

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

FORT PECK TRIBES)	
)	
Plaintiff/Appellant,)	Appeal No. 497
)	
-vs-)	
)	OPINION AND ORDER
DALE DECOTEAU,)	
)	
Defendant/Appellee)	
)	
*****)	

Adrienne Weinberger, Prosecutor, Fort Peck Tribes, P.O. Box 1027, Poplar MT 59255, for the Office of the Tribal Prosecutor.

Mary L. Zemyan, Esq., 218 Third Avenue S., Wolf Point, MT 59201 for Mr. DeCoteau.

On November 15, 2007, the Tribes filed two criminal charges against Defendant/Appellee Mr. Dale DeCoteau, Hindering Law Enforcement in violation of Fort Peck Tribes Comprehensive Code of Justice, (“CCOJ”) Title VII Section 424 and Disorderly Conduct in violation of CCOJ Title VII Section 440. On December 20, 2007, Mr. DeCoteau filed a Motion to Dismiss the charges. The Motions were briefed and oral argument was held on January 18, 2008. On February 11, 2008, the Tribal Trial Court issued an Order granting Defendant’s Motion concerning the Disorderly Conduct charge based on freedom of speech but not that concerning the Hindering

Law Enforcement charge. The Tribes filed an appeal of the dismissal to this court on February 29, 2008.

On March 27, 2008, at the pre-trial hearing for the trial on the Hindering Law Enforcement charge, the Tribes requested that the trial be held in abeyance pending the outcome of the appeal of the Disorderly Conduct charge. The Tribal Trial Court did not rule on that request at the hearing, but later, on May 1, 2008 a clerk of court informed the Tribes that the trial would not be held in abeyance.

The Office of Tribal Prosecutor filed an Application for Writ of Supervisory Control on May 1, 2008. The Application requested that the Court of Appeals stay the jury trial set for May 6, 2008. After a review of the Application for Writ of Supervisory Control and finding merit therein, we set a briefing schedule on the Application and granted Petitioner's request to stay the trial. Oral arguments on the appeal were held on June 23, 2008. We find this case to be difficult due to the serious allegations against a person in high authority. However, we defer to and affirm the Tribal Trial Court for the reasons stated below.

We first address Mr. DeCoteau's argument that the CCOJ does not provide for an appeal by the Tribes in these circumstances. It is true that CCOJ Title II, Section 205 (a) limits the Tribes' right of appeal in criminal cases to appealing a judge's, not a jury's, not guilty determination. However, for purposes of the Tribes' right to appeal

we find the Tribal Trial Court's dismissal of a criminal complaint to be the equivalent of a judge's not guilty determination.

According to the Tribal Trial Court's Order on Motion to Dismiss, this prosecution arose out of alleged events in Wolf Point early in the morning of February 12, 2007. At 3:11 am, a Wolf Point City Police Officer initiated a traffic stop, stating he had seen a vehicle slide into an intersection. Upon speaking to the passenger and viewing the inside of the vehicle, the officer believed that the driver was under the influence of alcohol and that there were both open and unopened containers of alcohol in the vehicle. One of the passengers was the underage daughter of Mr. DeCoteau, who at the time was the Fort Peck Tribes Public Safety Director. She indicated she was going to call her father. The city officer called for backup from the Fort Peck Tribal Police. A Tribal police officer soon arrived and while the city officer was telling him what the situation was, Mr. DeCoteau arrived. Mr. DeCoteau remained in his vehicle, a patrol vehicle, and called out to the tribal officer to explain what had happened. The tribal officer said he did not yet know and asked the city officer to go speak to Mr. DeCoteau. According to the police officers, Mr. DeCoteau informed the city officer that he did not have jurisdiction over Indians and told him "to get the (expletive deleted) away from me." When the city officer continued speaking to Mr. DeCoteau, he allegedly responded in a threatening voice, "I said get the (expletive deleted) away

from me.” The city officer stated that he was going to report Mr. DeCoteau to his supervisor and left the scene.

Mr. DeCoteau contends that his statements to the officer cannot be the basis for a prosecution for the offense of Disorderly Conduct because his speech is protected under the Indian Civil Rights Act. He cites City of Houston v. Hill, 482 U.S. 451 (1987) in support of his argument. The Tribes agree that Mr. DeCoteau has freedom of speech rights, but argue that due to his position of authority in law enforcement, his speech in this particular situation is not protected. The Tribes cited the Tribes v. Red Fox (FPTCOA Appeal No 1, 1986) case, in support of their contention that Mr. DeCoteau’s speech rights are more restricted than those of ordinary citizens.

We agree with the Tribal Trial Court that Mr. DeCoteau’s speech was protected to the extent that he cannot be prosecuted for using obscene language against a police officer. Our decision in Red Fox is distinguishable because the speech in that case occurred in open court and constituted Contempt of Court. This case is more like City of Houston, in which the United States Supreme Court held that the First Amendment of the United States Constitution prohibited a city from criminalizing citizens’ making negative or interrupting statements to police. Under the provision in the Indian Civil rights Act similar to the First Amendment, 25 U.S.C. §1302 (1), we apply the interpretation of the Court in City of Houston to this case.

Assuming the facts are as presented in the Tribal Trial Court Order, we do not condone Mr. DeCoteau's conduct. While it is understandable that Mr. DeCoteau may have been very upset, as a parent, to receive the telephone call he did, in the middle of the night, Tribal members expect a higher level of behavior from public officials, especially those in law enforcement.

We also agree with the Tribal Trial Court that the charge of Hindering Law Enforcement should not be dismissed. The elements of that offense are not limited to speech and that prosecution should go forward.

Therefore, IT IS HEREBY ORDERED that the Tribal Trial Court's Order is affirmed and the Stay of Proceedings issued on May 5, 2008 is vacated.

DATED this 29 day of November, 2008.

FORT PECK COURT OF APPEALS

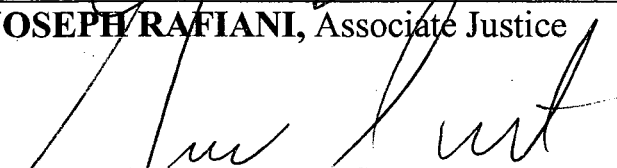
By:



BRENDA DESMOND, Chief Justice



JOSEPH RAFIANI, Associate Justice



GERALD SCHUSTER, Associate Justice

2-3-2009
Dr