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

FORT PECK ASSINIBOINE AND SIOUX TRIBES,
Plaintiff/Appellee,

vs.

Appeal No. 003

PATRICK LAVENDURE,
Defendant/Appellant.

THIS APPEAL is from the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Wolf Point, Montana, Associate Judge Violet E. Dubois.

FOR APPELLANT, Patrick Lavendure: Emmett Buckles, Lay Counselor, Poplar, Montana.

FOR APPELLEE, Fort Peck Tribes: Clayton Reum, Prosecutor, Poplar, Montana.

Briefs were not submitted by Appellant or Appellee. Oral Arguments were presented by Appellant's Lay Counselor, Emmett Buckles and Appellee Tribal Prosecutor, Clayton Reum on August 22, 1986.

OPINION by Daniel R. Schauer, Justice, joined by Julian H. Brown, Chief Justice, and Arnie A. Hove, Justice.

AFFIRMED AND HELD APPELLANT IN CONTEMPT OF COURT.

On September 19, 1984 Appellant, who was 26 years old, was charged with Statutory Rape of Shelly Porras, who was born May 17, 1970 and was 14 years old. Appellant was alleged to have put his penis in the girl's vagina and threaten her if she told what happened.

In a trial May 21, 1985 before the Honorable Violet E. Dubois, the court found the Appellant guilty. The court sentenced the Appellant to three (3) months, imposed a \$500.00 fine and ordered him to seek counseling at his own expense. Appellant presented what appeared to be the following two issues on appeal:

1. Whether Appellant was read his rights when arrested, and if he was not read his rights was there reversible error.

2. Whether Appellant's conviction for statutory rape of the young girl was supported by the evidence when she was suppose to have recanted or changed her story.

I.

Having reviewed the trial record and heard in open court the oral arguments, it was determined and admitted by Appellant there was no statement or confession made by Appellant which should have been suppressed. Furthermore, it was determined and admitted by Appellant that there was no illegally obtained evidence which should have been excluded by Title 2, Chapter 3, Section 305 of the Comprehensive Code of Justice. Therefore, Appellant's Issue No. 1 is without merit, has no bearing on the facts in Appellant's case and would not be reversible error.

II.

Appellant was charged with Statutory rape, a violation of Chapter 3, Section 1302, Fort Peck Tribal Code of Justice which has been recodified to Title 3, Chapter 2, Section 209 in the Comprehensive Code of Justice in the Assiniboine and Sioux Tribes. Section 209. reads in full as follows:

A person eighteen (18) years of age or over who engages in a sexual act (as defined in Section 208) with another person who is between the ages of twelve (12) and fifteen (15) years, inclusive, is guilty of statutory rape.

Statutory Rape is a Class A misdemeanor.

The evidence is uncontradicted. The Appellant was 26 years old at the time he committed the Statutory Rape of the victim who was 14 years old. On the record before the court and the oral arguments made, it would appear that Tribal Court had sufficient evidence before it to find the Appellant guilty. The Appellant's Motion To Appeal suggests that upon the questioning of Shelly Porras in the presence of Judge Violet E. Dubois, Iva Trottier, Patty Christian, Karen Hamilton, Lizzie Youngman and Emmett Buckles, she stated it was not Patrick Lavendure who had intercourse with her.

Rule 8 of the Fort Peck Tribal Court of Appeals Rules of Appellants procedure states, "The Court will not consider facts or arguments not presented to the Tribal Court..." The fact that the victim who supposed to have recanted, does not appear to be a fact considered by the Tribal Court, although, a transcript of the proceedings might have supported Appellant's allegations.

Therefore, the Court of Appeals having found no ground of dismissal, unanimously affirms the Appellant's judgment of conviction and sentence imposed by the Honorable Violet E. Dubois on May 21, 1985. Appellant is to begin serving his three (3) months immediately, pay the \$500.00 fine and seek counseling at his own expense as soon as he is released and within sixty (60) days of his release.

This Court must also address Appellant's failure to appear at the proceedings at the time directed by the subpoena.

Appellant was approximately 30 minutes late for oral arguments on August 22, 1936. Appellant was also held in Criminal

This section reads in part as follows:

All courts of the Assiniboine and Sioux Tribes have power to punish for Contempt of their authority the following offenses:

...(b) Disobedience or resistance to any process, order, subpoena, warrant or command of the court. Criminal Contempt is a Class A misdemeanor...

Appellant disobeyed a subpoena directing him to be at oral arguments at 1:00 P.M., August 22, 1986. Appellant is ORDERED to immediately begin serving thirty (30) days to run consecutively with the above sentence.

DONE this ____ day of August, 1986.

BY THE COURT OF APPEALS:

Julian H. Brown, Chief Justice

Daniel R. Schauer, Justice

Arnie A. Hove, Justice
