

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

**Oneida Nation / Oneida Police Department,
Plaintiffs**

v.

**Estelle D. Moncada
Defendant**

**Case No: 23-CT-086
23-CT-087
Date: November 15, 2023**

DEFAULT JUDGMENT

This case has come before the Oneida Trial Court, the Honorable John E. Powless, III presiding.

Appearing In-person: Plaintiffs' Attorney, Kelly McAndrews

Non-Appearance: Defendant, Estelle D. Moncada

Background

In accordance with the Nation's Public Peace Law, Defendant was cited for allegedly violating 3 O.C. 309.9-8, Possession of Prohibited Drugs and 309.5-3, Trespass, both citations are 1st offense violations. These citations stem from an alleged incident that occurred on August 6, 2023, as a result, a citation pre-trial hearing was held on October 19, 2023.

Principles of Law

Title 3. Oneida Judiciary – Chapter 309: Public Peace

309.9. Civil Infractions Involving Alcohol, Tobacco, and Drugs

309.9-8. *Possession of Prohibited Drugs.* A person commits the civil infraction of possession of prohibited drugs if he or she possesses or consumes a prohibited drug or is in possession of any drug paraphernalia.

309.5 Civil Infractions Against Property

309.5-3. *Trespass.* A person commits the civil infraction of trespass if he or she:

(a) enters or remains on private property or Tribal property without consent and he or she:

- (1) had notice that the entry was forbidden; or
- (2) received notice or order to depart but failed to do so.

(b) Notice. Notice or an order to depart may be given by:

- (1) written or verbal communication given to the intruder by an Oneida Police Department officer, the owner of the property, or a person authorized to act on behalf of the owner;
- (2) written notice posted on or about the property in a manner reasonably likely to come to the attention of potential intruders; or (3) fences, barricades, or other devices manifestly designed to enclose the property and to exclude potential intruders.

Title 8. Oneida Judiciary – Chapter 807: Citations

807.6 Hearing Procedure

807.6-1. Citation Pre-Hearing.

(f) If a defendant does not appear at the pre-hearing or submit written notice that he or she is contesting the citation when there is a non-mandatory appearance, and the defendant has not entered into a stipulation or paid the fine and/or penalty as listed on the citation, the Court may proceed to enter a default judgment.

- (1) A default judgment may include any fine amount due, restitution, suspension of any rights, privileges, or licensures, and/or any other penalty authorized by law.

Analysis

In accordance with 3 O.C. 309.9-8, a person may receive a citation for Possession of Prohibited Drugs when an individual consumes a prohibited drug or is in possession of any drug paraphernalia. Also, in accordance with 309.5-3, an individual may commit the civil infraction of Trespass when a person remains on Tribal property without consent or when written or verbal communication is provided to the individual by the Oneida Police Department.

Here, Plaintiffs allege Defendant violated 309.9-8, Possession of Prohibited Drugs. The Oneida Police Report states on August 6, 2023, Defendant was found unconscious on the women's bathroom floor at the Irene Moore Activity Center (IMAC) Casino. Oneida Casino Internal Security identified Defendant by her Wisconsin drivers license. The report further stated Internal Security found Defendant in the bathroom stall, on the ground with tin foil and a straw by her arm. The Oneida Police Officer observed the foil to have burn marks on one side and residue on the other side. The tin foil was tested, results came back inconclusive. The straw was not tested because it lacked visible residue. Nonetheless, it is not common for an individual to be unconscious on the floor with tin foil and a straw next to them. In the Oneida Police Officer's training and experience, tin foil and the straw are used to consume controlled substances.

Regarding 309.5-3, Plaintiffs submitted evidentiary support in that Defendant is not allowed on the Oneida Gaming Facility grounds. On July 9, 2018, the Oneida Casino Internal Security Department issued Defendant notice that she is banned from all Oneida Gaming Facilities and/or

restaurants effective immediately. Defendant was also notified that failure to comply with this ban order and attempts to enter the gaming area may result in a trespass citation. On August 6, 2023, Defendant was found unconscious on the women’s bathroom floor at the IMAC Casino, an Oneida Gaming Facility. The Police report further stated that Defendant knew she was banned, but thought it expired. The Ban Order identified the order could expire if Defendant met with the Security Director and the money that was taken was repaid. It was not reported that Defendant did either, therefore, Defendant trespassed by violating the Oneida Gaming Facility Ban Order.

The Defendant was cited for violating the Nation’s Public Peace law. Failure to appear may result in a default judgment. Here, the Defendant did not appear or provide written notice she was contesting the citation. The Defendant also did not enter into a stipulation or pay the fine listed on the citation. Therefore, the Court ordered a default judgment as described below.

Finding of Facts

1. The Court has subject matter and personal jurisdiction over this matter.
2. Defendant was issued the following citations and received proper notice of this hearing:
 - a. 309.9-8, Possession of Prohibited Drugs, 1st Offense citation.
 - b. 309.5-3, Trespass, 1st Offense citation.
3. A citation pre-trial hearing was held October 19, 2023.
 - a. The Defendant did not appear.
4. The Defendant was found in default for failure to appear.

Order

A default judgment is entered in favor of the Petitioner and against the Defendant in the amount as follows:

23-CT-086; Possession of Prohibited Drugs, 1st Offense – 309.9-8.

Fine:	\$250.00
Court Costs:	<u>\$25.00</u>
Total Amount owed by Defendant:	\$275.00

23-CT-087; Trespass, 1st Offense – 309.5-3.

Fine:	\$250.00
Court Costs:	<u>\$25.00</u>
Total Amount owed by Defendant:	\$275.00


Total Amount owed by Defendant: \$550.00

The total amount due is payable to the Oneida Judiciary **within ninety (90) calendar days** from the date this Order is signed. Failure to pay is subject to the Nation’s laws and remedies.

The parties have the right to appeal in accordance with the Nation's laws.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council this Order was signed on November 15, 2023.



John E. Powless III, Trial Court Judge