

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

STATE OF DELAWARE	)	
	)	
	)	<b>C.R. No. 0401019608</b>
vs.	)	
	)	
LINFORD S. LANDIS,	)	
	)	
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**

Co-Defendant Charles R. Auman, Jr. is a licensed commercial horseshoe crab fisherman. Defendant Linford S. Landis, his relative, is authorized to assist Auman in the collection of horseshoe crabs under a disability permit issued to Auman by the Department of Natural Resources and Environmental Conservation (“DNREC”). The present charges arose from two surveillances of Defendant’s and co-Defendant’s activities conducted by the 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 a DNREC shellfish regulation.

## **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 alleges that the Defendant collected horseshoe crabs in a closed horseshoe crab sanctuary “in violation of 7 *Del. C.* § S-56(c).” In actuality, 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 and Co-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, Co-Defendant Auman 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 picked up at the boat ramp had already been lawfully collected by Defendant in a permitted area, and loaded on his boat. Defendant stated that they merely were 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 Co-Defendant filling cardboard boxes at the ramp area with horseshoe crabs from Co-Defendant's boat, and loading boxes of horseshoe crabs into his truck.

The Court finds the testimony of both Corporal Howell and the Co-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**.

**IT IS SO ORDERED**, this \_\_\_\_ day of September 2004.

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Kenneth S. Clark, Jr.  
Judge