
**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. 019

JONNY LEE STIFFARM,
Defendant/Appellant.

THIS APPEAL is from a jury verdict finding Appellant guilty of CARRYING CONCEALED DANGEROUS WEAPON, a violation of Title III, Chapter 4, Section 401 of the Comprehensive Code of Justice of the Assiniboiné and Sioux Tribes (hereinafter CCOJ), in the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. Special Judge Cranston Hawley presided.

FOR APPELLEE: Emmett Buckles, Tribal Prosecutor, Poplar, Montana.

FOR APPELLANT: Ralph J. Patch, Attorney at Law, Wolf Point, Montana.

Appellant filed a brief with the Clerk of the Fort Peck Tribal Court. Appellee filed no brief. At the time for oral argument, Appellant and Appellee presented oral arguments.

OPINION by Arnie A. Hove, Chief Justice, joined by Daniel R. Schauer, Justice and Gary James Melbourne, Justice.

HELD: THE CONCEALED WEAPONS STATUTE IS NOT VAGUE ON ITS FACE TO THE POINT OF BEING UNCONSTITUTIONAL NOR DOES IT VIOLATE THE DEFENDANT'S DUE PROCESS RIGHTS GUARANTEED BY THE INDIAN CIVIL RIGHTS ACT OF 1968. APPELLANT'S CONVICTION AND SENTENCE IS AFFIRMED.

On March 13, 1986, Officer Andrew Azure signed a complaint alleging Appellant did commit the crime of Carrying a Concealed Weapon, a violation of Title III, Chapter 4, Section 401 of the Comprehensive Code of Justice of the Assiniboiné and Sioux Tribes (hereinafter CCOJ). On that date Officer Azure received a call from the Tribal Office concerning an incident where Appellant was alleged to have pulled a weapon on Councilman Weeks and Councilman Culbertson. Officers Osgood and Azure investigated this incident and asked Jonny Lee Stiffarm if she had a gun. Appellant admitted having a gun and pulled it out of her coat and showed it to the officers. When asked if she had a license to carry the gun the Appellant stated she did not need a license under the code.

On March 13, 1986, Councilman Weeks signed a complaint alleging Appellant did commit the crime of Disorderly Conduct,

a violation of III CCOJ 413. Councilman Weeks alleged that Appellant did point a gun at Councilman Culbertson and after putting the gun back in her pocket pointed her finger at him and stated, "Don't ever fuck with me or screw with me, your next if you ever mess with me."

On March 13, 1986, Councilman Culbertson signed a complaint alleging Appellant did commit the crime of Simple Assault, a violation of III CCOJ 215. Councilman Culbertson alleged Appellant pulled a hand gun on him and told him "Don't fuck with me."

The crimes of Carrying a Concealed Weapon, Disorderly Conduct, and Simple Assault are Class A Misdemeanors under the CCOJ.

A trial by jury was held on May 7, 1986. After the Prosecutor presented the Tribe's case, Judge Cranston Hawley entertained and granted Appellant's motions to dismiss the crimes of Disorderly Conduct and Simple Assault. Appellant was found guilty of Carrying a Concealed Weapon by a five to one vote of the jury.

On May 20, 1986, Appellant by and through her attorney, Ralph J. Patch filed a written Notice of Appeal appealing the Honorable Cranston Hawley's denial of Appellant's motion to dismiss the charge of Carrying a Concealed Dangerous Weapon on the grounds that the statute in question was unconstitutionally vague. The Notice of Appeal based the grounds for the appeal on one (1) Issue. Appellant's Brief presented two (2) issues which were as follows:

1. Whether the Concealed Weapons statute contained in the Comprehensive Code of Justice of the Fort Peck Assiniboine/Sioux Tribes is vague to the point of being unconstitutional on its face.
2. Whether the application of the Concealed Weapons statute contained in Comprehensive Code of Justice of the Fort Peck Assiniboine/Sioux Tribes is a violation of the Defendant's Due Process rights guaranteed by the Indian Civil Rights Act of 1968.

Before addressing the Appellant's two (2) issues, the court will address the following issue:

Whether the Fort Peck court of Appeals has jurisdiction to hear this appeal, and if so, whether Appellant's Notice of Appeal meets the requirements of I CCOJ 206(a) and (c).

I.

Whether the Fort Peck Court of Appeals has jurisdiction to hear this appeal, and if so, whether Appellant's Notice of Appeal meets the requirements of I CCOJ 206(a) and (c).

This court has jurisdiction of appeals as granted in I CCOJ 202. I CCOJ 202 reads in part as follows:

"Jurisdiction of Court of Appeals.

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 has jurisdiction over appeals from final orders and judgments of the Tribal Court. In criminal cases, the defendant is given the right to appeal from a judgment of conviction. The Tribe is also given the right to appeal in certain circumstances. The Tribe's right to appeal under I CCOJ 202 in this case will be discussed. I CCOJ 205 reads in part as follows:

"Right of Appeal.

(1) Criminal Cases. The defendant in a criminal case shall have an appeal as of right from a judgment of conviction. 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. Appeals in criminal cases shall be taken as provided in Section 206."

The jury verdict of guilty is a judgment of conviction and Appellant has exercised her absolute right to appeal the same. Therefore, if Appellant has followed the requirements of Section 206, her appeal must be granted. The Appellant filed a written Notice of Appeal. I CCOJ 206(a) sets forth the procedure on appeal of criminal cases and CCOJ 206(c) sets forth the requirements of the notice of appeal. These sections read:

Sec. 206. Procedure on appeal of criminal cases.

(a) Time to appeal and how to appeal. An appeal must be taken within (15) fifteen days from the judgment appealed from by filing a written notice of appeal with the Clerk of the Fort Peck Tribal Court. No extension of the (15) fifteen day period shall be granted.

...

(c) Notice of appeal. The notice of appeal shall specify the party or parties taking the appeal, shall designate the judgment, or part thereof appealed from, and shall contain a short statement of reasons for the appeal. The Clerk shall mail a copy of the notice of appeal to all parties other than parties taking the appeal....

The Appellant's Notice of Appeal was filed when the fifteen (15) days and meets the requirements of I CCOJ 206(c). Because of the above and as previously stated, this Court has jurisdiction over this appeal.

II.

Whether the Concealed Weapons statute contained in the Comprehensive Code of Justice of the Fort Peck Assiniboine/Sioux Tribes is vague to the point of being unconstitutional on its face.

The Appellant was found guilty of violating III CCOJ 401, Carrying Concealed Dangerous Weapon. This statute reads:

Sec. 401. Carrying a concealed dangerous weapon.

Whoever carries, concealed about his or her person, any of the following weapons, unless they are carried with specific governmental approval, is guilty of carrying a concealed dangerous weapon:

(a) any blackjack, billy, bludgeon, metal knuckles, or any knife with a blade over six (6) inches long or other sharp or dangerous instrument usually employed in the attack or defense of a person; or

(b) any gun or dangerous firearm, whether loaded or unloaded.

Appellant contends that the above statute is unconstitutionally vague and indefinite. Appellant argues and states, "the criminal statute in question, as it stands, while it may afford the Defendant some idea as to why and accusation is made, it does not leave the defendant with the knowledge necessary to know how to comport her actions to avoid the penalty of this vague statute." This Court disagrees with Appellant's contention.

In deciding whether this statute is unconstitutionally vague, Appellant recommends that this Court adopt the test contained in State vs. Huffman, 612 P.2d 630 (1980), which is set forth as follows:

"The test to determine whether a criminal statute is unconstitutionally vague and indefinite is whether its language conveys a sufficiently definite warning as to the conduct proscribed when measured by common understanding and practice. A statute which either requires or forbids doing of an act in terms so vague that persons of common intelligence must necessary guess at its meaning and differ to its application is violative of due process." 612 P.2d 630 at 636.

This Court has not formally adopted a test to determine whether a criminal statute is unconstitutionally vague and indefinite. The test in State vs. Huffman is basically the test used in all jurisdictions to determine whether a criminal statute is unconstitutionally vague and indefinite. Therefore, this Court will follow Appellant's recommendation and adopt the test in State vs. Huffman.

It has been established that whenever a challenge on the basis of vagueness is made to a criminal statute, and that statute does not involve First Amendment freedoms it must be examined in the light of the facts of the case at hand. United States vs. National Dairy Products Corp., 372 U.S. 29, 83 S.Ct. 594 (1963).

The facts of this case are that Appellant pulled a hand gun from her jacket pocket and pointed it at Councilman Culbertson and told him, "Don't fuck with me." Appellant then put the gun back in her pocket and pointed her finger at Councilman Weeks and stated, "Don't ever fuck with me or screw with me, your next if you ever mess with me. Officers Osgood and Azure entered the Tribal Executive Council Board's chambers and Appellant showed the Officers the hand gun. When Officer Azure asked Appellant if she had a license, she informed them she did not need a license to carry a gun under the code.

An underlying principle of criminal law is that all are entitled to be informed as to what the state commands or forbids and no one should be required, at peril of life, liberty, or property, to speculate as to the meaning of penal statutes. Fundamental fairness requires that no person be held criminally responsible for conduct which he could not reasonably understand to be proscribed. 21 Am Jur 2d, Section 16, Page 128 et seq. III CCOJ 401 is clear in that it informs all Indians on the Fort Peck Indian Reservation that they are forbidden to carry concealed weapons specifically described therein. The only exception to this statute is the Indian that carries the concealed weapon with "specific governmental approval."

A criminal statute may be challenged as indefinite where the uncertainty has to do with what persons are within the scope of the act, what acts are prohibited, or what acts are excepted from the prohibition. Similarly, uncertainty as regards the penalty may make a criminal statute unenforceable. 21 Am Jur 2d, Section 17, Pages 128-129 et seq.

In the present case, the persons within the scope of III CCOJ 401 are Indians living on the Fort Peck Indian Reservation. (See I CCOJ 106). The acts prohibited are the carrying of concealed weapons described in III CCOJ 401 without specific governmental approval. The acts excepted are the carrying of those concealed weapons described in III CCOJ 401 with specific governmental approval. The only governments one could reasonable infer that could give such approval would be the Tribe and the BIA for the purposes of law enforcement. Furthermore, the Tribal Executive Board could adopt a system for the issuance of permits to Indians on the Fort Peck Indian Reservation and has not adopted such a system. Therefore, III CCOJ 401 is not indefinite or vague on its face.

As stated above, Appellant argued that III CCOJ 401 does not leave Appellant with knowledge necessary to know how to comport her actions to avoid the penalty of this vague statute. The analysis above demonstrates Appellant's argument is without merit in that Appellant, an enrolled member of the Fort Peck Indian Reservation, should not have been carrying the concealed hand gun without specific governmental approval.

III.

Whether the application of the Concealed Weapons statute contained in Comprehensive Code of Justice of the Fort Peck Assiniboine/Sioux Tribes is a violation of the Defendant's Due Process rights guaranteed by the Indian Civil Rights Act of 1968.

Appellant's Issue No. 2 was actually addressed in this Court's discussion of Issue No. 1. III CCOJ 401 is not vague on its face to the point of being unconstitutional. Therefore, it is the opinion of this Court that the application of III CCOJ 401 to Appellant is not a violation of Appellant's Due Process rights guaranteed by the Indian Civil Rights Act of 1968.

A final matter this Court will address is the dismissal of the charges of Disorderly Conduct under III CCOJ 413 and Simple Assault under III CCOJ 215 by the Tribal Court Judge when a jury trial was in progress. The Disorderly Conduct statute reads:

Sec. 413. Disorderly conduct.

Whoever, with intent to harass, alarm or annoy another person, or in reckless disregard of the fact that another person is harassed, annoyed or alarmed by his or her behavior:

- (a) engages in fighting, or in violent, tumultuous, or threatening behavior;
 - (b) makes unreasonable noise;
 - (c) in a public place, uses abusive or obscene language, or makes an obscene gesture;
 - (d) obstructs vehicular or pedestrian traffic, or the use of a public facility;
 - (e) persistently follows another person in or about a public place or places;
 - (f) solicits sexual activity as defined in Section 208 while loitering in a public place; or
 - (g) creates a hazardous, physically offensive, or seriously alarming condition by any act which serves no legitimate purpose
- is guilty of disorderly conduct.

The Simple Assault statute reads:

Sec. 215. Simple Assault.

A person who

- (a) intentionally cause bodily injury to another; or
- (b) recklessly or negligently causes bodily injury to another with a deadly weapon; or
- (c) attempts by physical menace to put another in fear of serious bodily harm, or by physical menace causes another to harm himself or herself

is guilty of assault.

III CCOJ 103 places the Burden of Proof on the Tribe in criminal cases to prove each element of an offense beyond a reasonable doubt. In the transcript, the Tribal Prosecutor proved the elements of III CCOJ 413(a), (b), and (g) to support the charge of Disorderly Conduct and proved the elements of III CCOJ 215(c) to support the charge of Simple Assault.

The elements were proven by the eyewitness testimony of Councilmen Weeks and Culbertson and Officers Azure and Osgood. This testimony was direct and circumstantial evidence in support of the charges and would properly support a finding of guilty by a jury. Because of the evidence, the Tribal Court Judge was in error to have dismissed the charges.

The Judge's dismissal of the charges of Disorderly Conduct and Simple Assault was in effect a "judgment of not guilty" rendered by the Tribal Court without a jury on each of the same. The Tribal Prosecutor had the right to appeal the dismissed

charges under I CCOJ 205 and should have done so in view of the eyewitness's testimony.

IT IS THE UNANIMOUS DECISION OF THIS COURT TO HOLD THAT THE CONCEALED WEAPONS STATUTE IS NOT VAGUE TO THE POINT OF BEING UNCONSTITUTIONAL ON ITS FACE NOR DOES IT VIOLATE THE DEFENDANT'S DUE PROCESS RIGHTS GUARANTEED BY THE INDIAN CIVIL RIGHTS ACT OF 1968. THEREFORE, APPELLANT'S CONVICTION AND SENTENCE IS AFFIRMED. THE APPELLANT RECEIVED A \$100.00 FINE AND 10 DAY SUSPENDED JAIL SENTENCE AND WAS TO FORFEIT THE GUN TO THE COURT FOR DISPOSITION.

DONE this _____ day of August, 1987.

BY THE COURT OF APPEALS:

ARNIE A. HOVE, Chief Justice

DANIEL R. SCHAUER, Justice

GARY JAMES MELBOURNE, Justice
