

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE)	
)	
)	C.R. No. 0401019546
vs.)	
)	
CHARLES R. AUMAN, JR.,)	
)	
Defendant.)	

Submitted September 1, 2004
Decided September 14, 2004

Melanie K. Withers, Esquire, Deputy Attorney General.
Timothy Willard, Esquire, counsel for Defendant.

DECISION AFTER TRIAL

A bench trial was held in the above-captioned matter on September 1, 2004. The Court reserved decision. After review of the testimony and evidence presented at trial, the Court finds and determines as follows.

BACKGROUND

Defendant, Charles R. Auman, is a licensed commercial horseshoe crab fisherman. The present charges arose from two surveillances of Defendant's activities conducted by the Department of Natural Resources and Environmental Conservation ("DNREC") on June 11, 2003. The first observation, by DNREC Officer Pritchett, occurred on the morning of June 11, 2003. The second observation, testified to by DNREC Corporal Howell, occurred later that afternoon. As a result, Defendant was

charged with violation of two DNREC shellfish regulations, and collection of horseshoe crabs without a permit.

DISCUSSION

The State has the burden to prove each and every element of these offenses beyond a reasonable doubt. 11 *Del. C.* § 301. *State v. Matushefske*, 215 A. 2d 443 (Del. Supr., 1965). Reasonable doubt is well established by case law. Reasonable doubt is not a “vague, whimsical or merely possible doubt, but such a doubt as intelligent, reasonable, and impartial men may honestly entertain after a conscious consideration of the case.” *Id.* A reasonable doubt is “a substantial, well-founded doubt arising from a candid and impartial consideration of all the evidence or want of evidence.” *State v. Wright*, 79 A. 399, 400 (Del. Gen. Sess. 1911).

The Court is the trier of fact and the sole determiner of the credibility of the witnesses.

Collection of Horseshoe Crabs in a Closed Area

The State first alleges that the Defendant collected horseshoe crabs in a closed horseshoe crab sanctuary “in violation of 7 *Del. C.* § S-56(c).” In actuality, Count 1 of the Information charges a violation of DNREC Shellfish Regulation S-56(c), promulgated under the statutory authority of 7 *Del. C.* § 2701 *et seq.*

Corporal Howell testified that he observed the Defendant collecting horseshoe crabs at the Cedar Creek public boat ramp, in northern Sussex County, on June 11, 2003. Under DNREC Regulation S-56(a), the Cedar Creek public boat ramp, as state lands, is a horseshoe crab sanctuary and closed to collection. Additionally, the State offered pictures (State’s Exhibits 7, 9 and 10), taken by Corporal Howell, which show the presence of several horseshoe crabs in this restricted area.

At trial, the Defendant testified that he had his boat at the Cedar Creek public ramp to offload horseshoe crabs he had collected elsewhere that day. He said that the horseshoe crabs he picked up at the boat ramp had already been lawfully collected in a permitted area under his commercial license, and loaded on his boat. Defendant stated that he was merely picking up those crabs that fell or crawled out of the boxes and off of the boat while transferring them from the boat to boxes, and loading the boxes into his truck. The Defendant's testimony is consistent with pictures offered by the State (State's Exhibits 15 and 16) that depict the Defendant and his brother filling cardboard boxes at the ramp area with horseshoe crabs from Defendant's boat, and loading boxes of horseshoe crabs into his truck.

The Court finds the testimony of both Corporal Howell and the Defendant to be credible. Further, the testimony of the witnesses is not in direct conflict. Weighing all the evidence, it is reasonable to conclude that Corporal Howell witnessed the Defendant picking up crabs in the restricted area that had been harvested elsewhere and merely dropped or escaped in transfer. Under such circumstances the Defendant would not be in violation of DNREC Regulation S-56(c), since he would be merely retrieving dropped crabs already lawfully collected.

This Court cannot find the Defendant guilty of the crime charged when there exists a reasonable doubt as to whether the horseshoe crabs picked up in the sanctuary area were collected on-site or harvested from another lawful location, and therefore finds the Defendant **NOT GUILTY** as to Count 1.

*Collection or Dredging of More Than 300 Cubic Feet of Horseshoe Crabs
In a 24-Hour Period*

Next, the State alleges that the Defendant collected more than 300 cubic feet of horseshoe crabs on June 11, 2003 in "violation of Title 7, Section SR 54(h)." Again, this

count actually charges the Defendant with a violation of DNREC Regulation S-54(h). The regulation clearly limits licensed fisherman to collection of no more than 300 cubic feet of horseshoe crabs in a 24-hour period. However, the evidence shows that determining how many horseshoe crabs or boxes of horseshoe crabs constitute 300 cubic feet is not nearly so clear.

The State offered evidence that a cardboard box typically used by commercial fisherman to store harvested horseshoe crabs holds approximately 250 to 300 crabs, and that the most commonly used box contains approximately 42 cubic feet of volume. Thus, Corporal Howell estimated that seven boxes would equate to the daily limit of 300 cubic feet of crabs (actually 294 cubic feet). Corporal Howell stated that if a commercial horseshoe crabber collected more than seven boxes in a day, he was in violation of the regulation. However, the State's witness also conceded on cross-examination that four different sized boxes are used in the horseshoe crab industry. Corporal Howell testified that he believed the boxes he saw the defendant fill in the afternoon were 42 cubic foot boxes. However, Corporal Howell did not observe the boxes filled by Defendant in the morning, and had no direct knowledge of their estimated volume.

The Defendant, a long-time commercial fisherman, estimated that a box could hold up to 500 horseshoe crabs depending on whether the crabs are male or female. Further, the Defendant explained to the Court the difference between a "fluffed" and a "settled" box of horseshoe crabs. When the crabs are first harvested they may fill a box but as the crabs sit they settle and space is created in the box. The Defendant stated that it is common practice for fishermen to "top off" settled boxes with additional horseshoe crabs to fill the empty space and maximize their daily volume limit.

Officer Pritchett testified that he observed the Defendant offload and fill four boxes of horseshoe crabs from his boat in the morning. According to Corporal Howell's testimony and the DNREC Evidence Seizure tag (State's Exhibit 2), later that afternoon the Defendant had filled two and one half boxes when he was arrested, and there remained 491 crabs on his boat. The only crabs that the officers actually counted were those on the boat, which had not yet been placed in the boxes. The officers did not measure the volume of the loose crabs remaining on the boat. The Defendant testified that he intended to use the crabs collected on the boat to fill the final box and "top off" the remaining boxes from the morning. The DNREC officers did not measure the boxes used by the Defendant that day.

Considering the knowledgeable testimony of the Defendant and the DNREC officers it is obvious that no clear method has been established to determine how many horseshoe crabs or boxes of horseshoe crabs constitute 300 cubic feet. There is some variation between the officer's estimation and that of the Defendant. Although estimates of volume based on non-standardized box volumes may be sufficient for the general regulation of the industry, when the State elects to prosecute an alleged violation of the catch limit regulation, it must be prepared at trial to offer more concrete evidence sufficient to meet the strict burden of proof this Court must apply. The State did not seize the volume of crabs in question, or the boxes Defendant used to store the crabs. Nor did the State attempt to measure the boxes the Defendant actually used, or to measure the volume of the loose crabs on his boat. Such imprecise evidence, based largely on estimates when actual volume easily could have been objectively measured by the State, is insufficient to establish beyond a reasonable doubt that the volume of crabs

collected by Defendant was greater than 300 cubic feet. Accordingly, the Court finds the Defendant **NOT GUILTY** of Count 2 of the Information.

Collection of Horseshoe Crabs Without a Permit

Finally, the State alleges that the Defendant collected horseshoe crabs without a permit in violation of Title 7, Section 2704(a).

The Defendant has a disability permit under Title 7, Section 1915. The State contends that under his permit, the Defendant is not permitted to harvest horseshoe crabs. However, he is permitted to assist a family member, as defined within the regulations, in the harvesting of horseshoe crabs. The Defendant assists his brother in harvesting the horseshoe crabs.

Corporal Howell testified that he witnessed the Defendant throwing horseshoe crabs into the boxes at the Cedar Creek public ramp. However, inasmuch as the Court has found the Defendant not guilty of collecting horseshoe crabs at the public ramp (Count 1), the State cannot prove this element of the immediate offense. Therefore, I find the defendant **NOT GUILTY** on Count 3.

IT IS SO ORDERED, this ____ day of September 2004.

Kenneth S. Clark, Jr.
Judge