

**FORT PECK COURT OF APPEALS
ASSINIBOINE & SIOUX TRIBES
POPLAR, MONTANA**

FORT PECK TRIBES.)	
)	
Plaintiff/Appellant,)	Cause No. <u>491</u>
)	
-vs-)	
)	OPINION AND ORDER
JEREMY ADAMS,)	
)	
Defendant/Appellee.)	

Appearances:

Imogene Lilley, Prosecutor, , P.O. Box 1027, Poplar MT 59255, Counsel for Fort Peck Tribes, Plaintiff/Appellant.

Erin Shanley, Public Defender, P.O. Box 1027, Poplar, MT 59255, Counsel for Defendant/Appellee Jeremy Adams

On May 14, 2007 Appellant Fort Peck Tribes charged Appellee Jeremy Adams with Rape, in violation of Title VII, Chapter 2, Section 220 of the Fort Peck Comprehensive Code of Justice, (“CCOJ 2004”). A pre-trial hearing was held on June 20, 2007 and a jury trial was set for October 2, 2007.

At the pre-trial hearing the Tribes provided some discovery documents to Appellee Adams. Appellee Adams requested further discovery, including physical evidence

collected from both the victim and himself as well as investigative and medical reports. The Tribes agreed to provide those items soon. On September 24, 2007, Public Defender Shanley filed a Notice of Appearance on behalf of Appellee Adams as well as a request for discovery. On October 1, 2007 Public Defender Shanley filed a Motion in Limine requesting that the Court prohibit the Tribes from offering evidence that had not been provided to Appellee Adams, arguing that to allow the evidence to be admitted would violate Appellee Adams' rights to due process, effective counsel and confrontation. The Tribes opposed the Motion in Limine, asserting that the evidence in question was unavailable to the Tribes because it was in the possession of the United States government. Further, according to the Tribes, the trial should go forward because the Tribes had other evidence of guilt, such as testimony of the alleged victim and an eyewitness.

On October 4, 2007, the Tribal Trial Court granted the Motion in Limine and dismissed the matter without prejudice. The Tribes appealed.

We affirm the Tribal Trial Court. In a well-reasoned decision, the Tribal Trial Court determined that regardless of the existence of other evidence, the Tribes were unable to meet their burden of proof with testimonial evidence alone. Further, to allow the trial to proceed would be a violation of Appellee Adam's right to due process.

It appears that the Tribes, despite their best efforts, are unable to retrieve the evidence from the federal government. This places the prosecutor's office in a difficult position, but the solution does not lie in going forward with a trial when a defendant has not had the opportunity to examine all the evidence that has been collected, including possibly exculpatory evidence.

IT IS NOW, THEREFORE, THE ORDER OF THIS COURT THAT:

The Judgment of the Tribal Court is affirmed.

DATED this 24 day of ~~July~~ ^{September}, 2008.

FORT PECK COURT OF APPEALS

By: Brenda C Desmond
BRENDA DESMOND, Chief Justice

[Signature]
JOE RAFFIANI, Associate Justice