

R v Doody**Provincial Court of Newfoundland and Labrador
15 March 2005**

Provincial Court of Newfoundland and Labrador
Grand Bank

File 0804A-00307

Between Her Majesty the Queen
and George Michael Doody

Decision

I have decided that the Crown has failed to prove the charge against the Accused beyond a reasonable doubt. These are my reasons to arriving at that conclusion.

Facts

The Department of Fisheries and Oceans found a gill net off of Fox Cove Point, in Placentia Bay, on June 24, 2004. It was a fleet of two nets, approximately 200 feet long, and the landward half of the net was floating on the surface of the water. The reason that it was afloat was because someone had shortened the lines on five of the buoys. The net was marked with a float bearing the identification number of the Accused's 18 foot long lobster fishing boat, and was in fact the Accused's net. In the net were two dead salmon, and a live salmon, which was released back to the sea.

The Accused had a licence to fish lobster last summer, and also had a bait fishing licence to use a gill net for herring, which are commonly used for bait in lobster traps. A condition of the bait fishing licence required the gill net to be set in such a way that the head rope was at least a fathom below the surface of the water.

Contemporaneously with the lobster season, the great Atlantic salmon are then making their way to the rivers of these fair shores. And, when in the salt water, the salmon tend to swim close to the surface. So, to protect the endangered salmon stock, fishermen are required to sink their nets, by at least a fathom, so that the passing salmon will swim over the nets en route to the rivers. There is no longer any legal netting for Atlantic salmon, because of their endangered status as a result of dwindling stocks.

The Accused says that he did set his gill net according to this requirement, and was fishing for bait with the net in the area from early May to the latter part of June, 2004. He sometimes checked the net personally, and sometimes had his friend John Brown check it for him: the two were in the practice of sharing bait, and so had mutual interests in each other's fishing efforts. When lobster were plentiful, the net was checked almost every day, because of the demand for fresh bait. However, when the lobster landings were scarce, then the net was only checked twice a week.

John Brown says that he checked the net on Wednesday, June 23, and that it was fine, and set as required. He says that the next day, he saw DFO hauling the net, and reported that fact to the Accused. On hearing this, the Accused went to DFO and gave them a statement, saying that the fleet of two nets seized was his, and that he had set the fleet of nets as required, i.e., at least a fathom below the surface of the water.



And so there is no doubt that, by floating the net to the surface, somebody was attempting to catch fish that swim on the top of the water. These species include mackerel and Atlantic salmon, the latter being the prize, albeit, illegal catch.

Issue

The sole issue, in light of the evidence and submissions heard, is whether the Crown has proven that the Accused had set the net not in accordance with the condition of the licence. On review of the conditions, there is no doubt that, when fishing herring, the gill nets were to be set at least a fathom below the surface of the water, and the Accused says that that is how he set the fleet of nets. This is confirmed by John Brown, as is the evidence that other boaters frequented the area, and that sometimes fishing gear is tampered with.

Here it is to be noted that Officer Walsh agreed with the evidence of complaints sometimes being received about unknown persons tampering with gear, and also opined that it would have only taken a few minutes to have tied up the floats.

When we watched the video tape of the seizure of the nets, and the subsequent examination of them at the DFO compound the next day, it was clear that there was approximately a fathom of line on each of the floats, but that the lines had been tied up in such a way as to bring the floats within a foot of the head rope in some cases, and directly to the head rope in some others. While there were no questions asked of any of the witnesses, I could not help but notice that the float lines which had been shortened, had been done so in different ways. As mentioned, some were tied directly to the head rope, and some were tied to within a foot of the head rope.

I also noted that different types of knots had been used to shorten the float lines: from seeing the video tape played twice, it appears that these included a clove hitch, a bowline on the bight, a half hitch, and perhaps even a Prussik knot. The different lengths of line used, and the mix of different knots used, suggest that these floats were tied up in a hurry, and by a person unused to routinely tying up fishing gear.

However, no finding need rest on that, as the Accused was, to my mind, a credible witness, and was corroborated in much of his evidence not only by his friend John Brown, but also by fisheries officer Walsh. Having accepted his evidence, it is clear that he had correctly set the net, and was checking it, or having it checked for him, regularly. He denied having floated the net, and there is no reason in law to disbelieve him.

Logically, it follows that the Accused met the due diligence requirements of section 78.6(a) of the Fisheries Act, and must therefore be acquitted.

Dated at Grand Bank, NL, this 15th day of March, 2005.

Porter, PCJ

