

**Filed in District Court
State of Minnesota**

STATE OF MINNESOTA

IN DISTRICT COURT

Lynch, Wendy
Sep 12 2018 4:32 PM

COUNTY OF CROW WING

NINTH JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

File No. 18-CR-16-19

vs.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW and
ORDER**

James Warren Northrup,
Defendant

The above-entitled matter came on before the Undersigned Judge of District Court on September 5, 2018, based upon the agreement of the parties that the matter would proceed as a trial on stipulated evidence pursuant to Minn.R.Crim.P. 26.01, subd3. The parties do not dispute the facts and the facts submitted are not contradictory, Defendant Northrup's arguments are: (1) he should be found not guilty because he did not intend to violate any laws; and (2) he has treaty rights to hunt and gather because no Band gave up usufructuary rights to the area where his acts occurred.

Plaintiff, State of Minnesota, is represented by Crow Wing County Attorney Donald Ryan and Assistant Attorney General Robert Cary. Defendant James Northrup (hereinafter "defendant") appeared and is represented by Attorneys Joseph Plumer and Frank Bibeau. The stipulated facts and evidence received by the Court are as follows: the police reports and investigative materials on a compact disc;

exhibit # 1: photographs of the net recovered from the lake;

exhibit # 2, photograph of Defendant and a Conservation Officer;

exhibit # 3, photograph of Defendant and Todd Thompson in canoe and Conservation Officers in motorboat;

exhibit # 4, Office of Tribal Enrollment, Affidavit of Relinquishment to Band Membership form;

exhibit # 5, Application for Enrollment with the Minnesota Chippewa Tribe form;

exhibit # 6, an unsigned copy of the enrollment transfer resolution removing Mr. Northrup from the Leech Lake Reservation Pillager Band and enrolling him in the Fond du Lac Reservation Lake Superior Band. The parties stipulate this exhibit shall be treated as if it were fully executed;

exhibit # 7 Minnesota Chippewa Tribe Tribal Constitution Interpretation 4-81;

exhibit # 8, Minnesota Chippewa Tribe Tribal Constitution interpretation 7-86;

exhibit # 9, Revised Constitution and Bylaws of the Minnesota Chippewa Tribe; and exhibit # 10, Minnesota Chippewa Tribe Enrollment Ordinance

Based upon the stipulated facts and evidence, this Court makes the following:

FINDINGS OF FACT

1. On August 28, 2015, Minnesota Conservation Officers observed Defendant and Todd Thompson in a canoe on Gull Lake.
2. Thompson put a gill net into the lake as Defendant paddled.
3. After the net was placed, Defendant and Thompson paddled toward shore.
4. The Conservation officers approached the canoe and ordered Defendant and Thompson to stop. They did not.
5. Defendant and Thompson disembarked at a boat landing located in Crow Wing County, Minnesota.
6. The Conservation officers removed the net from the lake. The net lacked identification and licensing information.
7. The canoe did not display a registration sticker.
8. Defendant and Thompson were not wearing personal flotation devices when on the lake, and there were no personal flotation devices in the canoe.
9. The Conservation officers spoke with Defendant and Thompson. Both admitted setting the gill net. Both acknowledged that they did not have a permit or license from the State of Minnesota to net fish. Both claimed they had federal treaty rights to place the net in Gull Lake.
10. Defendant is a member of the Fond du Lac Band of Minnesota Chippewa Tribe and has been since 1993.
11. The new submissions, while accepted as true and accurate, do not change the legal conclusion in this Court's November 8, 2017, pretrial ruling that the record is insufficient to establish that Defendant has usufructuary rights on Gull Lake.

Based upon the foregoing Findings of Fact, this Court draws the following:

CONCLUSIONS OF LAW

Count 1- Illegal Means of Taking Fish

1. The laws of Minnesota provide that who ever takes fish with nets except as specifically authorized is guilty of a crime. Minn. Stat. § 97C.325 (a)(3); CRLMJIG28.03.
2. The crime of illegal means of taking fish has three elements, each of which must be proven beyond a reasonable doubt before the court may reach a verdict of guilty. The three elements are:
 - a. The defendant took fish by means of nets. "Taking" includes placing a net to take fish Minn. Stat, § 97A.015, subd. 47 & subd. 55);

- b. The defendant acted without specific authority to do so; and
 - c. The defendant's act took place on August 28, 2015, in Crow Wing County.
- 3 The Court concludes that each element of illegal means of taking fish has been proven beyond a reasonable doubt.

Count 2- Netting Fish Without a License

4. The laws of Minnesota provide that whoever takes fish by netting without the required license to net fish and an angling license is guilty of a crime. Minn. Stat. g 97C.301, subd.4
5. The crime of netting fish without a license has three elements, each of which must be proven beyond a reasonable doubt before the court may reach a verdict of guilty. The three elements are:
- a. The defendant took fish by netting;
 - b. The defendant acted without both a license to net fish and an angling license; and
 - c. The defendant's act took place on August 28, 2015, in Crow Wing County.
6. The Court concludes that each element of netting fish without a license has been proven beyond a reasonable doubt.

Count 3- Operating Watercraft Without Registration

7. The laws of Minnesota provide that whoever operates a watercraft that requires a license on the waters off this state without a valid registration sticker affixed to the watercraft as prescribed by the Commissioner of the Department of Natural Resources is guilty of crime. Minn. Stat. § 86B.301, subd.1(3).
8. The crime of operating watercraft without registration has four elements, each of which must be proven beyond a reasonable doubt before the court may reach a verdict of guilty.

The four elements are:

- a. The defendant operated a watercraft on the waters of this State.
 - b. The watercraft operated by defendant was required to have a watercraft license. "All non motorized canoes shall display decals furnished by the Department of Natural Resources for such watercraft." Minn.Rule 6110.0400.
 - c. There was not a valid registration sticker affixed to the watercraft as prescribed by the Commissioner of the Department of Natural Resources. "The decals shall be securely affixed on each side of the forward half of the watercraft for which the decal is issued, in such a position as to provide clear and legible identification." Minn.Rule 6110.0400.
 - d. The defendant's act took place on August 28, 2015, in Crow Wing County.
9. The Court concludes that each element of operating watercraft without registration has been proven beyond a reasonable doubt.

Count 4- Using Watercraft Without Personal Flotation or Lifesaving Devices

10. The laws of Minnesota provide that whoever uses a watercraft on the waters of this state when the watercraft is not equipped with the number and type of personal flotation or lifesaving devices prescribed by the Commissioner of Natural Resources is guilty of a crime. Minn. Stat. § 86B.501, subd. 1.

11. The crime of using watercraft without personal flotation or lifesaving devices has three elements, each of which must be proven beyond a reasonable doubt before the court may reach a verdict of guilty. The three elements are:

- a. The defendant used a watercraft on the waters of this state.
- b. The watercraft was not equipped with the number and type of personal flotation or lifesaving devices prescribed by the Commissioner of Natural Resources. "Every person on board a watercraft or waterfowl boat shall wear or have readily accessible a U.S. Coast Guard-approved wearable person flotation device. Minn. Rule 6110.1200, subp3.
- c. The defendant's act took place on August 28, 2015.

12. The Court concludes that each element of using watercraft without personal flotation or lifesaving devices has been proven beyond a reasonable doubt.

ORDER

1. The Defendant is GUILTY of the offense of illegal means of taking fish pursuant to Minn. Stat. § 97C.325 (a)(3), a gross misdemeanor.
2. The Defendant is GUILTY of the offense of netting without a license pursuant to Minn. Stat. § 97C.301, subd. 4, a misdemeanor.
3. The Defendant is GUILTY of the offense of operating watercraft without registration pursuant to Minn. Stat. § 86B.301, subd. 1(3), a misdemeanor.
4. The Defendant is GUILTY of the offense of using a watercraft without personal flotation or lifesaving devices pursuant to Minn. Stat. § 86B.501, subd. 1, a misdemeanor.
5. The parties shall return for a **sentencing hearing on October 12, 2018, at 9:30 a.m.** at the Crow Wing County Courthouse.

LET JUDGMENT BE ENTERED ACCORDINGLY:

BY THE COURT:

Austad, Jana

Jana Austad

2018.09.12

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Jana M. Austad
Judge of District Court