

NOTICE

Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

RAYMOND R. BLODGETT,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11241
Trial Court No. 3PA-11-2372 CR

MEMORANDUM OPINION

No. 6006 — December 11, 2013

Appeal from the District Court, Third Judicial District, Palmer,
William L. Estelle, Judge.

Appearances: Chadwick P. McGrady, Palmer, for the Appellant.
Christopher Orman, Assistant District Attorney, Palmer, and
Michael C. Geraghty, Attorney General, Juneau, for the Appel-
lee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Coats,
Senior Judge*.

Judge MANNHEIMER.

Raymond R. Blodgett, a fishing guide, appeals his convictions on multiple counts of knowingly aiding his clients to commit violations of fishing regulations. Specifically, Blodgett was convicted of taking his clients to fish in Fish Creek (a

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

tributary of the Talkeetna River) and then knowingly supplying his clients with bait and tackle that was prohibited in Fish Creek.

On appeal, Blodgett claims that the district court committed three evidentiary errors.

First, Blodgett argues that the district court committed error by refusing Blodgett's request to take judicial notice of certain maps and other written materials published or endorsed by the Department of Fish and Game. According to Blodgett, these written materials conclusively showed that Blodgett's clients were not fishing in Fish Creek, but were instead fishing in Clear Creek (a nearby stream).

Second, Blodgett argues that the district court committed error by allowing another fishing guide to testify as a witness for the State. This witness described the geographic locations of Fish Creek and Clear Creek, both in relation to each other and in relation to the Talkeetna River. Blodgett argues that it was error to allow this witness to testify because, even though the State listed the guide as an intended witness in its pre-trial disclosure, the State did not designate the guide as an "expert" witness.

Third, Blodgett argues that the district court committed error by allowing the State to introduce evidence concerning another guiding violation that Blodgett committed several years earlier.

In addition to these claims of evidentiary error, Blodgett argues that the district court exceeded its sentencing authority by ordering the forfeiture of the boat (and motors and trailer) that Blodgett used to transport his clients to the fishing site.

For the reasons explained in this opinion, we conclude that the first two of Blodgett's evidentiary claims have no merit. With respect to his third claim (the admission of evidence of his prior conviction), we agree with Blodgett that this evidence should not have been admitted, but we conclude that the error was harmless. Finally, we

conclude that the district court properly ordered the forfeiture of Blodgett's boat, motors, and boat trailer. We therefore affirm the judgement of the district court.

General underlying facts

Blodgett is a long-time licensed fishing guide in the Talkeetna region. Fish Creek is a stream in the Talkeetna River drainage; it has been designated as a special management stream for rainbow trout. By regulation, fishermen are restricted to using an unbaited, single-hook artificial lure in Fish Creek. *See* 5 AAC 61.185(a) & (c)(3).

On August 7, 2011, a state trooper observed Blodgett assisting four clients who were fishing in Fish Creek, just upstream from its confluence with the Talkeetna River, in violation of this regulation: the clients were using double hooks baited with salmon roe. It is a crime for a sport fishing guide to aid someone else's violation of any fishing regulation.¹ The trooper therefore cited Blodgett for aiding his clients' violations of the regulation restricting the type of tackle that can be used in Fish Creek.

At trial, the State presented evidence that, when Blodgett and his clients arrived at the fishing spot, one of the clients asked Blodgett where they were fishing. Blodgett responded, "Mystery Creek". The client was apparently unsatisfied with this answer, so he again asked Blodgett where they were. This time, Blodgett replied, "No-name Creek".

Blodgett then provided his clients with double hooks and salmon roe. Using this prohibited tackle, the clients caught several fish. When the state trooper approached Blodgett after witnessing this conduct, Blodgett claimed that he and his

¹ AS 16.40.270(f)(1).

clients were fishing in Clear Creek, not Fish Creek — because (according to Blodgett) a sliver of water from Clear Creek flowed into Fish Creek.

At trial, Blodgett again contended that his clients had been fishing in Clear Creek, not Fish Creek.

Alternatively, Blodgett contended that even if his clients were fishing in Fish Creek, Blodgett had not *knowingly* directed them to Fish Creek. Blodgett argued that he could reasonably rely on the maps and other publications issued by the Department of Fish and Game; these maps and publications showed that only Clear Creek had a confluence with the Talkeetna River — that Fish Creek did not flow into the Talkeetna River directly, but was instead a tributary of Clear Creek.

As we describe in more detail in the next section of this opinion, Blodgett filed a pre-trial motion asking the district court to take judicial notice of the Department's maps and other publications. During the litigation of this motion, the gist of Blodgett's defenses became clear.

Later, at Blodgett's trial, in anticipation of these defenses, the State presented witnesses who testified that the stream in question — the place where Blodgett and his clients were fishing — was indeed Fish Creek. These witnesses explained that, formerly, Fish Creek had been a tributary of Clear Creek, as depicted in the maps — that it had flowed into Clear Creek about a half-mile before Clear Creek joined the Talkeetna River. But in 2006, major flooding altered these water courses. Since that time, Fish Creek has flowed directly into the Talkeetna River, without joining Clear Creek — so that there is now a confluence of the Talkeetna River and Fish Creek.

At the end of the trial, the jury rejected Blodgett's defenses and found him guilty.

The district court's refusal to take judicial notice of the maps and other descriptions published by the Alaska Department of Fish and Game and the United States Geological Survey

Before trial, Blodgett filed a motion asking the district court to take judicial notice of the locations of Fish Creek and Clear Creek, based on maps and written descriptions contained in publications issued by the Alaska Department of Fish and Game and the United States Geological Survey. In particular, Blodgett asked the district court to declare that Fish Creek had no confluence with the Talkeetna River, but rather flowed into Clear Creek about one-half mile before Clear Creek joined the Talkeetna River.

In effect, Blodgett was asking the district court to declare that he was innocent of the charges. The State's evidence showed that Blodgett and his clients were fishing at the confluence of the Talkeetna River and the stream in question. Blodgett was asking the district court to take judicial notice that there was no confluence of Fish Creek and the Talkeetna River — so if Blodgett and his clients were located at the confluence of some creek and the Talkeetna River, then that creek must have been Clear Creek, not Fish Creek.

The published materials that Blodgett submitted to the district court were the most recent versions available at the time of his offense in 2011. Nevertheless, the State argued that these published materials did not accurately depict the true geographic positions of the two creeks — because the materials were based on the pre-2006 watercourses, before the flooding in 2006 altered the landscape.

The State told the court that post-2006 videos and satellite photographs (which the State intended to offer at trial) “plainly show Fish Creek flowing [directly] into the Talkeetna River”, and that the alteration of the landscape caused by the 2006 flood “block[ed] the flow which once existed between Clear Creek and Fish Creek”.

In reply, Blodgett contended that the actual geographic location of the two creeks — in particular, the fact that Fish Creek no longer flowed into Clear Creek, and that Fish Creek now flowed directly into the Talkeetna River — was all irrelevant. Blodgett argued that, regardless of where Fish Creek and Clear Creek were actually located at the time of his offense, the Department of Fish and Game’s description of the two creeks was legally controlling — and, thus, the district court was required to adhere to the description of the two creeks found in the maps and other published materials until such time as the Department issued new, superseding publications.

Alaska Evidence Rule 201 governs a court’s authority to take judicial notice of facts — which, in this context, means a trial judge’s authority to declare that a particular fact is true or is proved, without submitting the question to the jury.²

To qualify as a proper subject of judicial notice, the proposed fact must “not [be] subject to reasonable dispute” for one of two reasons: either because the fact is “generally known within this state”, or because the fact is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”. Evidence Rule 201(b).

The district court denied Blodgett’s request for judicial notice because the court concluded that there *was* reasonable dispute as to the accuracy of the descriptions of the two creeks contained in the government publications.

The district court also rejected Blodgett’s argument that it was irrelevant where the two creeks were actually located, and that the only thing that mattered was how the creeks were described in the government publications. The court noted that even though state regulations defined what fishing practices were legal in Fish Creek, the

² Alaska Evidence Rule 201(a).

regulations themselves did not attempt to define the physical location or boundaries of Fish Creek.

The district court conceded that if the government publications inaccurately described the location of the two creeks, this might be relevant to the question of Blodgett's *mens rea* — the question of whether Blodgett might have reasonably relied on those publications when he took his clients to the stream in question, and when he chose what fishing tackle to give his clients. But the court concluded that this was an issue of fact to be decided by the jury, not a proper subject of judicial notice.

On appeal, Blodgett renews his contention that the district court should have taken judicial notice that there was no confluence of Fish Creek and the Talkeetna River — that the only pertinent confluence of waters was the confluence of Clear Creek and the Talkeetna River, and that therefore Blodgett and his clients were in the waters of Clear Creek.

As he did in the district court, Blodgett makes two arguments regarding his request for judicial notice.

First, Blodgett asserts that the maps and written descriptions issued or endorsed by the Department of Fish and Game are legally binding, even though they do not reflect geographic reality. Blodgett argues that he “had the right to follow even an inaccurate finding by [the Department of] Fish and Game” concerning the geographic relationship of Fish Creek, Clear Creek, and the Talkeetna River — even if he knew it was wrong. Blodgett asserts that the district court was legally required to follow and apply the Department's erroneous description of these waterways until the Department issued an emergency order, or otherwise revised its publications, to formally acknowledge the geographic change.

But the Department of Fish and Game has not defined the boundaries or geographic course of Fish Creek by regulation. The regulation that Blodgett's clients

violated — and that he assisted them in violating — simply refers to Fish Creek by name (and by specifying that the “Fish Creek” at issue is the one that lies “in the Talkeetna River drainage”). 5 AAC 61.185(c)(3).

The maps and written descriptions in the publications issued or endorsed by the Department are for informational purposes. They do not override 5 AAC 61.185, nor do they override the Department’s underlying purpose of protecting the rainbow trout populations of the rivers and streams listed in 185(b) and (c). Even when a listed stream changes course, so that the informational maps and written descriptions of that stream are no longer accurate, the Department’s restrictions on tackle and bait continue to apply to that stream.

Blodgett argues that there is a second reason why the district court should have taken judicial notice of the Department’s erroneous description of the relationship of Fish Creek, Clear Creek, and the Talkeetna River: Blodgett contends that this erroneous description was relevant to the issue of whether he acted with the culpable mental state required by the charging statute — whether he was *aware* that his clients were fishing in Fish Creek with prohibited tackle.

But as we explained earlier, the district court did understand that the evidence was relevant for this purpose. The State had to prove that Blodgett was aware that his clients were violating the restrictions on trout fishing in Fish Creek, and the district court recognized that Blodgett potentially had a defense if, in good faith, he relied to his detriment on the erroneous descriptions of Fish Creek and Clear Creek in the Department’s publications.

For this reason, the district court ruled that Blodgett could introduce the maps and other publications that misdescribed the geographic relationship of the two creeks (both to each other, and to the Talkeetna River). But as the district court explained, the jury would have to decide whether Blodgett indeed relied in good faith on

the erroneous descriptions in the Department's publications; this was not a proper subject for judicial notice.

The district court's rulings were correct, and we uphold them.

(Later, when Blodgett went to trial, the publications at issue were introduced into evidence, and Blodgett's attorney relied on these publications when he argued the case to the jury. The defense attorney asserted that people are entitled to rely on the Department's descriptions of rivers and streams, even when these descriptions turn out to be wrong. Therefore, the attorney contended, even if Blodgett and his clients were actually fishing in Fish Creek, the State had failed to prove beyond a reasonable doubt that Blodgett was *aware* that his clients were fishing in Fish Creek.

The jurors rejected this argument and convicted Blodgett — apparently concluding that, despite the erroneous descriptions in the Department's publications, Blodgett was personally aware of the true location of Fish Creek, and he knowingly assisted his clients in violating the restrictions on trout fishing in that stream.)

The issue of whether the testimony of Gerald Sousa was “expert” testimony

Shortly before the start of trial, Blodgett's attorney filed a motion *in limine* asking the district court to prohibit the State from presenting one of its proposed witnesses: Gerald Sousa, a fishing guide.

Sousa had decades of experience fishing in the Talkeetna River area, and the State intended to have Sousa identify the location of Fish Creek and describe its geographic relationship to Clear Creek and to the Talkeetna River.

In particular, the State called Sousa to explain that Fish Creek no longer flows into Clear Creek — that, as a result of the 2006 flooding, the channel of Clear

Creek moved to the southwest, so that Fish Creek now flows directly into the Talkeetna River. Sousa testified that, to the extent that the Department of Fish and Game's publications indicated otherwise, they were wrong.

Blodgett's attorney knew that the State intended to call Sousa to testify at Blodgett's trial, because the State listed Sousa as one of its intended witnesses. Moreover, Blodgett's attorney could reasonably surmise the subject matter of Sousa's trial testimony, because the State had earlier brought Sousa to court to testify about these same matters at the pre-trial hearing where Blodgett's attorney made his request for judicial notice.

In the defense attorney's motion *in limine*, the attorney argued that Sousa should be prohibited from testifying about the geographic location of the two streams and the Talkeetna River because Sousa's testimony would "conflict with the [Department's] regulations". (*Sic*: The defense attorney was actually arguing that Sousa's testimony would conflict with the informational descriptions contained in the Department's publications — which, according to the defense attorney, had the same force of law as the regulations codified in 5 AAC 61.)

The district court rejected this argument and ruled that Sousa could testify about Fish Creek and its geographic location.

On the first day of trial, Blodgett's attorney presented a new objection to Sousa's proposed testimony: he argued that Sousa should be excluded from testifying because he was an "expert" witness, and because, even though Sousa was on the State's witness list, the prosecutor had failed to list him as an "expert".

This objection was made in passing, in the midst of lengthy arguments on other issues, and the district court made no ruling on this objection at the time.

Several days later, as the prosecutor readied to call Sousa to the stand, Blodgett's attorney objected that Sousa should not be allowed to testify because he was

not a “percipient” witness — by which the defense attorney meant that Sousa had no personal knowledge of what happened on the day when Blodgett was cited for assisting his clients to engage in illegal fishing.

In conjunction with this argument that Sousa would not be testifying from personal knowledge, the defense attorney asserted that Sousa should not be allowed to testify as an expert either, because the State had not listed him as an “expert” on its witness list.

(In addition, the defense attorney argued that Sousa’s proposed testimony would be “contrary to [Department] regulation”, would be “very cumulative”, would be “a waste of time”, would be “unbelievably confusing to the jury”, and would be “prejudicial towards Mr. Blodgett”.)

The district court overruled all of these objections.

With regard to the defense attorney’s objection that (1) Sousa had no personal knowledge of the subject matter of his testimony, and thus (2) Sousa would be testifying as a previously undisclosed expert witness, the district court rejected the defense attorney’s characterization of the situation. The court ruled that Sousa would not be testifying as an expert witness, but rather as a lay witness, because Sousa *would* be testifying from personal knowledge — his personal knowledge of the locations and geographic relationship of Fish Creek, Clear Creek, and the Talkeetna River, derived from his many years spent in the area.

On appeal, Blodgett contends that the district court misunderstood what it means to be an “expert”. Blodgett notes that, under Alaska law, a person can qualify as an expert witness based on their experience and familiarity with a subject, even though they have not received specialized education or other formal training, and even though

they have no special license or credential.³ Blodgett then asserts — incorrectly — that the district court refused to recognize Sousa as an “expert fishing guide” because Sousa had no specialized training or special license.

The district court made no such ruling — because the question of whether Sousa was an “expert fishing guide” was never raised.

As we have explained, Blodgett’s attorney raised a two-pronged objection to Sousa’s testimony. The first part of the defense attorney’s objection was that Sousa would not be testifying from personal knowledge. The second part of the defense attorney’s objection was that, since Sousa would not be testifying from personal knowledge, the only way Sousa could properly testify would be as an “expert witness” — which, according to the defense attorney, would be improper because, even though the State’s witness list included Sousa, it did not list him as an “expert”.

Blodgett’s objection did not require the district court to evaluate Sousa’s qualifications as an “expert fishing guide”. Instead, the district court was required to decide (1) whether Sousa would be testifying from personal knowledge; and if Sousa would not be testifying from personal knowledge, (2) whether the State’s alleged procedural error — its failure to designate Sousa as an “expert” on its witness list — called for the complete exclusion of Sousa’s testimony.

The district court rejected the first part of the defense attorney’s argument (and did not reach the second part). Specifically, the district court ruled that Sousa’s proposed testimony *was* based on personal knowledge.

In his brief to this Court, Blodgett’s attorney again argues that Sousa was not testifying from personal knowledge — because “[t]here was no suggestion ... that

³ See, for instance, the discussion of this point in *Marron v. Stromstad*, 123 P.3d 992, 1002-03 (Alaska 2005).

Mr. Sousa was present on the creek on the day of the alleged incident[, or] that [he] had any direct knowledge of what type of bait or the number of hooks that were being used [by Blodgett’s clients].”

But Sousa did not offer any testimony on these subjects. Rather, Sousa testified about the geographic locations of the waterways at issue in this case. He testified that, ever since the 2006 flood, Fish Creek has flowed directly into the Talkeetna River, and that Fish Creek no longer flows into Clear Creek. Sousa further testified that, to the extent Fish and Game publications suggested otherwise, these publications were wrong.

The district court found that all of this testimony was based on Sousa’s personal knowledge, derived from his many years in the region, and the record amply supports the district court’s finding.

Sousa may indeed have been an “expert” in the sense of being an experienced and skilled fishing guide, but that is not the issue. The question is how to characterize the *testimony* that he gave at Blodgett’s trial — and this challenged testimony was not “expert testimony”.

Sousa had personal knowledge of what he was testifying about, and the jurors did not need esoteric background information — information about facts and principles known only to members of a specialized field or profession — in order to understand Sousa’s testimony, or to assess whether Sousa’s testimony was rationally based on his personal knowledge and observations. Sousa’s testimony was therefore normal or “lay” testimony, not expert testimony. See our discussion of this point in *Carter v. State*, 235 P.3d 221, 225 (Alaska App. 2010).

For these reasons, we uphold the district court’s ruling.

The evidence that Blodgett committed an earlier guiding violation on Clear Creek

Before trial, the State gave notice that it intended to introduce evidence that Blodgett had previously been convicted of aiding a client to violate a fishing regulation. On that prior occasion, in July 2006, Blodgett's clients hooked king salmon in Clear Creek on a day that king salmon fishing was closed. Instead of releasing the fish immediately, Blodgett assisted his clients in pulling the fish from the water and photographing the fish before releasing them. Removing the fish from the water constituted an illegal "taking" of the fish under AS 16.05.940(34).

The district court ruled that this prior act was admissible under Alaska Evidence Rule 404(b)(1) because it was offered for a purpose other than to establish Blodgett's character. Specifically, the court concluded that this prior conviction was relevant to the question of whether Blodgett had "actual knowledge, or awareness of a substantial probability" that he and his clients were fishing in Fish Creek on the day in question.

At trial, the State offered brief testimony concerning this prior conviction. Trooper Cody Litster testified that he encountered Blodgett and his clients fishing near the mouth of Clear Creek (*i.e.*, its confluence with the Talkeetna River) on a day that king salmon fishing was closed. Litster charged Blodgett for aiding his clients in taking king salmon from the water so that they could be photographed. During their interaction, Blodgett told Litster that he knew the king salmon season was closed, and that he also knew that, because of the closure, king salmon were not supposed to be removed from the water.

The district court instructed the jury that this evidence could be used for only one "limited purpose": "[to decide] if it tends to show the defendant's knowledge."

And during the prosecutor's summation to the jury, in line with this instruction, the prosecutor argued that this earlier violation tended to prove that Blodgett had a working knowledge of the fishing regulations:

Prosecutor: You were presented with evidence of a 2006 violation that occurred. It occurred in Clear Creek. [According to] the testimony provided by Trooper Litster, when Trooper Litster approaches Mr. Blodgett [at that earlier time], Mr. Blodgett says, "Oh, yeah, we know the salmon season's closed, but we're fishing for something else." [This evidence shows that] in Clear Creek in 2006, [Mr. Blodgett] knew a particular regulation regarding when salmon could be fished, and when he could do it.

One could reasonably argue that Blodgett's conduct during the 2006 offense tended to show that he was well-versed in the fishing regulations, or at least the regulations governing the streams in the Talkeetna River drainage. The problem is that, given the way Blodgett's case was litigated, there was no real dispute as to whether Blodgett had a working knowledge of these regulations.

As we have explained, two main issues were litigated in Blodgett's case, and both of these issues centered on the erroneous description of the geographic relationship of Fish Creek, Clear Creek, and the Talkeetna River in the maps and other publications issued by the Department of Fish and Game.

The first issue was Blodgett's assertion that, as a matter of law, the stream where he and his clients were found fishing must have been Clear Creek, not Fish Creek, because the Department's maps and publications showed that only Clear Creek had a confluence with the Talkeetna River. The second issue was an issue of fact: whether Blodgett was misled by the Department's maps and publications into erroneously

believing that he and his clients were fishing in Clear Creek, when they were actually in Fish Creek.

Blodgett's working knowledge of the Department's fishing regulations (as distinguished from his familiarity with the Department's informational maps and other publications) had essentially no relevance to these issues. Everyone agreed that the pertinent regulation, 5 AAC 16.185, forbade the use of bait in Fish Creek and restricted fishermen to single-hook artificial lures. The question was not whether Blodgett knew about this regulation; rather, the question was whether Blodgett knew that he and his clients were in waters where this regulation applied.

In its brief to this Court, the State argues that Blodgett's prior offense was also relevant to this latter question — Blodgett's knowledge of Fish Creek's true geographic position, and his knowledge that he and his clients were in Fish Creek. But the particular facts of the prior offense do not support this inference. The only thing about the prior offense that supports this inference is the fact that Blodgett was willing to break the law on this prior occasion to please his clients — thus raising the inference that he might have been willing to do the same thing in the present case. This use of the evidence is forbidden by Evidence Rule 404(b)(1).⁴

⁴ As we have explained, Evidence Rule 404(b)(1) bars evidence of other wrongful acts if the “evidence has no genuine purpose other than to show the defendant's character and the consequent likelihood that the defendant acted in conformity with that character during the episode being litigated”. *Smithart v. State*, 946 P.2d 1264, 1270-71 (Alaska App. 1997), *reversed on another ground* in *Smithart v. State*, 988 P.2d 583 (Alaska 1999). *See also Beaudoin v. State*, 57 P.3d 703, 707-08 (Alaska App. 2002) (“Evidence Rule 404(b)(1) bars the admission of evidence of a person's other bad acts if this evidence is introduced for a particular prohibited purpose: to prove a person's character so that this character can be used as circumstantial evidence that the person acted true to character during the incident being litigated.”).

Accordingly, we conclude that the district court committed error when it allowed the State to present evidence of Blodgett’s 2006 guiding offense. However, we agree with the State that the admission of this error was harmless.

The testimony concerning this prior offense took up a tiny portion of a trial that was a week long. The prosecutor’s reference to this offense during his summation was similarly brief. And the offense itself — temporarily lifting a salmon out of the water to be photographed — was *de minimis* in terms of its moral blameworthiness or its potential to generate outrage among the jurors.

Just as importantly, the record demonstrates that the real issues in Blodgett’s case — *i.e.*, the true geographic location of Blodgett and his clients, and whether Blodgett knew that he was in Fish Creek, or whether he was misled by the Department of Fish and Game’s maps and other publications — were starkly presented to the jurors, both through the testimony of the witnesses and by the arguments of counsel.

Based on our review of the record as a whole, we conclude that the error in admitting the evidence of Blodgett’s 2006 offense did not appreciably affect the jury’s verdict.⁵

The forfeiture of Blodgett’s boat, motors, and boat trailer

Because Blodgett was convicted of knowingly assisting his clients’ violation of the fishing regulation, he was subject to the penalty of an *in personam*

⁵ See *Love v. State*, 457 P.2d 622, 634 (Alaska 1969) (holding that, for instances of non-constitutional error, the test for harmlessness is whether the appellate court “can fairly say that the error did not appreciably affect the jury’s verdict”).

forfeiture of his property under AS 16.05.195(a)(1). This statute provides, in pertinent part:

(a) [The] fishing gear, vessels, ... and other paraphernalia or gear used in or in aid of a violation of [Title 16] ... or [a] regulation adopted under [Title 16] ... may be forfeited to the state ... upon conviction of the offender in a criminal proceeding of a violation of [Title 16] ... in a court of competent jurisdiction[.]

In Blodgett's case, the district court ordered the forfeiture of the boat and the accompanying two motors that Blodgett employed to transport himself and his clients to the waters of Fish Creek, as well as the trailer that Blodgett used to haul the boat to the water.

On appeal, Blodgett argues that AS 16.05.195(a) does not authorize so broad a forfeiture. Blodgett notes that his clients' fishing violation took place on the banks of Fish Creek, not in the middle of the creek. Based on this fact, Blodgett argues that his boat and motors and trailer were not "used in" the commission of the offense.

But AS 16.05.195(a) authorizes the forfeiture of vessels and other gear if they are used either "in" the commission of an offense or "in ... aid of" the commission of an offense. This latter clause of the statute is broad enough to cover the boat and the accompanying marine motors that Blodgett employed to get his clients to the banks of Fish Creek where the illegal fishing took place.

Blodgett argues that, even though the language of the statute might reasonably be construed broadly enough to authorize forfeiture of the boat and the motors, we should not construe the statute in that manner. Blodgett notes that, as a general rule, forfeiture statutes are to be construed narrowly — *i.e.*, against the government. *See One Cocktail Glass v. State*, 565 P.2d 1265, 1268-69 (Alaska 1977).

Thus, Blodgett argues, if there are two reasonable interpretations of the statute, one favoring the government and the other favoring him, this Court is obliged to adopt the narrower interpretation that disfavors the government.

We agree with this principle, but we disagree with Blodgett's assertion that the statute in question can reasonably be interpreted to favor him.

Blodgett concedes that if his clients had completed their illegal fishing, and if he or his clients had then put the fish into Blodgett's boat for the purpose of using the boat and motors to return to the road system with their illegally caught fish, Blodgett's boat and motors could lawfully be declared forfeit — because, in that case, the boat and motors would have been employed in the separate violation of transporting illegally taken fish, AS 16.05.920(a).

But Blodgett argues that, unless and until that happened, his boat and motors were not “used in ... aid” of the fishing violation. According to Blodgett, the fishing violation in this case occurred at a discreet moment in time — the moment when his clients cast their lines into the waters of Fish Creek with bait and improper tackle. Up until that time, Blodgett contends, there was no violation — because it was legal for his clients to fish in Fish Creek, as long as they did not use bait or prohibited hooks.

It is possible to imagine situations where, after a fishing guide has transported a client to a fishing site, the client unexpectedly begins to do something illegal, or suggests something illegal, and the guide decides to go along with the client and assist their illegal conduct. In such situations, it might make sense to distinguish (1) the guide's initial innocent use of a boat to transport the client to the site, versus (2) everything that occurred later, after the guide became aware of, and complicit in, the client's wrongdoing.

But in Blodgett's case, the sentencing judge explicitly found that Blodgett intended from the outset to take his clients to Fish Creek and to have them use prohibited gear:

The Court: I think the most telling thing [is that] when [Blodgett's clients] went out there, they [asked], "What creek is this? It's either Clear Creek or it's Fish Creek." [And Blodgett] said, "It's No-Name Creek." And they said, "No. Come on. What is it really?" [And Blodgett replied,] "It is Mystery Creek."

It wasn't "No-Name Creek", and it wasn't "Mystery Creek." It was either Clear Creek or Fish Creek. But if one is fishing in Fish Creek, and it's illegal, one might not want to tell one's clients, "We're going to Fish Creek," because they might go and tell other people, "We went to Fish Creek."

[And] if [it was] really Clear Creek, [as Blodgett later contended], why not say "Clear Creek"? ... [As] soon as the troopers showed up, that was [his] defense, "Hey, we're in Clear Creek here. We're okay" But they weren't.

. . .

But "Mystery Creek"? ... "No-Name Creek"? [Those clients] weren't being told the truth And I think that, probably, was the most telling thing, because it suggests [he was] hiding what he knew from his clients, either to protect himself or to protect them. And then immediately stating ... to the troopers when the troopers showed up, ... "This is really Clear Creek." And if he thinks it's really Clear Creek, why tell the clients, "It's No-Name Creek"? And then, when they press him, tell them ... "Mystery Creek"?

That conduct, [given Blodgett's] two prior criminal convictions, suggests that he's intentionally not telling the

truth to his clients because he knows he's engaging in another criminal offense It all suggests that he knew exactly what he was doing, didn't want [his clients] to know, and didn't want ... the troopers to know that he knew Clear Creek had dried up five years [before]

Given these findings, the district court could properly conclude that when Blodgett used his boat (and marine motors) to transport his clients to the site of the illegal fishing, he was using the boat and motors "in aid of" his intended offense — *i.e.*, using them for the purpose of advancing or facilitating that offense. Thus, the forfeiture of the boat and the motors was authorized by AS 16.05.195(a)(1).

The forfeiture of the boat trailer poses a somewhat different problem. One issue is whether the trailer should be deemed "gear" or "paraphernalia" as those terms are used in AS 16.05.195(a). A second issue is the degree of connection that the State must prove between a defendant's "gear" or "paraphernalia" and the offense upon which the forfeiture is based.

Even if the terms "gear" and "paraphernalia" are interpreted broadly, it would seem that the forfeiture statute should be interpreted to require proof of some significant connection between a defendant's "gear" or "paraphernalia" and the offense in question. Otherwise, a defendant might face forfeiture of the refrigerator they used to store sandwiches and beverages overnight in anticipation of a morning fishing trip.

However, given the facts of Blodgett's case, given the district court's finding that Blodgett planned the offense beforehand, and given the fact that a boat trailer is a piece of equipment that has essentially only one purpose (the transportation of a boat to and from water), we conclude that the forfeiture of the boat trailer was lawful in Blodgett's case.

Blodgett raises one additional argument: that even if AS 16.05.195(a) gave the district court the authority to order forfeiture of his boat and motors and trailer, the value of this forfeited property — approximately \$45,000 — is so great that the forfeiture amounts to an “excessive fine” under the Eighth Amendment to the federal constitution because it is grossly disproportionate to Blodgett’s offense. *See Hillman v. Anchorage*, 941 P.2d 211, 215-17 (Alaska App. 1997), and *Baum v. State*, 24 P.3d 577, 580 (Alaska App. 2001).

Blodgett points out that the maximum fine for his offense is \$10,000.⁶ He argues that the district court failed to provide a sufficient justification for imposing a forfeiture so much greater than this maximum fine. More particularly, Blodgett argues that no forfeiture should exceed the maximum fine unless it is supported by an explicit judicial finding that the forfeiture is “necessary to protect the public”.

We need not decide whether Alaska law requires such a finding because, even if the law did require it, that requirement is satisfied in Blodgett’s case. Although the sentencing judge never used the phrase “necessary to protect the public” when the judge ordered the forfeiture of Blodgett’s boat, motors, and trailer, it is clear from the sentencing judge’s remarks that (1) he thought there was little chance that Blodgett could be rehabilitated, and (2) he believed a large forfeiture was necessary to deter Blodgett and to deter other guides who might be tempted to engage in similar misconduct.

As the sentencing judge noted, the present conviction is Blodgett’s third criminal offense, and he has a lengthy record of other, non-criminal violations:

The Court: [Mr. Blodgett] had jail [time] suspended on two different crimes in one [prior] case. Then he had

⁶ *See* AS 16.40.290(a) (declaring that a violation of AS 16.40.270 is a class A misdemeanor) and AS 12.55.035(b)(5) (establishing \$10,000 as the maximum fine for a person convicted of a class A misdemeanor).

another criminal case where ... he had jail time ... imposed and suspended again. ... [In that] second offense, he paid a \$10,000 fine. ... [So] this is a third [criminal] offense by a guide who [additionally] has other [non-criminal] violations [that are] just basically tickets.

As we have already explained, the sentencing judge concluded that Blodgett planned the current offense, and that he actively attempted to mislead his clients as to the true location of their fishing.

The judge declared that his primary sentencing goal was to deter other people from abusing the State's fish resources the way Blodgett had. The judge also indicated that he had little hope of rehabilitating Blodgett: "I don't know that rehabilitation is possible, given the number of [Blodgett's] violations, the length of [his] history [of offenses], and the lack of any sort of rehabilitation program available."

Based on all of this, the sentencing judge stated that he viewed the forfeiture of Blodgett's boat as the "most important" aspect of the sentence. The judge explained that only forfeiture of the boat would adequately serve to deter Blodgett and other guides: "The big deterrence to guides ... [is not] that they might have to spend part of [the] off-season in jail. ... It's the [loss of] the big ticket [item]."

Given Blodgett's prior record, and given the sentencing judge's findings regarding (1) the intentionality of the present offense, (2) Blodgett's poor prospects for rehabilitation, and (3) the inadequacy of lesser measures to effectively deter future misconduct, we conclude that the sentencing judge did, in effect, declare that the forfeiture of Blodgett's boat and accompanying equipment was necessary to protect the public.

For these reasons, we uphold the forfeiture.

Conclusion

The judgement of the district court is AFFIRMED.