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

IN THE MATTER OF:

Fort Peck Tribes,
Plaintiff/Appellee

Appeal No. 450

VS

Sterling E. Red Eagle, Jr.,
Defendant/Appellant

ORDER CONCERNING APPEAL

On October 3, 2005, Defendant Sterling Red Eagle Jr., was charged with Rape a felony, in violation of CCOJ Title VII, Chapter 2, Section 220. The Honorable Robert Welch, Associate Tribal Court Judge conducted a jury trial on April 6 and 7, 2006, before. Mr. Red Eagle Jr., was convicted and sentenced to one year in jail. On April 27, 2006, he filed a Notice of Appeal, contending the Tribal Trial Court made four separate errors.

Appellant Red Eagle Jr.'s specific contentions are as follows:

1. The Court erred in permitting the alleged victim and her mother to remain in the courtroom during closing arguments because their crying and emotional displays were prejudicial to him.
2. The Court erred in refusing to allow the jury to have a copy of the code provision on Statutory Rape, CCOJ Title VII, Chapter 2, Section 221.
3. The Court erred in the manner in which jurors were summoned and selected.
4. The Court erred in refusing to strike the testimony of a witness who stated she had been threatened.

After a review of the record, we affirm on Issues 1, 2 and 4 and set a briefing schedule and

oral argument on Issue 3. Concerning Issue 1, we find no grounds for appeal since Appellant Red Eagle Jr. and his counsel did not object to the presence of the alleged victim and her mother at the time of the trial. On the second issue, we find the Tribal Trial Court was correct in refusing to allow a copy of the Statutory Rape code provision into the jury room. Appellant Red Eagle Jr. was charged with Rape, in violation of CCOJ, Title VII, chapter 2, section 220, not Statutory Rape in violation of CCOJ, Title VII, chapter 2, section 221. Nor did his counsel argue at trial that Statutory Rape was a lesser-included offense of the charge of Rape. Thus, there was no reason for the jury to have a copy of Section 221. Furthermore, it might have been confusing to the jury to be given a copy of a statute that Appellant Red Eagle Jr. was not charged with violating.

As for Issue 3, while the challenge is far from clear, because the manner of summoning and selecting jurors for criminal trials is of paramount importance, we find Appellant Red Eagle Jr. has raised a question that should be addressed on appeal.

Therefore, IT IS HEREBY ORDERED:

1. Appellant Red Eagle Jr. shall file a brief in support of his argument that the jury selection was flawed on or before February 28, 2007.
2. Appellee, Fort Peck Tribes shall file a response brief on or before March 9, 2007.
3. If Appellant Red Eagle Jr. chooses to file a reply brief, he shall do so on or before March 16, 2007.
4. This matter is set for oral argument on Monday March 19 at m., 2007.

DATED this 20th day of February, 2007

BY THE FORT PECK COURT OF APPEALS:

Brenda Desmond, Chief Justice

Gerard Schuster, Associate Justice

Joseph Raffiani, Associate Justice
