
**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. 089

LEO WALKING EAGLE, Jr.
Defendant/Appellant.

THIS APPEAL is from a judgment of "guilty" of Disorderly Conduct rendered by the Honorable Terry L. Boyd, Associate Judge without a jury on June 29, 1989.

FOR APPELLANT/DEFENDANT: Carson Walking Eagle, Lay Counselor, 715 Anchor Apt. #1, Billings, Montana 59105

FOR APPELLEE/PLAINTIFF: Daniel Schauer, Tribal Prosecutor, P.O. Box 1027, Poplar, Montana 59255

CRIMINAL: TRIBAL COURT CLERKS MUST PROVIDE THE APPELLATE COURT WITH THE ENTIRE TRIBAL COURT RECORD; THE COMPLAINT FILED AGAINST APPELLANT MEETS THE BASIC REQUIREMENTS OF II CCOJ 101(b); AND AT ARRAIGNMENT, THERE MUST BE STRICT COMPLIANCE WITH II CCOJ 402 BY THE TRIBAL COURT AND THE TRIBAL JUDGE MUST DETERMINE APPELLANT UNDERSTANDS HIS/HER RIGHTS, NATURE OF THE OFFENSE, AND MAXIMUM SENTENCE WHICH MAY BE IMPOSED.

Argued: December 1, 1989 Decided: December 1, 1989

OPINION by Arnie A. Hove, Chief Justice, joined by Gary James Melbourne, Associate Justice and Floyd G. Azure, Associate Justice.

HELD: APPELLANT'S JUDGMENT OF "GUILTY" FOR DISORDERLY CONDUCT A VIOLATION OF III CCOJ 413(g) IS HEREBY AFFIRMED. APPELLANT IS TO BEGIN SERVING THE BALANCE OF HIS SENTENCE IMMEDIATELY.

FACTS:

On June 29, 1989, appellant was charged by a Criminal Complaint with Disorderly Conduct, a violation of III CCOJ 413(g). The Criminal Complaint was signed by Daniel Schauer, Tribal Prosecutor.

The complaint specifically alleged as follows:

"On 6-28-89 at approximately 1630 hours, defendant was bothering & harassing people downtown by panhandling from others. defendant was warned earlier. Defendant was arrested and advised of of (sic) his rights.

The complaint also set forth two (2) witnesses: Mark Cady, BIA Law Enforcement and Kelly Brunelle, Roosevelt County Sheriff's Office.

On June 29, 1989, appellant was arraigned on the Disorderly Conduct charge. After being read his rights, appellant was asked to enter a plea. Appellant entered a plea of guilty. The tribal court then imposed a sentence of twenty (20) days confinement.

On July 3, 1989, appellant, having served five (5) days, was released from custody by Judge Boyd pending the appeal deadline of July 14, 1989. Release was made on appellant's own recognizance with a stipulation he not leave the jurisdiction of the tribal court without prior approval. On July 11, 1989, appellant appealed from the June 29, 1989 judgment entered by the tribal court by filing a Notice of Appeal.

On appeal, appellant raised the following issues:

1. Was Due Process of Law adhered to.
2. Did the trial court have jurisdiction.

This Court will address the appellant's two (2) issues in this opinion. Before addressing the two (2) issues, however, this Court must point out it does not believe it received all papers comprising the record in this case, ie, arrest warrant, judgment and etc. Failure of the Tribal Court clerks to provide the entire record in a case as required by I CCOJ 209 makes it extremely difficult for this Court to properly decide an appeal. In any event, based on the record before this Court, the following opinion shall be issued.

I.

Before addressing the first issue, this Court has jurisdiction over appellant's appeal even though he entered a plea of guilty under I CCOJ 205(a). This section reads as follows:

"(a) The defendant in a criminal case shall have an appeal as of right from a judgment of conviction. The Tribe shall have no right of appeal from a jury verdict of 'not guilty' in criminal cases, but shall have a right of appeal from a judgment of 'not guilty' rendered by the Tribal Court without a jury. Appeals in criminal cases shall be taken as provided in Section 206." (Emphasis Added).

After appellant entered his plea of guilty on June 29, 1989, the tribal court then entered a judgment of conviction. In this criminal case appellant has a statutory right of appeal from that judgment of conviction.

In addressing the first issue, appellant argues he was denied due process of law. In the instant case, the record before this Court reflects due process of law was afforded appellant.

On June 29, 1989, the tribal court conducted an arraignment of several defendants which included appellant. Appellant alleges that at the time of arraignment, the trial court failed to determine that he understood his rights, the nature of the offense charge, and the penalties involved. Before discussing the above in further detail, this Court will look at the section of the CCOJ governing arraignments.

Title II CCOJ 402 governs the requirements of an arraignment. This section reads as follows:

"(a) Arraignment is the bringing of an accused before the Court, informing him/her of his/her rights and of the charge against him/her, receiving his/her plea, and setting conditions of pre-trial release as appropriate in accordance with this Code.

"(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of Court.

"(c) Before an accused is required to plead to any criminal charges the judge shall:

"(1) Read the complaint to the accused and determine that he/she understands the complaint and the Section of the Tribal Code which he/she is charged with violating, including the maximum authorized penalty; and

"(2) Advise the accused that he/she has the right (a) to remain silent, (b) to have a speedy and public trial where he/she will be confronted with witnesses against him/her after he/she has had sufficient time to prepare his/her defense if he/she pleads "not guilty," (c) to be tried by a jury if the offense charged is punishable by imprisonment, and (d) to be represented by counsel at his/her own expense,

"(d) If the arrest was without a warrant, and the defendant is to be continued in custody, the judge shall also determine during arraignment whether there is probable cause to believe that an offense against Tribal law has been committed by the named accused.

"(e) The judge shall call upon the defendant to plead to the charge:

"(1) If the accused pleads "not guilty" to the charge, the judge shall then set a trial date and consider conditions for release prior to trial as provided in section 402.

"(2) If the accused pleads "guilty" to the charge, the judge shall accept the plea only if he/she is satisfied that the plea is made voluntarily and the accused understands the consequences of the plea, including the rights which he/she is waiving by the plea. The judge may then impose sentence or defer sentencing for a reasonable time in order to

obtain any information he/she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the Court prior to sentencing.

"(3) If the accused refuses to plead, the judge shall enter a plea of "not guilty" on his/her behalf."

In reviewing the transcript proceedings, the tribal court not only determined appellant understood his rights, the nature of the offense charged and penalties involved, but the transcript reflects appellant was afforded all of his rights under the applicable portions of II CCOJ 401. Pursuant to II CCOJ 401(c) (2), before appellant was required to enter his plea, the tribal court advised him of his rights under this section and determined he understood those rights. This colloquy between the tribal judge and appellant went as follows:

Judge Boyd: Court is now in session on the twenty-ninth day of June, 1989 at 10:45 a.m., for the purposes of arraignment. When I call you name, approach the bench. Richard Russell, Arlene Richer, Edgar Buck Elk, Ben Fast Horse, Merle Longee, and Leo Walking Eagle. Okay, you are going to be allowed to enter a plea of guilty to the or not guilty to the crime you are charged with having committed. If you plead not guilty to the crime you are charged with having committed, you have the following rights: the right to counsel at your own expense, the right to trial by jury f or any crime for which you may be imprisoned, the right to have the trial judge order into court all evidence and witnesses in your favor, the right to see, hear, and question all witnesses against you, the right to remain silent, the right to a speedy and public trial, the right to bail.

Richard Russell: Yes, Sir.

Judge Boyd: Arlene Ricker, do you understand your rights?

Arlene Ricker: Yes.

Judge Boyd: Edgar Buck Elk, do you understand your rights?

Edgar Buck Elk: Yes.

Judge Boyd: Benjamin Fast Horse, do you understand your rights?

Benjamin Fast Horse: Yes, Your Honor.

Judge Boyd: Merle Longee, do you understand your rights? Yes.

Merle Longee: Yes.

Judge Boyd: Leo Walking Eagle, do you understand your rights?

Leo Walking Eagle: Yes.

[Transcript p.1, 1.1 to p.2, 1.7.]

The transcript reflects the tribal court complied with II CCOJ 401(c)(I). First, the tribal judge had the tribal prosecutor read the complaint to appellant. Second, the tribal 413, to appellant. Finally, the tribal court advised appellant of the maximum authorized penalty for Disorderly Conduct and determined appellant understood all of the above in a colloquy which went as follows:

Daniel Schauer: Tribes versus Leo Walking Eagle. You are hereby charged in this complaint with committing the offense of Disorderly Conduct, which is in violation of Chapter four, Title three, Section 413(g), Fort Peck Tribal Code Of Justice. To wit, said Defendant did on or about the twenty-eighth day of June, 1989, in the Fort Peck Tribal jurisdiction; the Comprehensive Code of Justice, Title one, Chapter one, Section 106 gives this "Court jurisdiction. On 6/28/89 at approximately 1630 hours, Defendant was bothering and harassing people downtown by panhandling from others, Defendant was warned earlier. Defendant was arrested and advised of his rights. Witnesses to the offense: Mark Cady and Kelly Brunelle, BIA law Enforcement and Roosevelt County Sheriff's Office, and the Complaint signed by the Tribal Prosecutor.

Judge Boyd: Okay, I'm going read the, uh, section of the Code that's, uh, violation for disorderly conduct, everybody here has been charged with Disorderly Conduct, so I'm only going to read it this one time, so you can pay attention. Uh, disorderly conduct is in violation of, uh, Title three, Section 413. Who ever with intent to harass, alarm or annoy another person, or in wreckless (sic) disregard of the fact that another person is harassed or annoyed or alarmed by his or her behavior, creates a hazardous, physically offensive or seriously alarming condition by any act which serves no legitimate purpose, is guilty of disorderly conduct. Disorderly conduct is a class A misdemeanor, urn, punishable by maximum penalty of three months confinement, a five hundred dollar fine or both. Leo Walking Eagle, do you understand the charge against you?

Leo Walking Eagle: Yes.

Judge Boyd: What is your plea? Guilty or not guilty?

Leo Walking Eagle: Guilty.

[Transcript, p.3, 1.3-23.]

The CCOJ is quite clear on what is required of the Tribal Court prior to acceptance of a guilty plea from any defendant. Before accepting appellant's plea of guilty, the tribal court only needed to be satisfied that the plea was made voluntarily and he understood the consequences of his plea. The tribal court obviously did this, and in addition thereto, afforded appellant his opportunity to be heard prior to sentencing as required by II CCOJ 401(e) (2) in the following:

Judge Boyd: Do you have anything to say to the Court before sentence is passed?

Leo Walking Eagle: Yes, urn, I, I'm on monthly, uh, monthly, uh, income for Social Security. I get my check tomorrow and uh, I'd uh, like to ask the Court to gimme a fine, and I'll take care of it tomorrow, which is not twenty—four hours. My, my check comes up to three hundred and sixty-eight dollars, so I'll take care of my fine.

[Transcript, p. 3, 1.24 to p.4, 1. 7.]

In conclusion, the transcript of the June 29, 1939 arraignment proceedings reflects the tribal court complied with the applicable portions of II CCOJ 401. Therefore, appellant was afforded his rights under II CCOJ and due process of law.

II.

In addressing issue no. 2, in the instance case, the tribal court did have jurisdiction over appellant. However, this Court did have some reservations about the adequacy of the complaint prepared and filed by the tribal prosecutor.

Title II CCOJ 101 addresses the necessary contents of a criminal complaint. This section reads as follows:

"(a) A complaint is the written statement of the essential facts charging that a named individual has committed a particular criminal offense. All criminal prosecutions shall be initiated by a complaint filed with the Court signed by the prosecutor and sworn to before a judge. All complaints initiated by the prosecutor shall be based on probable cause that the crime charged happened and that the defendant(s) committed the crime charged. A judge shall have the authority to demand the filing of an information by the prosecutor or to hold a preliminary hearing to determine whether lawful probable cause as to the crime exists, and whether the appropriate defendant (s) exist prior to the issuance of a summons or warrant for the arrest of the defendants.

"(b) Complaints shall contain:

"(1) A written statement of the violation describing in ordinary language the nature of the offense committed, including the time and place as nearly as may be ascertained. Statements or affidavits by persons having personal knowledge may be expressly referenced in and attached to the complaints.

"(2) The name and description of the person(s) alleged to have committed the offense.

"(3) A statement describing why the Court has personal jurisdiction of the defendant.

"(4) A description of the offense charged.

"(5) The signature of the prosecutor sworn to before a judge.

"...."

The language in the complaint filed against appellant does meet the basic requirements of II CCOJ 101(b)(1), (2), (3), (4), and (5).

First, the complaint is a written statement of the violation alleged to have been committed by appellant describing in ordinary language the nature of the offense committed and included the time and place. Second, the complaint contained the name of appellant. Third, there was a statement describing why the Court has personal jurisdiction of the defendant. This statement reads: "The Comprehensive Code of Justice ,Title I, Chapter I, Sec.. 106 gives this court jurisdiction." Fourth, the complaint described the offense charged. Finally, the complaint contained the signature of the prosecutor before a tribal judge.

In scrutinizing the complaint in light of appellant's contentions, it was a concern of this Court whey the tribal prosecutor was not more specific in identifying appellant as an Indian and where appellant was alleged to have committed the offense within the boundaries of the Fort Peck Indian Reservation as part of the statement describing why the tribal court has personal jurisdiction. However, appellant did not raise the issues that he was non—Indian or that he committed the offense outside the boundaries of the Fort Peck Indian Reservation.

Another concern of this Court was whether the complaint was the adequate written statement of all the "essential facts" contemplated by II CCOJ 101(a). This Court is of the unanimous opinion that the complaint contains the "essential facts" contemplated by II CCOJ 101(a), however, it could have included a more specific description of the people appellant was "bothering & harassing downtown by panhandling to others." This specific description should have consisted of listing the people bothered and harassed by appellant as additional witnesses on the complaint and/or obtaining statements or affidavits from them and attaching the same to the complaint.

In conclusion, this Court finds the complaint filed by the tribal prosecutor meets the basic requirements of II CCOJ 101. As a result thereof, appellant was provided due process of law and any error on the part of the tribal prosecutor in not providing a more specific description of the people and/or obtaining statements or affidavits from them was "harmless".

IT IS THE UNANIMOUS DECISION OF THIS COURT TO AFFIRM THE JUDGMENT OF THE TRIBAL COURT AND APPELLANT'S CONVICTION FOR DISORDERLY CONDUCT UNDER III CCOJ 413(g). APPELLANT IS TO BEGIN SERVING THE BALANCE OF HIS SENTENCE IMMEDIATELY.

DATED this ____ day of January, 1990.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

Gary James Melbourne, Associate Justice

Floyd G. Azure, Associate Justice

