
**FORT PECK COURT OF APPEALS
ASSINIBOINE AND SIOUX TRIBES
FORT PECK INDIAN RESERVATION
POPLAR, MONTANA**

FORT PECK ASSINIBOINE AND SIOUX TRIBES,
Plaintiff/Appellee,

vs.

Appeal No. 001

DAVID RED FOX,
Defendant/Appellant.

THIS APPEAL is from the Fort Peck Tribal Court, Assiniboine and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. Judge Thomas McAnally presided.

FOR APPELLANT: David Red Fox, disbarred Lay Counselor, Poplar, Montana.

FOR APPELLEE: Clayton Reum, Tribal Prosecutor, Poplar, Montana.

Appellant filed a Brief with the Clerk of the Fort Peck Tribal Court on July 30, 1986, and presented copies to the court and Appellee on August 22, 1986. Appellee submitted no Brief. At the time for oral argument, Appellant represented to the court that he was a Lay Counselor qualified and admitted to practice before the Fort Peck Tribal Court. Appellee informed the court that Appellant had in fact been disbarred and was no longer a qualified counselor or admitted to practice before the Fort Peck Tribal Court. Appellant was not permitted to argue his own case. Oral argument was not presented by Appellee.

OPINION by Arnie A. Hove, Justice, joined by Julian H. Brown, Chief Justice, and Daniel R. Schauer, Justice.

AFFIRMED AND HELD APPELLANT IN CONTEMPT OF COURT.

On January 8, 1985, Appellant attended a Writ of Habeas Corpus proceeding concerning his son, William Red Fox. The hearing was held before The Honorable William McClammy. The result of the hearing was that William Red Fox was remanded over to the custody of a tribe in Oregon and removed him from Appellant's custody. After the hearing, Appellant was alleged to have pointed his finger at Judge McClammy and said, "I won't talk to that son-of-a-bitch." Judge McClammy charged Appellant with Criminal Contempt, a violation of Title III, Chapter 4, Section 410 of the Comprehensive Code of Justice of the Assiniboine and Sioux Tribes. A jury trial was held April 6, 1985, and Appellant was found guilty. Appellant was ordered to serve five days and received a \$100.00 fine. Appellant appealed his conviction and presented two issues on

appeal. The issues were as follows:

1. Was Appellant's conviction of Criminal Contempt of court supported by the evidence at trial?
2. Was the conduct of Appellant protected speech immune from prosecution in the Indian Civil Rights Act and United States Constitution?

I.

The law under which Appellant was convicted and appeals is Title III, Chapter 4, Section 410, of the Comprehensive Code of Justice and reads in part as follows:

All courts of the Assiniboine and Sioux Tribes have power to punish for contempt of their authority the following offenses:

- (a) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice....

Upon reviewing the transcript, there is some discrepancy as to who Appellant directed the following statement, "I won't talk to that son-of-a-bitch." However, there is no discrepancy, nor does Appellant deny having used the offensive language.

Jerry Schuster, who had represented Appellant's son, William Red Fox, at the hearing testified that Appellant's conduct, "... certainly is not within what I would call proper courtroom respect and demeanor and whatever." Judge McClammy testified that his policy is that there is no swearing in the courtroom and the Appellant's conduct was disruptive. Furthermore, Judge McClammy testified his conduct showed disrespect not only for himself but for the whole court system.

Based on the above testimony and record before the court, i.e., the documents filed, transcript of the trial and Appellant's Brief, this court finds that the Appellant's conviction for Criminal Contempt of court, was supported by the evidence.

II.

Defendant argues that his conduct at the hearing on January 8, 1985, was protected speech, immune from prosecution under the Indian Civil Rights Act and United States Constitution. Appellant has presented a novel issue, however, one without merit. Appellant's issue, should it have had merit, would allow for disruptive conduct and offensive language in a courtroom where respect for a Judge and the court system is imperative to their being able to properly function.

This court finds that the conduct of Appellant was not protected speech immune from prosecution under the Indian Civil Rights Act and the United States Constitution. Furthermore, this court will not afford such disruptive conduct and offensive language in the courtroom protection under the Indian Civil Rights Act or the United States Constitution.

Therefore, this court affirms the judgment from which the appeal was taken and Appellant is HEREBY ORDERED to immediately begin serving his five days and pay the \$100.00. Appellant is to be given credit for a 1 1/2 days previously served.

On Appellant's conduct August 22, 1986, this court finds the Appellant also in Criminal Contempt for the following reasons:

1. His attempt to deceive the Court by representing himself as a qualified Lay Counselor admitted to practice before the Fort Peck Tribal Court; and
2. His obvious disrespect for the Court during the proceedings.

Appellant having been a Lay Counselor should have been aware of court procedure and rules. Rule 6(e) of the Rules of Appellate Procedure reads in full as follows:

Self-representation. Any party may represent himself/herself before the Court with the exception of presenting oral argument. All parties must be represented at oral argument by an attorney or lay counselor qualified and admitted to practice before the Fort Peck Tribal Court.

Appellant admitted that he had been disbarred only after the same was brought to the attention of the Court by the Appellee. This Court recessed after denying Appellant's request for an extension to obtain counsel to present his oral argument. After a brief recess, Appellant became disrespectful and refused to cooperate with the court until sharply reprimanded.

Accordingly, this court HEREBY ORDERS David Red Fox to serve five days concurrently with the previously ordered sentence.

DONE this 22nd day of August, 1986.

FORT PECK COURT OF APPEALS:

Julian H. Brown, Chief Justice

Arnie A. Hove, Justice

Daniel R. Schauer, Justice
