

COUNTY OF LUNENBURG
PROVINCE OF NOVA SCOTIA
2002

CASE NO: 1092672

IN THE PROVINCIAL COURT OF NOVA SCOTIA

[Cite as: R v. Dominix, 2002 NSPC 012]

HER MAJESTY THE QUEEN

versus

LAWRENCE JAMES DOMINIX

DECISION

HEARD BEFORE: THE HONOURABLE JUDGE ANNE E. CRAWFORD, J.P.C.

PLACE HEARD: BRIDGEWATER, N.S.

DATE HEARD: FEBRUARY 26, 2002

CHARGE: ...did unlawfully fail to comply with Item 17 of the conditions of a ground fish licence by fishing in an area closed to fishing contrary to Section 22 (7) of the Fishery (General) Regulations established by P.C. 1993 - 186, as amended, made pursuant to Section 43 of the Fisheries Act, being chapter F-14 of the Revised Statutes of Canada, 1985, as amended, and did therefore commit an offence under Section 78 (a) of the Fisheries Act.

COUNSEL: PHILIP ROMNEY, CROWN ATTORNEY
THOMAS FEINDEL, DEFENCE ATTORNEY

[1] Lawrence Dominix is charged under s. 22 (7) of the Fishery (General) Regulations with fishing in a closed area.

Facts

[2] On June 12, 2001 the defendant's vessel was observed by an air surveillance patrol of the Department of Fisheries and Oceans at a location which was admittedly .5 nautical miles or 3000 feet inside a closed area. Pictures were taken, both still and video, showing the fishing vessel *Sea Harvester*, a longliner, with what appears to be fishing gear over the side. A crew member identified as Craig Conrad appeared to be working with the line, hauling it in, and at one point in the video is seen to remove something which could be a fish and throw it back in the water.

[3] The defendant says that on the day in question he did what he always does when fishing near a closed area. He started laying his trawl "on the line" of the closed area and steamed away from the line to the northwest to lay it out. He said he had laid 8 tubs of trawl on a string and anchored it at the far (northwest) end. He said he would then haul it in from the northwest end back toward the closed nursery area.

[4] On this day at the end of the line closest to the nursery area he ran into a snarl in the line and stopped to unsnarl it. That procedure was what the Fisheries Officers observed from their plane. He said he was not under way at the time; he was drifting, and must have drifted inside the line as his crew, his father and Craig Conrad, worked to free the snarl. The fish that was thrown back was just bait. While they freed the snarl, he himself was at the stern of the vessel baiting more trawl for the next set.

Issues

[5] The defendant does not deny that his boat was inside the closed area at the time in question, but says that he was not fishing or, if he was, that he exercised all due diligence to avoid the commission of the offence.

“fishing”

[6] The definition of “fishing” from *Ship “Frederick Gerring Jr.” v. R.* (1897), 27 S.C.R. 271 has been frequently quoted by Nova Scotia courts of all levels in this type of case:

The act of fishing is a pursuit consisting, not of a single but of many acts according to the nature of the fishing. It is not the isolated act alone either of surrounding the fish by the net, or by taking them out of the water and obtaining manual custody of them. It is a continuous process beginning from the time when the preliminary preparations are being made for the taking of the fish and extending down to the moment when they are finally reduced to actual and certain possession. That, at least, is the idea of what "fishing," according to the ordinary acceptance of the word, means, and that, I think, is the meaning which we must give to the word in the statutes and treaty.

[7] This definition was adopted by Freeman, J.A. in *R. v. Denton* (1991), 105 N.S.R. (2d) 357 (C.A.), a very similar case to this, in which a scallop dragger drifted .7 miles inside a closed area while the fishing gear was being brought back on board. I see nothing to distinguish that case from this. Whether bringing dragnets or snared longlines back on board, or baiting trawl for a new set, each is part of a fishing operation and the opinion of the defendant that he was not fishing is an error of law.

[8] I find that the defendant was fishing at the time in question.

Due diligence

[9] The defendant says that when he discovered a snarl in his line, his only reasonable course of action was to stop the engine until the snarl was untangled; otherwise, the line could get tangled up in the propeller, disabling the vessel and necessitating a tow to shore. He submits that this is no different than fixing a disabled engine inside the closed area. He was doing what any reasonable fisher in the circumstances would do. And of course, once the engine was stopped he was at the mercy of the winds and tide and had no choice as to where he drifted.

[10] That may be so; however, if he had not set his trawl so close to the line in the first place, he would have had a margin of error and could probably have avoided drifting into the closed area. This was not an unforeseeable eventuality. He testified that snarls are a relatively frequent occurrence and that they are more frequent at the end of a line.

[11] Due diligence requires that a fisher take “all reasonable steps to avoid the particular event”. *R. v. Sault Ste. Marie (City)*, (1978] 2 S.C.R. 1299. Setting the

beginning of his trawl “on the line” as he testified is not due diligence. Cf. *R. v. Alvarez and Labos* (1990), 81 Nfld. & P.E.I.R. 37 (Nfld.S.C.T.D.) where the defence of due diligence was not available to two foreign fishing captains who intended to fish one mile outside the two hundred mile limit, but because of navigational error ended up inside it.

[12] The defendant has not established the defence of due diligence.

Conclusion

[13] I find that the defendant is guilty as charged.

The Honourable Judge Anne E. Crawford