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STATE OF MICHIGAN

IN THE 89TH DISTRICT COURT FOR THE COUNTY OF CHEBOYGAN

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

V

CASE NO.14-652195-SI

DUSTIN LEE MACLEOD,
Defendant.

FORMAL HEARING

BEFORE THE HONORABLE MARIA I. BARTON, DISTRICT JUDGE

Cheboygan, Michigan - Thursday, December 18, 2014

APPEARANCES:

FOR THE PEOPLE:

Aaron J. Gauthier P60364
Assistant Prosecutor
Post Office Box 70
870 South Main Street
Cheboygan, Michigan 49721
1.231.627.8450

FOR THE DEFENDANT:

In Pro Per

TRANSCRIBED BY:

Christine Hartman, CER-7546
Certified Electronic Recorder

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Cheboygan, Michigan

Thursday, December 18, 2014, at 1:43 p.m.

THE COURT: All right. Call the matter of the People of the State of Michigan versus Dustin MacLeod.

MR. GAUTHIER: Ready on that matter, Your Honor.

THE COURT: All right. We're here for a--excuse me, a formal hearing. Do--are the parties ready to proceed?

MR. GAUTHIER: People are ready to proceed, Your Honor.

THE COURT: All right. And Mr. MacLeod, are you ready to proceed?

THE DEFENDANT: Yes, Ma'am.

THE COURT: Okay.

MR. GAUTHIER: I have some exhibits I'm marking.

(At 1:44 p.m., People's Proposed Exhibits 1, 2, 3, 4, 5, 6, 7 Marked)

THE COURT: You may have a seat, Mr. MacLeod. All right. And this is a civil infraction for leaving property on state land more than 24 hours?

MR. GAUTHIER: That's correct, Your Honor.

THE COURT: All right. You may call your first witness.

MR. GAUTHIER: People would call Sergeant Greg Drogowski.

THE COURT: All right. Sergeant Drogowski, if you

1 want to step forward, please. Raise your right hand. Do
2 you swear to tell the truth, the whole truth, and nothing
3 but the truth, so help you God?

4 THE WITNESS: I do.

5 THE COURT: Have a seat, please.

6 SERGEANT GREG DROGOWSKI

7 called at 1:45 p.m., by the People, sworn by the Judge,
8 testified:

9 DIRECT EXAMINATION

10 BY MR. GAUTHIER:

11 Q Could you state your name and spell your last name for the
12 record, please?

13 A Greg Drogowski. D-r-o-g-o-w-s-k-i.

14 Q Where do you work, sir?

15 A Michigan Department of Natural Resources.

16 Q And do you know the defendant, Dustin MacLeod?

17 A Yes I do.

18 Q Were you on duty on June 1st of this year, 2014?

19 A Yes.

20 Q Okay. Did you, during the course of your duties that day,
21 come across any structures that came to your attention?

22 A I did.

23 Q Okay. And where was that located?

24 A That was located on the--near the boundary line of state
25 land and Mr. MacLeod's property, east of Black River Road.

1 Q Okay. And what did you observe there?

2 A There were multiple structures that were on Mr. MacLeod's
3 property and then went on to state land.

4 Q Okay. And I want to show you what's been marked as People's
5 Proposed Exhibits 1, 2, and 3. Do those photographs fairly
6 and accurately depict what you observed when you went out to
7 the property?

8 A Yes they do.

9 MR. GAUTHIER: Your Honor, I'd move for the
10 admission of People's 1, 2, and 3.

11 THE COURT: Any objection, Mr. MacLeod?

12 THE DEFENDANT: No, Ma'am.

13 THE COURT: All right. People's 1, 2, and 3 will
14 be admitted.

15 (At 1:47 p.m., People's Exhibits 1, 2, and 3
16 Admitted)

17 MR. GAUTHIER: Okay.

18 BY MR. GAUTHIER:

19 Q And, Mr.--Sergeant Drogowski, can you describe wh--that
20 structure? Was it completely on state land or?

21 A No. It's--it's approximately 50-50. Well the--there's a
22 pink ribbon in the picture of number 1. That is the
23 boundary line.

24 Q Okay.

25 A There--you can see it in picture number 3, too, in the

1 reverse direction.

2 Q Okay. So there's a flag in--in picture number 3 and that's
3 the boundary line?

4 A Yes.

5 Q Okay. Sergeant Drogowski, I want to show you what's been
6 marked as People's Proposed Exhibit #4. That's an aerial
7 satellite photograph. Does that depict the area in
8 question?

9 A Yes it does.

10 MR. GAUTHIER: Your Honor, I'd move for the
11 admission of People's 4.

12 THE COURT: Mr. MacLeod, any objection?

13 THE DEFENDANT: No, Ma'am.

14 THE COURT: All right. People's 4 will be
15 admitted.

16 (At 1:48 p.m., People's Exhibit 4 Admitted)

17 BY MR. GAUTHIER:

18 Q Sergeant Drogowski, could you circle on that or indicate in
19 some fashion on Exhibit 4 where the property in question is
20 approximately?

21 A I hope I don't need my reading glasses. I could circle the
22 general area here.

23 Q That's fine. Thank you.

24 MR. GAUTHIER: Exhibits 1 through 4, Your Honor.

25 THE COURT: All right. Thank you.

1 BY MR. GAUTHIER:

2 Q Sergeant Drogowski, what did you do in response to locating
3 those structures partially on state land?

4 A I--I--Mr. MacLeod and I talked on the phone.

5 Q Okay.

6 A The following day.

7 Q All right. And did you ask--did you inform Mr. MacLeod that
8 these structures did encroach upon state lands?

9 A I did

10 Q Okay. Did you request him to remove them from state land?

11 A I--I verbally asked him to remove them at that time.

12 Q Okay. What was his response?

13 A Mr. MacLeod said he couldn't do that.

14 Q Okay. I want to show you what's been marked as People's
15 Proposed Exhibit #5. And what is that document?

16 A This is the first letter that was written to Mr. MacLeod
17 through our--Lori Burford at the DNR, Trespass Specialist
18 with the Forest Management Division.

19 Q Okay.

20 MR. GAUTHIER: Your Honor, I guess I'd move for
21 admission of People's Exhibit #5.

22 THE COURT: Mr. MacLeod, any objection?

23 THE DEFENDANT: May I see it briefly?

24 MR. GAUTHIER: Oh, yeah. As to Exhibit #5?

25 THE COURT: Any objection, Mr. MacLeod?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: All right. People's 5 will be
3 admitted.

4 (At 1:50 p.m., People's Exhibit #5 Admitted)

5 MR. GAUTHIER: Okay.

6 BY MR. GAUTHIER:

7 Q And what's the date of that letter?

8 A This letter is July 31, 2014.

9 Q Okay. And does that letter address the encroachment onto
10 state land?

11 A It does.

12 Q Okay. Was there any additional contact from your department
13 regarding the structure to Mr. MacLeod?

14 A Ms. Burford had talked to Mr. MacLeod, either once or twice--

15 Q Okay.

16 A --on the phone about this issue also.

17 Q All right. And I want to show you what's been marked as
18 People's Proposed Exhibit #6.

19 A This is a--

20 MR. GAUTHIER: 5 has been admitted, Your Honor.

21 THE COURT: All right. Thank you.

22 BY MR. GAUTHIER:

23 Q And is that a letter from your department to Mr. MacLeod?

24 A It is. Requesting--the second--

25 MR. GAUTHIER: And, Your Honor, I'd move--

1 BY MR. GAUTHIER:

2 Q Hang on before you testify to its contents.

3 MR. GAUTHIER: I'd move for the admission of
4 People's #6, Your Honor.

5 THE COURT: Mr. MacLeod?

6 THE DEFENDANT: Yes, Ma'am.

7 THE COURT: No objection?

8 THE DEFENDANT: No.

9 THE COURT: All right. That will be admitted as
10 well.

11 (At 1:51 p.m., People's Exhibit #6 Admitted)

12 BY MR. GAUTHIER:

13 Q And what's the date of that letter, Sergeant Drogowski?

14 A September 11, 2014.

15 Q Okay. And does that letter address the encroachment on
16 state lands by the structure?

17 A It does.

18 Q Okay. And does it request him to remove those structures?

19 A It denies permission to have the structures on the property
20 and--

21 Q And just we're clear, the--the first date that you observed
22 the structure on the property was June 1st?

23 A Correct.

24 MR. GAUTHIER: #6 has been admitted, Your Honor.

25 THE COURT: All right.

1 BY MR. GAUTHIER:

2 Q Did you have any further face-to-face or telephone contacts
3 directly with Mr. MacLeod regarding this matter prior to the
4 issuance of a citation?

5 A I don't believe I did.

6 Q Okay. All right.

7 MR. GAUTHIER: I don't believe I have any further
8 questions for Sergeant Drogowski at this time, Your Honor.

9 THE COURT: All right. Mr. MacLeod, any questions
10 for Sergeant Drogowski?

11 THE DEFENDANT: Yes, Ma'am.

12 THE COURT: All right.

13 CROSS EXAMINATION

14 BY THE DEFENDANT:

15 Q Mr. Drogowski, when you went back there to the property on
16 June 1st, did you encounter any people that were camping out
17 back there on the property?

18 A Scott Brunning came out of the woods. I'm not sure where he
19 was staying at but I talked to him.

20 Q Because on the 1st, there was several people that were
21 camping in the area that were setting up that arbor at that
22 time. And the arbor never--and the lodge was never
23 completed until around the 7th or 8th. I have no recollection
24 of speaking with you in June on any of these matters. The
25 property line and surveys were not even completed until July

1 to know where them lines were. So--

2 MR. GAUTHIER: Your Honor, I guess I'm going
3 object to the form of the question. Mr. D--Mr. MacLeod will
4 have an opportunity to testify. If he wishes to ask Mr.--
5 Sergeant Drogowski a question, I'd ask that he do so and not
6 testify at this time.

7 THE DEFENDANT: Oh.

8 THE COURT: Yeah. It--right now is your
9 opportunity to ask Sergeant Drogowski questions. You'll be
10 given the opportunity to testify and tell the Court what you
11 wish the Court to hear.

12 THE DEFENDANT: Okay.

13 THE COURT: But this is for questions to Mr. Dr--
14 Drogowski.

15 THE DEFENDANT: Okay. Okay.

16 BY THE DEFENDANT:

17 Q Mr. Drogowski, I guess what I would ask you is when did you
18 understand where the exact property line was? On what month
19 and day?

20 A On--on June 1st, the property corners were in and that's
21 where I estimated where the property line may be. Later the
22 actual line was established by the survey.

23 Q Which would have been after the end of July?

24 A I think it was in November.

25 Q November?

1 A Yes.

2 Q When it was actually established?

3 A Right.

4 Q Okay.

5 THE DEFENDANT: Okay. That's all that I would
6 like to ask him.

7 THE COURT: All right. Thank you, sir. You may
8 step down.

9 MR. GAUTHIER: Just one brief redirect, Your
10 Honor.

11 THE COURT: Oh, I'm sorry.

12 REDIRECT EXAMINATION

13 BY MR. GAUTHIER:

14 Q Sergeant Drogowski, when you were at the property on--on
15 June 1st, you said there were corners indicated on the
16 property?

17 A Yes.

18 Q And so your visual inspection of the property would indicate
19 that those structures were on state land as of June 1st, is
20 that correct?

21 A Correct. Correct.

22 Q Okay.

23 MR. GAUTHIER: Nothing further.

24 THE COURT: Anything based on that question, Mr.
25 MacLeod?

1 RE CROSS EXAMINATION

2 BY THE DEFENDANT:

3 Q So basically it was a visual from--from permanent corners
4 and the corners were located in the vicinity of the--the
5 field?

6 A Correct.

7 Q Or where the arbor was?

8 A Yes.

9 Q Okay.

10 THE DEFENDANT: That's all.

11 THE COURT: All right. Thank you. You may--

12 MR. GAUTHIER: Nothing further, Your Honor.

13 THE COURT: All right.

14 (At 1:54 p.m., Witness Steps Down)

15 MR. GAUTHIER: Your Honor, I'd call Conservation
16 Officer Greg Bottorff to testify.

17 THE COURT: All right. You want to step up to the
18 witness stand and raise your right hand? Do you swear to
19 tell the truth, the whole truth, and nothing but the truth,
20 so help you God?

21 THE WITNESS: I do.

22 THE COURT: Have a seat, please.

23 ERIC BOTTORFF

24 called at 1:55 p.m., by the People, sworn by the Judge,
25 testified:

1 DIRECT EXAMINATION

2 BY MR. GAUTHIER:

3 Q Sir, can you state your name and spell your last name for
4 the record?

5 A Yes. My name is Eric Bottorff. It's B-o-t-t-o-r-f-f.

6 Q And where do you work?

7 A I work for the Department of Natural Resources out of
8 Gaylord.

9 Q Okay. And what is your function for the Department of
10 Natural Resources?

11 A I am a Conservation Officer.

12 Q Were you on duty on October 14th of this year?

13 A I was.

14 Q Okay. And I want to show you what's been marked as People's
15 Proposed Exhibit #7. Is this a citation that you issued
16 that day?

17 A Yes it was.

18 MR. GAUTHIER: Your Honor, I'd move for the
19 admission of Exhibit #7.

20 THE COURT: All right. Mr. MacLeod, any
21 objection?

22 THE DEFENDANT: The only objection I would have to
23 that is that ticket clearly has a Tribal box on it. I'm a
24 Tribal member and I would question why that isn't marked on
25 that ticket.

1 THE COURT: Mr. Gauthier?

2 MR. GAUTHIER: I believe that would go as to its
3 weight not as to its admissibility. I'd ask the Court admit
4 it as an exhibit and Mr. MacLeod can make whatever legal
5 arguments he wishes to the Court regarding its sufficiency.

6 THE COURT: Where are we talking--I--I--on the
7 ticket? Where does it--is there a?

8 MR. GAUTHIER: Are you talking right here?

9 THE DEFENDANT: Yep. Right there.

10 MR. GAUTHIER: Yes. In the--in the ticket there's
11 an area where it alleges that the person did in violation of
12 and is--the box that are checked say state law and
13 administrative rule rather than Tribal. And I believe that
14 Mr. MacLeod is going to present to the Court a legal
15 argument that this should be considered a Tribal violation
16 and this Court has no jurisdiction. But I think that would
17 be a legal argument that would not affect the admissibility
18 of the exhibit.

19 THE COURT: All right. This is the ticket that
20 the officer wrote?

21 MR. GAUTHIER: It is. It's the ticket that we're
22 here for the hearing on.

23 THE COURT: All right. I'll admit the--People's
24 Exhibit 7 over objection. And you can still make your
25 argument, Mr. MacLeod.

1 (At 1:57 p.m., People's Exhibit 7 Admitted)

2 BY MR. GAUTHIER:

3 Q Officer Bottorff, did you issue that citation?

4 A Yes. I had an officer--

5 Q Who is it issued to?

6 A --training with me and he and I issued the citation.

7 Q Okay. And who is it issued to?

8 A Mr. MacLeod; Dustin MacLeod.

9 Q Okay. Were you present when that citation was presented to
10 him?

11 A Yes I was.

12 Q Okay. Was it presented in person?

13 A Yes it was.

14 Q Okay. Did you have--wh--where was it presented? Was it at
15 the property in question?

16 A It was at Mr. MacLeod's residence.

17 Q Okay. Have--had you been out and observed the structure on-
18 -on the property in question?

19 A Yes I have.

20 Q Okay.

21 A Or had before that.

22 Q Before the issuance of the citation you had?

23 A Yes.

24 Q And did you have any discussion with Mr. MacLeod about the
25 citation when it was issued to him?

1 A I did.

2 Q Did he make any statements about the structure or its
3 location?

4 A I briefly discussed issues with him regarding the placement
5 of those structures on state land. Mr. MacLeod indicated
6 that he had received a letter from the Department regarding
7 a--a request for removal and he said that he decided not to
8 do that. So he was issued a citation at that time.

9 Q Okay. And what citation was he issued? What's the alleged
10 violation?

11 A It was placing private property on state land for more than
12 24 hours.

13 Q Okay. Thank you. And the state land in question, is that
14 located in Cheboygan County?

15 A It is.

16 MR. GAUTHIER: Your Honor, People's Exhibit 7 has
17 been admitted. I have no further questions for Officer
18 Bottorff.

19 THE COURT: All right. Mr. MacLeod, do you have
20 any questions--or cross-exam for--

21 THE DEFENDANT: Just--just a couple.

22 CROSS EXAMINATION

23 BY THE DEFENDANT:

24 Q Mr. Bottorff, have you had any cultural sensitivity training
25 under the 2007 Consent Decree Agreement?

1 A I have.

2 Q And have--do you carried a certificate for that or what
3 registers you as being through cultural sensitivity?

4 A All conservation officers are required to through the
5 sensitivity training. I don't believe that we received
6 cards for it.

7 Q That's actually followed through upon and there's no
8 certificate for completing any course like that?

9 A I don't recall if I got a certificate or not for it. It's
10 been quite a while since I was at it.

11 Q Okay. Are you aware of the 2007 Consent Decree and the
12 rules and laws under the Tribe and agreements between the
13 DNR and the Tribal people?

14 A I am.

15 Q Okay. Thank you.

16 MR. GAUTHIER: I have nothing further, Your Honor.

17 THE COURT: All right. You may step down.

18 (At 1:59 p.m., Witness Steps Down)

19 THE COURT: Any further witnesses, Mr. Gauthier?

20 MR. GAUTHIER: No, Your Honor. The People have no
21 further proofs.

22 THE COURT: All right. Mr. MacLeod, do you wish
23 to testify or do you have any witnesses?

24 THE DEFENDANT: I have no witnesses, Ma'am.

25 THE COURT: Do you wish to testify?

1 THE DEFENDANT: Um, I don't know how this process
2 works here, Ma'am, but I--I can testify if Mr. Gauthier
3 would like to ask me questions.

4 THE COURT: Well, no--

5 MR. GAUTHIER: Well it would give you an
6 opportunity to--if there's any factual--you can make a legal
7 argument but if you want to state any facts to the Court,
8 you have to be under oath and state those facts as
9 testimony.

10 THE DEFENDANT: Okay.

11 THE COURT: And what I would do is I'd swear you
12 in and then you could just tell me what you wish to tell me
13 and then Mr. Gauthier would be given the right to cross-
14 exam. And you can--you can stay there. You don't need to
15 come up here.

16 THE DEFENDANT: Okay.

17 THE COURT: If that's what you--I don't--I don't--
18 I'm not trying to force you to testify I'm just letting you
19 know what your rights are.

20 THE DEFENDANT: Okay. Okay. And I'll--I'll
21 swear.

22 THE COURT: Okay. Raise your right hand. Do you
23 swear to tell the truth, the whole truth, and nothing but
24 the truth, so help you God?

25 THE DEFENDANT: Yes, Ma'am.

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THE COURT: All right. You may go ahead.

THE DEFENDANT: I have brought with me a section of the 2007 Consent Decree that was signed between the Tribes and the Michigan Department of Natural Resources in 2007. And I would like to, as part of my testimony, move that this should be heard in a Tribal forum. That I am a--a legal federally recognized Tribal member. And if the Court would like, I could provide copies of what I have for law enforcement or I can read it off to the Court. Whatever the Court would like.

THE COURT: It's up--it's up to how--you, Mr. MacLeod.

THE DEFENDANT: Okay. Law enforcement; 24.1, as a general principle, prosecutions of alleged violations of fish, game laws and regulations by Tribal members in the inland portion of the 1836 Ceded Territory shall be heard in Tribal forum. This provision is predicated on the enactment of fish and game laws and regulations that are consistent with the Decree and the existence of a Tribal forum with subject matter jurisdiction to hear prosecutions of alleged violations of fish, game laws and regulations. As used in section, that's a Roman Numeral I can't read. I'm sorry, Ma'am. Tribal forum means either a Tribal Court or another mutually acceptable Tribal tribunal. In any Tribal forum in which a prosecution is heard, upon request of a law

1 enforcement agency whose officer will be a witness, the law
2 enforcements officer's testimony shall be presented--
3 presented by a Tribal prosecutor or other trained legal
4 advocate. 24 dash 2, except the categories of a violation
5 specifically otherwise noted in the Decree, if the predicate
6 requirements are met, the State shall be precluded from
7 initiating prosecutions of Tribal members in State courts
8 for violations of State law or regulations pertaining to
9 hunting, trapping, otherwise taking any species of wildlife,
10 fishing or gathering, when such acts are within the scope of
11 the Decree or subject to Tribal regulations that are
12 consistent herewith. Definition of the extent of the Inland
13 Article 13 Rights, except as otherwise specifically provided
14 below the extent of the Tribes' Inland Article 13 Rights,
15 Tribal members may hunt, fish, trap, gather natural
16 resources without limitations as to species, including non-
17 native artificial propagated species, targeted for harvest,
18 seasons or methods of harvest, or use of resource harvested,
19 may engage in other wh--other historical traditional
20 activities such as the construction of sweat lodges.
21 Gathering; the Tribes may authorize their members to gather
22 plants, materials, other natural resources on state lands
23 for personal, medicinal, cultural, and traditional craft and
24 use. I would--I would move for a dismissal, Your Honor, on
25 the facts that this should be heard in a Tribal forum. And

1 it is an issue with the sweat lodge and cultural religion.
2 And on them grounds of the jurisdiction, I feel that this
3 should be dismissed from this Court and put into the proper
4 Tribal forum and jurisdiction.

5 THE COURT: All right. Do you have anything else,
6 sir?

7 THE DEFENDANT: No, Ma'am.

8 MR. GAUTHIER: Your Honor, I have no questions.

9 THE COURT: All right. Do you have anyone else
10 you wish to testify, sir?

11 THE DEFENDANT: Can I--can I call up Phil?

12 THE COURT: All right. S--step up to the witness
13 stand and raise your right hand. Do you swear to tell the
14 truth, the whole truth, and nothing but the truth, so help
15 you God?

16 THE WITNESS: Yes, Ma'am.

17 THE COURT: Have a seat, please. And if you could
18 state your name and spell your last.

19 THE WITNESS: My name is Dr. Phil Bellfy. And the
20 last name is spelled B-e-l-l-f-y.

21 THE COURT: Okay. You may go ahead and ask
22 questions.

23 DR. PHIL BELLFY

24 called at 2:04 p.m., by the Defendant, sworn by the Judge,
25 testified:

1 DIRECT EXAMINATION

2 BY THE DEFENDANT:

3 Q Mr. Bellfy, have you been down to the area where we've had
4 the ceremonial grounds?

5 A Yes I have.

6 Q Do you--let me ask you, is there any other adjacent
7 properties or people around in that area of where that
8 property of the ceremony is?

9 A No. It's all vacant land.

10 Q All vacant?

11 A Yep.

12 Q So it's in the some--area of the swamp?

13 A Yep. There's some elk feeding areas in--in that general
14 vicinity.

15 Q Okay. Mr. Bellfy, what's your knowledge of the 2007 Consent
16 Decree?

17 A Well I'm professor emeritus of American Indian Studies from
18 Michigan State University and the 1836 Treaty formed the
19 basis of my entire academic career, essentially. And
20 obviously I've been keeping track of everything that has
21 happened on it, the fishing rights case and the Consent
22 Decrees that are involved with that, and, of course, the
23 2007 Inland Consent Decrees. And a very integral part of my
24 academic life.

25 Q Mr. Bellfy, with your knowledge of the 2007 and the 1836

1 Consent Decree and the situation at hand that--with the
2 sweat lodge and the arbors and where we have defined a
3 border after the fact of having a sacred sight in the
4 ceremony, what would your take be on the rights of the
5 Tribesmen for protection of a cer--such a cer--ceremonial
6 sacred sight and sweat lodge?

7 MR. GAUTHIER: Your Honor, I'm going to object.
8 That question calls for a conclusion of the law. And that's
9 not the purview of this witness. It's for the parties to
10 make legal arguments to the Court and the Court to issue a
11 legal ruling.

12 THE COURT: All right. Mr. MacLeod, do you wish
13 to respond to the objection?

14 THE DEFENDANT: Well, I don't know much about it.
15 Sorry, Your Honor.

16 THE COURT: All right. I'm going to sustain the
17 objection. It's calling for a conclusion of the law and
18 that's for the Court to decide.

19 THE DEFENDANT: Okay.

20 THE COURT: All right?

21 THE DEFENDANT: Okay.

22 BY THE DEFENDANT:

23 Q I guess, Mr. Bellfy, then with--with--with your
24 understanding as--and the treaties and the 2007 Consent
25 Decree, is it clear to you that this is a Tribal issue and

1 that it should have been--should be addressed in the Tribal
2 forum?

3 MR. GAUTHIER: I'm going to object, Your Honor.
4 It calls for a legal conclusion.

5 THE COURT: Again, Mr. MacLeod, do you--how do you
6 respond?

7 THE DEFENDANT: I guess I would respond that, you
8 know, Mr. Bellfy is--is my professional witness to--but I
9 understand and I'm here--

10 THE COURT: Okay.

11 THE DEFENDANT: --I'm trying to bring it to the
12 Court as best as I know how, you know. And that's what I'm
13 trying to do. So maybe I just don't know have the
14 understanding.

15 THE COURT: All right. That--what you're asking
16 him calls for a legal conclusion as the whether or not this
17 Court has jurisdiction to hear this case.

18 THE DEFENDANT: Uh-huh.

19 THE COURT: And that's an argument that you can
20 make after you've presented all of your evidence.

21 THE DEFENDANT: Okay.

22 THE COURT: All right?

23 THE DEFENDANT: Okay.

24 BY THE DEFENDANT:

25 Q Would it be clear to you, Mr. Bellfy, that as a Tribal

1 member and an elder that, you know, having cultural ceremony
2 and understanding that you would have the right to put up a
3 sweat lodge, sweat, and pray with your people on state
4 lands?

5 A Well, I'm not in a position, of course, the Court won't
6 allow me to interpret any of the law, but the Consent Decree
7 and the Religious Freedom Restoration Act both give--

8 MR. GAUTHIER: Your Honor, I guess I'm going to
9 object as to the offering of any conclusion or opinion with
10 regard to the law.

11 THE WITNESS: The Consent Decree allows people--

12 THE COURT: Ha--hang on. There's a--

13 THE WITNESS: --to erect a sweat lodge.

14 THE COURT: Th--there's an objection so let me
15 hear what Mr. MacLeod's response is to the objection. It's
16 the--again, the objection is that it's calling for a legal
17 conclusion.

18 THE DEFENDANT: Okay.

19 THE COURT: What--do you have a response to that?

20 THE DEFENDANT: I guess I have no response, Ma'am.

21 THE COURT: All right. I'm going to sustain the
22 objection.

23 THE DEFENDANT: I guess I have--I don't know what
24 to ask my witness for questions.

25 BY THE DEFENDANT:

1 Q Are you a federally recognized Native American?

2 A I am indeed. I'm a citizen of the White Earth Nation. My
3 reservation is in Minnesota. But I've lived in Michigan all
4 my life.

5 Q And you say that you're a professor at a university?

6 A I'm retired. Professor emeritus, yes.

7 THE COURT: From what university?

8 THE WITNESS: Michigan State University.

9 THE COURT: Okay.

10 THE DEFENDANT: Okay. I have no further
11 questions, Your Honor.

12 THE COURT: All right. Mr. Gauthier?

13 MR. GAUTHIER: I have no questions, Your Honor.

14 THE COURT: All right. You may step down, sir.

15 (2:10 p.m., Witness Steps Down)

16 THE COURT: Any further witnesses? Do you have
17 any further witnesses, Mr. MacLeod?

18 THE DEFENDANT: No, Ma'am.

19 THE COURT: All right. Argument?

20 MR. GAUTHIER: Your Honor, I would ask that the
21 Court would find, by a preponderance of the evidence, Mr.
22 MacLeod responsible for the citation as issued. The
23 citation was that he left property on state land for more
24 than 24 hours. I think there is no doubt but that the
25 question--the testimony and Exhibits establishes that fact.

1 In fact, I don't think Mr. MacLeod disputes that fact. As
2 of June 1st, the property was observed and documented. He
3 was asked verbally on June 2nd to remove it. In writing in
4 July and in September, to no avail. The property remains
5 there. A citation was issued in October. I believe that
6 that is a clear violation of Rule 299.921--or .922, which--
7 which, as an order of the Director of the Department of
8 Natural Resources, it's prohibited to store or leave
9 property on state owned land for more than 24 hours. And
10 the statute, Michigan Compiled Law 324.504 makes it a civil
11 infraction, a state civil infraction with a maximum fine of
12 \$500.00, to violate a rule or order promulgated for the
13 protection of state lands. Your Honor, in terms of any
14 religious liberty argument that Mr. MacLeod alludes to
15 today, nobody is trying to infringe upon his right to
16 exercise his religion, to exercise his religion by the
17 construction of any sweat lodges or any activities that he
18 would engage in on or about or inside those sweat lodges.
19 He can engage in any of those activities and those would be
20 constitutionally protected activities. However, that
21 doesn't mean that he can do them on property that he has no
22 right to do so. If he were a Roman Catholic he couldn't
23 build a church on state land either. So the religious
24 liberty arguments would not be a defense to a citation. And
25 also it's clear that Mr. MacLeod is arguing that this Court

1 lacks jurisdiction. And I don't believe that to be true,
2 Your Honor. There is evidence of a violation of a state
3 law. It's being prosecuted by the county prosecutor, which
4 is constitutionally entrusted with enforcing violations of
5 state law. This Court has the jurisdiction to hear these
6 violations. Mr. MacLeod makes reference to the Consent
7 Decree. I have a copy of the Consent Decree, Your Honor,
8 it's a 144 page document. It has a whole bunch of
9 provisions. And legal arguments could be made one way or
10 another about it but one interesting thing as I look h--look
11 at it, the Consent Decree was a--and--and this is a matter
12 of law, Your Honor, that the Consent Decree was a settlement
13 between the State of Michigan and several Indian tribes in
14 the Federal Court in the Western District of Michigan. Even
15 if the Department of Natural Resources were to issue a
16 citation to somebody, bring them into state court in
17 violation of that Consent Decree, which I'm not saying this
18 is, I--I have not heard enough from Mr. MacLeod to really--
19 frankly, Your Honor, ascertain whether it would or wouldn't
20 be. I don't believe it is but I haven't--I haven't analyzed
21 this 144 page document. My point is that Mr. MacLeod is not
22 a party to it. The Tribes are. If the Department of
23 Natural Resources violated that Consent Agreement I would
24 suspect that the Department of Natural Resources could be in
25 a lot of hot water with the Tribes. And the Tribes could

1 haul them back into Federal Court and enforce whatever
2 sanctions would be available to the Tribes. But Dustin
3 MacLeod, as an individual, I don't believe has any right to
4 use the Consent Decree as a defense--as a--as a defense to a
5 citation under state law that's brought by state
6 conservation officers and prosecuted by a state--by a county
7 prosecutor's office in a state court. I think there is
8 evidence of the violation. I've not heard enough--enough to
9 convince me that this Court lacks jurisdiction. I would ask
10 that you would find Mr. MacLeod responsible for the
11 violation. Thank you.

12 THE COURT: All right. Thank you, Mr. Gauthier.
13 Mr. MacLeod, argument?

14 THE DEFENDANT: Your Honor, I would argue that the
15 property lines were not established until long after the
16 fact of the ceremony. There was--even Mr. Drogowski quoted
17 that there was no definition of the proper property line
18 until November 2nd. That's not June 1st. I have zero
19 recollection of any contact with Mr. Drogowski until after
20 in July. If he made contact, he made contact with other
21 subjects on the matter or down at the grounds. But the
22 people that I know were there never encountered any DNR
23 officers on them days that there was encampment in the area.
24 That was actually when the structures were being put up was
25 between June 1st and June 7th. I also argue on the fact that

1 the 2007 Consent Decree doesn't apply to me. I'm a
2 federally recognized Native American. I carry the proper
3 blood quantum and cards to be protected under the 2007
4 Consent Decree. We have established a community of people.
5 I'm not alone. There are several Tribal members that are
6 involved in this ceremony. I didn't have it alone. We have
7 established a Sundance committee. We have established a
8 Sundance DBA in the Cheboygan County Clerk's office. And
9 this is not a--a lone situation. This is a community
10 situation. And be assured that the Tribes involvement will
11 come ahead. So I would ask that it would be dismissed under
12 jurisdiction, under Tribal forum, and the fact that the
13 ticket wasn't even properly wrote in the beginning because I
14 am a Tribal member with a federally recognized card that I
15 did provide to the officers at the time of writing the
16 ticket. And they declined to mark the box as a Tribal
17 issue, which would have brought the Tribe into the situation
18 to address the jurisdiction. And it would have been
19 addressed in the proper Tribal forum, had that box been
20 marked properly on the ticket in the beginning. Thank you,
21 Your Honor. That's all I have to say.

22 THE COURT: All right. Thank you, Mr. MacLeod.
23 With regards to the last issue that you just brought up,
24 the--the ticket not being marked as Tribal, the Court finds
25 that this was not a violation of Tribal law but a violation

1 of state law. There--you were--you had erected a structure
2 on state land and as early as June, contact was made and you
3 were made aware of the problem, according to the testimony
4 of Sergeant Drogowski. Now I know you say you don't--you
5 weren't aware of contact until July. That doesn't make that
6 much difference to the Court whether it was June or July.
7 There was contact made at--at some point in the summer with
8 you and you were told about the issue. And then in
9 September, I believe it was September--September 11th, a
10 letter was sent to you also explaining the issue with your--
11 the erection of property on state land. And then when
12 nothing happened--no, strike that. In July a letter was
13 sent to you by Lori Burford explaining the situation and-and
14 directing you to remove the property. And then a follow-up
15 letter was sent in--on September 11th, again addressing the
16 situation and putting you on notice that you had property on
17 state land. And then after a--it was not removed, finally
18 in October--October 14th, Officer Bottorff wrote you a ticket
19 for leaving property on state land for in excess of 24
20 hours, and that was in violation of Rule 299.922(t). And
21 they gave you seven days to remove the structure and it was
22 not done. With regard to the Consent Decree of 2007, I
23 don't f--I find that that does not apply here. I--there's
24 no evidence that you--someone other than you was the one
25 violating the--this rule. And the ticket was written to you

1 as an individual, not as a--a Tribal--not as a Tribe. And I
2 don't--you're not a party to the 2007 Consent Decree.

3 THE DEFENDANT: I absolutely am.

4 THE COURT: What--what tribe are--you haven't even
5 told me what Tribe you're a member of.

6 THE DEFENDANT: I'm a member of the Sault Sainte
7 Marie Tribe of Chippewa Indians.

8 THE COURT: Y--you have never even told me on this
9 record what Tribe you're a member of.

10 THE DEFENDANT: Could I add it to the record, Your
11 Honor, by my cards?

12 THE COURT: Mr. Gauthier?

13 MR. GAUTHIER: I--I believe that he is a member of
14 the Tribe of--of Sault Sainte Marie Tribe of Chippewa
15 Indians. I have no objection that the record so reflects.
16 He doesn't need to present a card.

17 THE COURT: All right. The record--we'll amend
18 the record to reflect that, Mr. MacLeod. Was the Chippewa
19 Tribe--the Sault Chippewa Tribe a mem--a part of the Consent
20 Decree--2007?

21 MR. GAUTHIER: They are a party to it, yes.

22 THE COURT: All right. And again, there's no
23 evidence on this record that the Sault Tribe was performing
24 any type of religious ceremony at this location. The--the
25 evidence that this Court has heard was that it was Dustin

1 MacLeod that had erected the structure and that there was no
2 part of a Tribal ceremony going on or anything like that.
3 So based upon this record, I'm going to find by a
4 preponderance of the evidence that you did violate the law,
5 sir. Now, the--the fine for doing so is \$100.00. And I'll
6 direct that you pay that and you also have the right to
7 appeal this decision if you wish to appeal the Court's
8 decision, all right? And you can see Mrs. Stankewitz at the
9 window and she can direct you if you wish to appeal; what
10 you need to do.

11 THE DEFENDANT: About the bond that I posted, Your
12 Honor?

13 THE COURT: The bon--did you post \$100.00 bond?

14 THE DEFENDANT: Yes. Yes, Ma'am, I did.

15 THE COURT: That will be applied.

16 THE DEFENDANT: Okay. Also today was the day that
17 if I was to provide evidence of ceremony it would have had
18 to have happened today?

19 THE COURT: Yes, sir.

20 THE DEFENDANT: Because I--I have that evidence.
21 I just was unaware. I thought that it was provided at the
22 last hearing.

23 THE COURT: All right. Thank you, sir.

24 MR. GAUTHIER: Thank you, Your Honor.

25 THE COURT: All right. And I'm going to return to

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Mr. Gauthier the Exhibits that were introduced.

MR. GAUTHIER: Thank you, Your Honor.

THE COURT: All right. Thank you.

(At 2:22 p.m., Court Concluded)

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CERTIFICATE

STATE OF MICHIGAN
COUNTY OF CHEBOYGAN

I certify that this transcript consisting of 36 pages is a true, complete and correct transcript of the testimony and proceedings taken in this case on Thursday, December 18, 2014.

DATED: 2/17/15



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