

IN THE CROW COURT OF APPEALS**IN AND FOR THE CROW INDIAN RESERVATION****CROW AGENCY, MONTANA**

CRIM. APP. DKT. NO. 00-561/562

**CROW TRIBE OF INDIANS,
Plaintiff/Appellee,**

vs.

**GREG THREE IRONS,
Defendant/Appellant.**

Decision entered October 12, 2000

[Cite as 2000 CROW 9]

Before Stewart, C.J., Gros-Ventre, J., and Watt, J.

OPINION

¶1 This is an appeal by Defendant/Appellant Greg Three Irons from his conviction by the Tribal Court (Stovall, Special Judge) on April 10, 2000, of the offense of driving under the influence of alcohol or drugs under Crow Tribal Code Section 13-3-302.

A. Course of Proceedings

¶2 Mr. Three Irons was represented in his bench trial by the Tribal public defender. Mr. Three Irons was acquitted on the charge of possession of intoxicants in Case No. 00-562. On the DUI conviction in Case No. 00-561, the Tribal Court sentenced Mr. Three Irons to 10 days in jail (with credit for one day served), a fine of \$230, and 60 days supervised probation. Following sentencing, Mr. Three Irons requested and was granted release on a \$230 bond pending the outcome of this appeal. As a specific condition of this release, Judge Stovall directed Mr. Three Irons to stay in contact with the public defender during the appeal process.

¶3 Under the Crow Rules of Appellate Procedure, Mr. Three Irons' brief or statement in support of his appeal was due on or about June 5, 2000. When that date passed, this court extended the due date on its own motion to June 30. When no brief was filed by that time, this court issued a revised scheduling order recognizing that personnel changes in the

public defender's office had delayed progress on criminal appeals, and further extending the deadline to September 1, 2000. On that date, the new public defender notified the court that he would not be filing an appellate brief on Mr. Three Irons' behalf, because, after reviewing the entire record, he could not identify any substantive or procedural grounds for the appeal. The public defender also advised the court that he had not had any contact with the Mr. Three Irons since July 17.

¶4 After receiving the public defender's notification, this court issued an order directing Mr. Three Irons personally to show cause in writing why the appeal should not be dismissed. Mr. Three Irons has not responded to that show cause order.

B. Decision

¶5 In another case decided today, this court has held that indigent criminal appellants' due process rights under the Indian Civil Rights Act and Crow Tribal law are fully satisfied by the following procedure:

(1) the public defender is responsible for timely filing a notice of appeal if the defendant so requests;

(2) the appellant is responsible for staying in contact and cooperating with the public defender throughout the appeal process; (3) if the public defender notifies this court that he finds no merit in the appeal, or that he has not received sufficient cooperation from the defendant, he may be excused from having to file a brief, and this court will give the appellant an opportunity to file a brief *pro se*; and (4) in a criminal appeal, rather than dismissing for appellant's failure to file a brief, this court will conduct a full examination of the trial proceedings and review the conviction for clear error.

Crow Tribe v. Bull Tail, Crim. App. Dkt. No. 00-479/480/481, slip op. at page 6 (Oct. 2000); 2000 CROW 8, ¶ __.

¶6 Following the above procedure, the court will not dismiss the present appeal for the failure of the Mr. Three Irons and his counsel to file a brief. Instead, this court has conducted a full examination of the proceedings in the Tribal Court, including the videotaped trial held on April 10, 2000, and will render a decision on the merits of this case.

¶7 Under the Crow Traffic Code, "it is unlawful . . . for any person who is under the influence of alcohol, noxious fumes, narcotic drug, or any other drug to a degree which renders him incapable of safely driving a motor vehicle, to drive *or be in actual physical control* of a motor vehicle within the Crow Indian Reservation." Crow Tribal Code § 13-3-302 (1)(emphasis added). At trial, Mr. Three Irons' counsel argued that he could not be convicted of DUI when there was no direct evidence of him having driven the motor vehicle that he occupied when he was arrested.

¶8 According to the evidence at trial, Tribal police officers responded to a complaint from a Tribal member that there was a vehicle sitting in her driveway. Upon arriving at the scene, the officers found Mr. Three Irons passed out in the driver's seat with his foot on the brake, while the vehicle was running and in gear. Upon removing Mr. Three Irons from the vehicle, it began moving forward, and the officers had to take it out of gear and shut off the engine.

There was sufficient evidence to show that Mr. Three Irons was under the influence of alcohol, and after being transported to the jail, he refused to submit to field sobriety tests or chemical breath tests.

¶9 Although the prosecution did not present any witnesses who actually observed Mr. Three Irons driving the vehicle immediately before he was arrested, such proof is not required under the Tribal DUI statute quoted above. Rather, the prosecution only needed to prove that Mr. Three Irons was “in actual physical control” of the vehicle. In the circumstances of this case, a literal interpretation of the Tribal DUI statute is consistent with and necessary for the protection of the public safety that was jeopardized by Mr. Three Irons being completely incapacitated at the wheel of a vehicle that was running and in gear.

C. Conclusion

¶10 For the foregoing reasons, the judgment of the Tribal Court is **AFFIRMED**.

¶11 Pursuant to Rule 16 of the Crow Rules of Appellate Procedure, this court’s Mandate will issue automatically ten (10) days from the date of this decision, unless a motion for rehearing is filed and granted before that time. Mr. Three Irons is directed to contact the public defender on or before that time so that arrangements can be made to serve the remainder of his jail time that was stayed pending this appeal. This case is **REMANDED** to the Tribal Court for execution of the sentence.

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