there could have been no doubt in the mind of any person who had taken the trouble of ascertaining the identity of the claim upon which he was working that this information could have been readily forthcoming. Bedekovic admitted making no such inquiry either in the field, or at the Mining Registrar's office.

The question therefore is whether on the criminal standard of proof I can be satisfied to a point beyond reasonable doubt that the defendant illegally mined on claim 6185 and whether Saveski aided and abetted him. Dealing with the second point initially the circumstances in which Saveski was found, in my view, constitute him, if an offence is proven, as being at the very least an aider and abettor. He made no adoption of the admissions which Bedekovic made in his presence, but notwithstanding this failure to adopt the comments by Bedekovic, Saveski's very presence on the claim without permission and in the company of Bedekovic and the circumstances of his working the claim point heavily to Saveski being implicated in any illegal activity that Bedekovic might have committed.

It is possible that persons could have been under an honest misapprehension as to the position of claim no. 6620 in relation to the land of claim 6185 upon which they were actually mining. People can make innocent or blameless mistakes and because of that Courts must always be careful in dealing with such defences and must look carefully at all the circumstances before rejecting a defence of mistake; but this it seems to me is no ordinary case of possible mistaken identity.

In the opal fields the position of markers and boundaries are important and significant, trespassing, whether accidental or otherwise, being considered as a serious matter doubtless because of the possibility of the trespasser finding stones of considerable value on just a single visit to an area or a single descent into a shaft. All miners and other local people are conscious of this sensitive and important fact of life in the Lightning Ridge district. Had the defendants been just visitors or merely new miners in the district, or had they been unaware of procedures to find out the position of claims, then I would be pleased to give them the benefit of a reasonable doubt that would exist.

The present facts are that both claims bore metal identification tags and the boundaries were clearly marked. No inquiry was made by Bedekovic about the identity of the area where they were working. As an experienced miner it would have occurred to Bedekovic that he must check the identity of an area where he is working.

In my view to accept what the defendants say as their defence would be to fly in the face of all logic and commonsense, overlooking the fact that Bedekovic was wilfully blind to the circumstances and, to put the best construction on his conduct, deliberately did not make inquiries to find out where they were mining. Had inquiries been made it would have been clear to the inquirer that he was entering a claim in respect of which no permission existed. I reject the explanation given by the defendants and I find the offences proven.

It is left for me to mention briefly the matters as to absolute liability raised by Mr. Jackson. The defendants were unrepresented and I felt the need to adjourn to examine the law as to the status of section 189. In view of my finding on the facts in these matters it is unnecessary for a finding on the law as to whether section 189 creates an absolute offence, although I would comment that in the light of my reading of the cases submitted by Mr. Jackson, and applying the principles of absolute offences, I incline to the view that Section 189 does not create an absolute offence.