

**SAINT REGIS MOHAWK TRIBAL COURT
IN AND FOR THE SAINT REGIS MOHAWK TRIBE**

Saint Regis Mohawk Tribe
Plaintiff

v.

Brent E. Fitzgerald
Defendant

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) **Case No.: 19-TRF-00636**
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) **DECISION AND ORDER**
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Procedural Background

On August 7, 2019, Saint Regis Mohawk Tribal Police Officer Trent McDonald issued traffic ticket #21813 to Brent E. Fitzgerald, defendant, for operating his vehicle in a negligent manner.

On October 7, 2019, Brent Fitzgerald, defendant, requested a continuance on the matter. The continuance was granted by the Court.

On October 28, 2019, the Court held an initial appearance on this matter. Brent E. Fitzgerald, defendant, appeared and was self-represented. Sgt. Alexander Jock appeared to act as the Prosecutor on behalf of the Saint Regis Mohawk Tribe. Defendant requested for a hearing on the matter.

On November 18, 2019, the Court held a trial. Brent E. Fitzgerald, defendant, appeared and was self-represented. Lorelei Miller, Esq., appeared and acted as the Prosecutor on behalf of the Saint Regis Mohawk Tribe. The Court heard testimony from the Brent E. Fitzgerald, defendant, and Officer Trent McDonald. The Court heard oral argument and accepted evidence from Lorelei Miller, Esq. on the Saint Regis Mohawk Tribal Police/Saint Regis Mohawk Tribe's behalf.

Applicable Law

The Saint Regis Mohawk Tribal Traffic Law and subsequent amendments govern this matter.¹

Jurisdiction

In order to address the instant case, the Court must first determine whether it possesses jurisdiction over the matter. The purpose of the Saint Regis Mohawk Tribal Traffic Law of 2000 is to regulate vehicle traffic on and through the Saint Regis Mohawk Indian Reservation.² The definition of Saint Regis Mohawk Indian Reservation includes both the Saint Regis Mohawk

¹ Saint Regis Mohawk Tribal Traffic Law enacted through TCR 2000-109, amended through TCR 2001-25, amended through TCR 2010-40, amended through TCR 2012-15, and amended through TCR 2018-09.

² Saint Regis Mohawk Tribal Traffic Law TCR 2000-109.

Reservation as established by the 1796 Treaty with the Seven Nations of Canada and any other lands over which the Tribe exercises jurisdiction now or in the future.³ Here, the alleged traffic incident occurred at Speedway Plaza located at 935 State Route 37. Thus, the incidents occurred within the borders of the Saint Regis Mohawk Indian Reservation. Therefore, the Court possesses the requisite jurisdiction.

Factual Findings

The Saint Regis Mohawk Tribal Police bears the burden of proof by clear and convincing evidence.⁴ Clear and convincing evidence is defined as “evidence indicating that the thing to be proved is highly probable or reasonable certain. This is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials.”⁵ Once it has been demonstrated upon clear and convincing evidence, the burden shall shift to Brent E. Fitzgerald, defendant, to rebut the presentation.⁶ The Court finds the following was proven by clear and convincing evidence:

1. Brent Fitzgerald, defendant, is an experienced truck driver.
2. On or about August 7, 2019, Brent Fitzgerald, defendant, was operating a truck and trailer and hit the low hanging line leaving Speedway Plaza. Defendant saw the line prior to hitting it.
3. Speedway Plaza is within the borders of the Saint Regis Mohawk Indian Reservation.
4. Brent Fitzgerald, defendant, was unaware that he hit the low hanging line causing damages to the cars that he was carrying and the line until after he had already left the premises.
5. Speedway did not have markings indicating the height of the line.
6. Once he became aware Brent Fitzgerald, defendant, notified the Saint Regis Mohawk Tribe dispatch.
7. Saint Regis Mohawk Tribe Police Officer Trent McDonald responded to the scene and met Brent Fitzgerald, defendant, at the scene.
8. Officer McDonald saw the damage to the line and vehicles that Brent Fitzgerald, defendant, was carrying on his truck.

³ Saint Regis Mohawk Tribal Traffic Law TCR To Amend TCR 2018-09.

⁴ Saint Regis Mohawk Tribal Law to Amend TCR 2018-09 § VI. 4. (b).

⁵ *Black's Law Dictionary* (11th ed. 2019), available at Westlaw BLACKS.

⁶ Saint Regis Mohawk Tribal Law to Amend TCR 2018-09 § VI. 4. (b).

9. Officer McDonald issued a tribal citation for Operating a Motor Vehicle in a Negligent Manner.

DISCUSSION

In the instant case, Officer Trent McDonald issued Brent Fitzgerald, defendant, a tribal citation for Operating a Motor Vehicle in a Negligent Manner based on an incident that occurred at the Speedway Plaza which resulted in damages to vehicles and a line. Defendant contends that he saw the line; however, contends that there were no markings providing the height of the line. Further, he contended that the low hanging line does not comply with New York State standards. During the hearing, the Saint Regis Mohawk Tribal Police Department's legal counsel, Lorelei Miller, Esq., pointed to the fact that the defendant saw the line before hitting it and that the defendant still proceeded to drive through it.

The Saint Regis Mohawk Tribal Traffic Law provides in relevant part that "[i]t shall be a violation of this Act for any operator of a motor vehicle to (i) operate his/her vehicle in a careless, reckless, or negligent manner such that the operation poses a risk to other operators of a motor vehicle, or to pedestrian(s) or to passenger(s) in a motor vehicle; (ii) or that the operator's operation of a motor vehicle in any way causes an accident; (iii) or that the operator's operation of a motor vehicle impedes traffic; or (iv) the operator's operation of a motor vehicle in any way impeded the enforcement of this Act."⁷

In this case, Brent Fitzgerald, defendant, hit a line located at Speedway Plaza and that this was reported to the Saint Regis Mohawk Tribe Police by the defendant. By hitting the line, the defendant caused damage to the cars that he was carrying on his trailer and the line itself. The defendant admitted to seeing the line before he hit it. These facts are not disputed. Thus, the Court accepts them as fact. For these reasons, the Saint Regis Mohawk Tribal Police argue that the defendant was negligent.

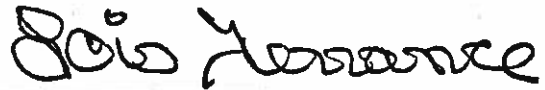
In response, defendant contends that the line was low based on his experience and knowledge of New York State standards and that there was no markings at the Speedway Plaza. The record also demonstrates that the defendant did not know he had hit the line until after he had left. The Court finds no evidence that demonstrates that the defendant operated his vehicle in a manner that posed a risk to others or that he operated his vehicle in a way that caused the accident such as speeding. Thus, the Court holds that the defendant did not operate his vehicle in a negligent manner.

ORDER

Based on the foregoing, traffic ticket #21813 issued to Brent E. Fitzgerald, defendant, for Operating his Motor Vehicle in a Negligent Manner is hereby **DISMISSED**.

⁷ The Court notes that this definition of the negligent driving operation offense is similar to the definitions provided in the other SRMT Traffic Court laws.

Signed this 22nd day of November, 2019.

A handwritten signature in black ink, appearing to read "Lois Terrance", written over a horizontal line.

Lois Terrance, Traffic Judge
Saint Regis Mohawk Tribal Court

No later than ten (10) days after a judgment is final, a party may ask the Judge for a rehearing, reconsideration, correction vacation, or modification of the judgment. The parties have thirty (30) days from the entry of this Order to file an appeal with the Saint Regis Mohawk Court of Appeals.