

UNITED STATES OF AMERICA
SAULT STE. MARIE CHIPPEWA TRIBAL COURT
APPELLATE DIVISION

**THE PEOPLE OF THE SAULT STE. MARIE
TRIBE OF CHIPPEWA INDIANS,**

Plaintiff-Appellee

**Appellate Court Case No. APP-06-05
Tribal Court Case No. C-06-12**

v

DONALD KRULL,

Defendant-Appellant

OPINION

I.

PER CURIAM.

FACTS AND PROCEEDINGS

Defendant was charged with three hunting violations under Tribal Code, Chapter 21; 21.501, hunting without a license; 21.507, hunting out of season; and 21.510, hunting without wearing hunters orange. This civil proceeding was tried before the Honorable Carol Andary, Tribal Judge, on November 20, 2006. The Tribal Court found by a preponderance of evidence that Defendant was responsible for all three violations and entered judgment in favor of Plaintiff. The Court imposed a fine of \$500.00 for each

violation and suspended Defendant's hunting license for the balance of hunting season. Defendant appeals and argues that the Tribal Court lacked jurisdiction, and that proper jurisdiction was vested in the State of Michigan. Defendant further argues that there were irregularities and improprieties in the proceedings. Affirmed.

During the trial, Trooper Nathan Grenfell of the Michigan State Police testified that on March 7, 2006, at approximately 9:20 PM he stopped a vehicle on Six Mile Road near M-221 for defective equipment. The driver, Christopher Frazier, was subsequently arrested for driving on a suspended license. While conducting a search of the van incident to an arrest, Trooper Grenfell noticed blood and hair in the van. After a discussion with Mr. Frazier, he learned the blood was from a deer. Upon further inquiry, Mr. Frazier stated that Bill Krull shot the deer on Neebish Island, and that the deer was at a residence on the Bay Mills Reservation.

Trooper Grenfell contacted the Bay Mill Tribal Police. On March 7, 2006, at approximately 10:00 PM, Conservation Officer William Schofield and his partner confiscated a gutted deer from the shed of a residence on the Bay Mills Reservation. Sault Tribe Law Enforcement was contacted since Mr. Frazier was believed to be a Sault Tribe Member. Further investigation disclosed that Mr. Frazier, Donald Krull and Andy Lyons were involved in taking the deer.

Christopher Frazier testified that he and Andy Lyons were on Neebish Island on March 7, 2006, and had arrived there at about noon. They ultimately met up with the Defendant, Donald Krull, and went for a drive in Mr. Krull's car. Mr. Frazier testified that they saw a deer and that he shot it, and that Mr. Krull was driving. When confronted by the Prosecutor about his statement to Trooper Grenfell that "Donald" shot the deer, statement to Sault Tribe Law Enforcement that "Bill" shot the deer, and his signed statement of March 8, 2006, that "Bill then shot the deer", Mr. Frazier changed his testimony and stated Defendant shot the deer.

Sergeant Gardner of the Sault Tribe Law Enforcement testified that he had information that a person by the name of "Wild Bill" was involved. Christopher Frazier and Sergeant Gardner both testified that "Wild Bill" and Donald Krull is the same person.

II.

JURISDICTION

The Treaty of 1836 between the United States and the Ottawa and Chippewa Indians specifically reserved hunting rights on ceded lands. Defendant does not dispute that Neebish Island is part of the ceded land described in the Treaty of 1836 or that Defendant is a Tribal Member. Article 13 of the Treaty states:

"The Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy until the land is required for settlement."

The Sault Ste. Marie Tribe of Chippewa Indians was organized pursuant to Section 16 of the Indian Reorganization Act, 25 USC § 476. Its Constitution and Bylaws took effect on November 13, 1975. The Sault Ste. Marie Tribe of Chippewa Indians is a political successor in interest to the Indians that signed the Treaty of 1836. United States v. Michigan, 471 F Supp. 192 (1979). The Tribe has the right of self-regulation. United States v. Michigan, 653 F.2d 277 (1981).

ARTICLE II of the Sault Tribe Constitution States:

ARTICLE II TERRITORY AND JURISDICTION

Section 1. The territory of the tribe shall encompass all lands which are now or hereafter owned by the tribe or held in trust for the tribe by the United States.

Section 2. The jurisdiction of the tribe shall extend to all of the lands of the tribe to the extent not inconsistent with Federal law and, further, for the purpose of exercising and regulating the rights to fish, hunt, trap and other usual rights of occupancy, such jurisdiction shall extend to all lands and waters described in the Treaty of March 28, 1836 (7 Stat. 491), and to

all lands and waters described in any other treaties which provide for such rights to the extent such jurisdiction is not inconsistent with Federal law.

Pursuant to it's authority, the Sault Tribe Board of Directors enacted Tribal Code, Chapter 21 "Hunting and Fishing" to regulate rights of Tribal Members to hunt and fish on Exclusive and Ceded Territory. The applicable and relevant sections of Chapter 21 state:

21.101 Purpose.

This Hunting and Inland Fishing Chapter is to permit the regulation of all matters pertaining to hunting, trapping and fishing except the Commercial and Subsistence Treaty Fishing Regulated under Chapter 20 of the Tribal Code. (Emphasis added)

21.204 Ceded Territory.

"Ceded Territory" shall mean the land and water ceded by the Treaty of March 28, 1836.....

The Sault Tribe Board conferred jurisdiction on the Tribal Court to adjudicate alleged violations of Chapter 21 pursuant to the following sections of the Tribal Code.

Section 21.301 states:

21.301 Jurisdiction.

- (1) As used in this Chapter, the term, person, means any person subject to the civil jurisdiction of the Tribal Code. Any such person shall be subject to the provisions of this Chapter. (Emphasis added)
- (2) By accepting a permit, any person submits to the jurisdiction of the Tribal Court in any proceeding relating to the Conservation Chapter that may be instituted.

Tribal Code 21.301(2) is intended to be informative, and not a requirement of jurisdiction. "Civil Jurisdiction" is defined in material part as follows:

81.103 Civil Jurisdiction.

The Tribal Court shall have jurisdiction of actions:

.....

(3) Where the Plaintiff is the Tribe or Tribal entity.

(4) As provided in any other Chapter.

.....

Plaintiff, in the case at bar, is the Sault Tribe, thus, the Tribal Court had jurisdiction in accordance with 81.103(3). The Tribal Court also had jurisdiction pursuant to 81.103(4) since the Board of Directors enacted 21.305 that states:

21.305 Civil Cause of Action for Member Violations.

Any violation of the regulations contained in this Chapter or of the regulations established by the Conservation Committee shall be a civil matter tried before the Tribal Court under such procedures as are described in the Tribal Code of the Sault Ste. Marie Tribe of Chippewa Indians. (Emphasis added)

We review issues of law De Novo. We also take Judicial Notice of Ordinances enacted by the Sault Tribe Board of Directors. Defendant argues that proper jurisdiction is vested in the State of Michigan, but provides no authority to support this claim.

In Settler v. Lameer, 507 F.2d 231 (1974) the United States Ninth Circuit Court Of Appeals held that regulations made by the Yakima Indian Nation Tribal Council to regulate and enforce by arrest and seizure of equipment fishing on or off the Yakima Reservation were valid.

The Court reviewed the Treaty of 1855 between the United States and Fourteen Tribes in Western Washington that had a provision in the Treaty that allowed Indians the right to take fish at “all usual and accustomed places”. The Yakima Tribal Counsel enacted regulations it deemed necessary to promote conservation of fishing resources. The resolution provided for the arrest, seizure of equipment, and punishment for offenses on or off the reservation. Defendant was arrested and charged with fishing in the Columbia River during the closed season 56 miles outside the reservation.

The Ninth Circuit Court of Appeals stated:

“The regulatory authority retained by the Yakima Nation with respect to the exercise of its off-reservation fishing rights can be truly effective only through off-reservation enforcement powers at the “usual and accustomed” fishing places.”

In footnote 18 of the Opinion, the Ninth Circuit stated:

“In view of the strict limitation of the power of the state to regulate Indian off-reservation fishing, there would be no effective regulation and enforcement of a broad range of fishing activities if enforcement powers are denied to the Tribe.”

It is settled law that the Sault Tribe has authority to enact and enforce its hunting ordinances on or off the reservation. The language of the Treaty of 1836, Sault Tribe Constitution, Tribal Jurisdiction Ordinances, and Federal case law supports this conclusion. Hunting regulations set forth in Chapter 21 would be meaningless without Tribal Court authority to adjudicate alleged violations of that Chapter.

III.

IRREGULARITIES OR IMPROPRIETIES IN THE PROCEEDING

Defendant argues that there was an “improper investigation, improprieties in the Tribal Court, conflict of interest and prejudicial action under Tribal Code 82.114(b)”.

Defendant also asserts that the "Tribal Court system to be uncooperative and prejudicial nearly from the onset in this case". To support those claims, Defendant argues facts and issues that are not in the Tribal Court record. Issues or facts not raised in the Tribal Court will not be considered on appeal. Tribal Code 82.125 states:

- (1) Unless a miscarriage of justice would result, the Court of Appeals will not consider issues that were not raised before the Tribal Court.

....

- (5) Facts which are not in the record shall not be presented in any manner to the Court of Appeals, and if presented, shall not be considered by that Court.

Defendant also argues that the Prosecutor intimidated Christopher Frazier "to the point that he withdrew his recantation due to the fear of being prosecuted for filing a false police report". There is no evidence in the Tribal Court record to support this conclusion. The Prosecutor had a right and duty to remind Mr. Frazier of his past claims to the State Police that "Donald shot the deer", the Sault Tribe Police that "Bill" shot the deer, and his signed witness statement that "Bill then shot the deer." Those three statements were consistent and close in time to the date of the violations. This is a far cry from "intimidation". The Tribal Judge had an opportunity to observe the demeanor of the witness while testifying, and was in a better position to determine credibility.

We find the balance of issues raised by Defendant on appeal to be without merit. Appellate Court Members Donelda Harper and Janine Gable joined in the Opinion, but would dismiss violations of Tribal Code 21.501 and 21.510 since those violations were proved by hearsay. The majority of the Court noted Defendant did not file a Pre-trial Motion to exclude this hearsay evidence or object to it's admission at trial. Rule 103(a) of the Federal and Michigan Rules of Evidence require a timely objection to evidence. Failure to object to the admission of evidence constitutes a waiver. We are prohibited from considering this issue on appeal pursuant to Tribal Code 82.125 (1)(4). Affirmed.