

CHARGES DROPPED IN FATAL KAYAK CRASH

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A judge has dismissed the charge against a motor boat operator who struck and killed a kayaker last June. Peter Snyder, 63, was paddling on Lake George, New York, between Long Island and Elizabeth Island near Kattskill Bay. Donald Peltier, 73, piloting a motor boat, struck Snyder's kayak broadside. There was blue paint on the powerboat, as well as marks on Mr. Snyder's kayak. Mr. Snyder also had three cuts on his body when he was pulled from the lake, which is consistent with being hit by a boat. Alcohol was not a factor in the incident. Mr. Peltier submitted to a breath test and it was negative for alcohol. Both Mr. Peltier and Mr. Snyder's wife, who was paddling alongside her husband, jumped into the water to save him, but Mr. Snyder drowned.

Mr. Peltier was originally charged with reckless operation, a misdemeanor, but a grand jury lowered the charge to the non-criminal violation of failure to yield the right of way. This means the grand jury declined to file any criminal charges in the case, and instead directed that the non-criminal count, which is the equivalent of a traffic ticket, be filed.

Both the defense attorney in the case and Saratoga County District Attorney James Murphy III, who was the special prosecutor, said the case revealed shortcomings in navigation law. Mr. Peltier's defense lawyer, Kurt Mausert, himself a kayaker, asked McNally to dismiss the charge because he said it was not supported by New York state law. "The navigation law clearly states that a kayak is not a vessel," Mausert said.

Queensbury Town Justice Robert McNally dismissed the charge. His Decision and Opinion indicates, "There are four essential elements of the offense being charged. . . . 1) that the defendant, while operating a mechanically propelled vessel, 2) failed to yield the right of way, 3) to a sailing vessel which was 4) proceeding in such direction as to involve risk of collision. . . . [T]he transcript and testimony make it clear that the decedent was unambiguously operating a kayak operated by paddle, not by sail as that term is commonly understood. In addition, while "sailing vessel" is not defined by the Navigation Law, the term "vessel" is defined in Navigation Law to specifically exclude "rowboats, canoes and kayaks" from the provisions of the Navigation Law, including the very section that defendant is charged with violating. For this reason, there is no proof of a non-hearsay nature to establish that the defendant failed to yield the right of way to a "vessel", let alone a "sailing vessel"." (*Eds – citations omitted.*)

The prosecutor urged Justice McNally to interpret the law broadly, so as to apply the intent of the law even though it did not have the correct language. Justice McNally, in his Decision and Opinion, stated, "[W]hen interpreting a statute, the starting point must always be the plain language of the statute itself. Where the language used by a statute is clear and unambiguous, courts must give effect to that plain language. Here, the statute is free from ambiguity, qualification or exception. In view of these long-standing rules of statutory construction, the Court can do no more and no less than apply the language as it is written. The

Court declines to impose an interpretation on the statute at variance with the plain language of Navigation Law, particularly in view of the express exclusion of kayaks from the provisions of the Navigation Law.” (*Eds - citations omitted.*)

District Attorney Murphy said he will ask Sen. Roy McDonald, R-Saratoga, and Sen. Betty Little, R-Queensbury, to amend the statute to include specific language to protect kayak, canoes and rowboats. "The law was written in 1941 and it was last amended 18 years ago," Murphy said. "But it also says it should be read with a degree of latitude. You have to apply common sense and to me, common sense dictates a boat with a motor needs to yield to those that rely on wind or a paddle." He added, "It is just common sense that a motor boat should yield the right of way to a kayak. Kayaks are slower, less maneuverable and paddled. Paddlers should be protected from motor boaters on New York state lakes and rivers."

I had the pleasure of speaking to Kurt Mausert, the kayaker and defense lawyer, for quite some time regarding this case and he kindly sent me Justice McNally's full decision. Mr. Mausert knows a lot of paddlers would like to crucify him for his defense work in this case, however, justice is limited to what the law allows. Speaking as a paddler, Mr. Mausert indicated that Lake George is "like a six lane freeway in the summer." His solution to power boat and paddle boat conflict, if he had his way, is to have designated non-motor areas of Lake George and "do not paddle" areas too. His favorite lake to paddle is Little Tupper Lake in the Adirondacks, where no motor boats are permitted.

Mr. Mausert said that the navigation law "is what it is. The definition section specifically excludes canoes, kayaks, and rowboats unless otherwise specified, and it's not otherwise specified anywhere." He explained, "Section 41 says failure to yield to a sailing vessel, so we have two words, sailing and vessel. There was no sail even if we could call it a vessel. He was charged under the wrong section of the law. Unfortunately there is no right section of the law." He urges paddlers to take this information to their New York state legislators for reform.

Regarding the facts surrounding Mr. Snyder's death, Mr. Mausert elaborated on the details, "What also helped is that my client is the sweetest old man around. He dove into the water once he realized he hit someone, and he nearly died of hypothermia. All of his fine motor skills were gone and he had serious decline in gross motor skills when they finally picked him up. He was taken to the hospital and they were not sure they could revive him."

He continued, "What we had was a perfect storm of events. The kayak was blue, a dark blue, and it merged perfectly with Lake George on that cloudy, overcast day. It was a windy day, there were 2' swells out there, and we know how big a kayak is, the kayak could have been in a trough of one of the waves. They were 600' from shore. My client was alternating between 5 and 10 miles per hour, breaking in the boat according to manufacturer's instructions. That means he had an elevated bow, the bow doesn't come down until the powerboat gets to speed. It was just a perfect storm of an accident that day. The autopsy showed the injuries from the boat were not fatal and he died with water in his lungs, he was not wearing a PFD, he sank to the bottom of the lake."

So what's the bottom line here? Well, in New York, since we don't paddle "vessels," it seems that our lives aren't even worthy of a traffic ticket. New York is home to several major races, including the General Clinton 70-Miler and the Adirondacks 90-Miler, plus all of the NYMCRA races, among others. Is New York alone in this thinking? I have no idea. Check your local jurisdiction to find out. We all should be worth more than a note on a court docket.