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

**IN THE MATTER OF
FORT PECK TRIBES,
Plaintiff/Appellant,**

Appeal No. 209

vs.

**EDITH GRACE ADAMS,
Defendant/Appellee.**

THIS APPEAL is from a court verdict, entered on February 24, 1994, in which the Appellee, Adams, was found not guilty of the offense of operating a motor vehicle while under the influence of intoxicating liquor and/or drugs, Chief Judge A.T. Stafne presiding. The court had found that Ms. Adams was under the influence of alcohol at the time of the incident (Trans., p. 94), but found that the Tribes did not meet the burden of proving beyond a reasonable doubt that she was driving the vehicle. The court therefore found Adams not guilty (Trans., p. 94).

The Tribes appealed pursuant to 1 CCOJ Section 205 (a), which provides as follows:

"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."

Appearing for the Appellant, Fort Peck Tribe: Marvin K. Youpee, Prosecutor.

Appearing for the Appellee, Edith Grace Adams: Mary L. Zemyan, esq., Wolf Point, Montana.

HELD: JUDGMENT IS AFFIRMED. FINDING OF NOT GUILTY BY TRIBAL COURT IS AFFIRMED.

DISCUSSION:

The issue here is basic and simply stated as follows:

Whether the Tribal Court erred in finding that the prosecution failed to meet its burden of proof beyond a reasonable doubt.

It is the duty of the Tribal Court to weigh the testimony of the witnesses, to judge their credibility and to resolve conflicts in their testimony. 1 CCOJ Section 506.

On February 24, 1994, Chief Judge Stafne stated at the conclusion of the trial:

"...We had three witnesses who were all drinking. A lot has been made of the stories of the wind up of the cars. .after the accident. One person, who was not drinking, Leslie Atchiko. Leslie Atchiko testified that the defendant was drinking. We've already arrived at that decision. Leslie Atchiko also testified that she could not identify Edith as the driver when this car passed her on the four lane. She saw it. .she testified that she saw Edith driving when they were pushing the vehicle out. That's all she testified to of the defendant driving. As you are aware. .we're all aware. .this Tribes' burden beyond a reasonable doubt. .this does place the reasonable doubt in the mind of this Court. .at this time, we find the defendant not guilty.."

The standard of review in such cases is stated in 1 CCOJ Section 202:

"The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court. The Court of Appeals shall review de novo all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence."

This court will not set aside the factual findings of the Tribal Court, or substitute its judgment for such factual findings, absent an abuse of discretion. We find no such abuse of discretion here. Chief Judge Stafne heard and saw the witnesses and considered the testimony and evidence presented. Based on the testimony and evidence presented, he concluded that the Tribes had not met the burden of proof **beyond a reasonable doubt**. We will not substitute our judgment for the judgment of the trier of fact.

Appellee raises a collateral issue of violation of the Indian Civil Rights Act (Appellee Brief, April 25, 1994, issue 2). We do not rule on this issue, having affirmed the judgment of the Tribal Court on the first issue.

ACCORDINGLY, this Court hereby affirms the judgment of the Fort Peck Tribal Court that the Fort Peck Tribal Court and that the Defendant/Appellant, Adams, is not guilty of the offense of operating a motor vehicle while under the influence of intoxicating liquor and/or drugs.

DATED this 15th day of July, 1994.

FORT PECK TRIBAL COURT OF APPEALS

Gary M. Beaudry, Chief Justice

Gerard Schuster, Associate Justice

Gary Melbourne, Associate Justice
Abstaining
