
**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. 028

HENRY LaROQUE,
Defendant/Appellant.

THIS APPEAL is from the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. Lawyer/Judge Ronald H. Hodge presided.

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

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

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

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

REVERSED AND REMANDED TO TRIBAL COURT FOR A NEW TRIAL.

On August 10, 1986, Ronald G. Keiser signed a complaint alleging Appellee did commit the crime of Theft, a violation of III CCOJ 304, when on or about the 19th or 20th of July he did see Henry LaRoque take four (4) guns out of his house. Mr. Keiser also claimed to be missing a diamond ring, 3 diamonds, a watch, 2 gold chains and a gold eagle.

A trial by judge was held on December 17, 1986, and Appellee was acquitted. Lawyer/Judge Ronald H. Hodge granted a Motion for Judgment of Acquittal submitted by Appellee's attorney Ralph J. Patch of Wolf Point. On December 22, 1986, Appellant by and through the Tribal Prosecutor, Emmett Buckles, did file a written notice of appeal appealing the reasons upon which the Tribal Court granted the Motion for Judgment of Acquittal. The notice of appeal based the grounds for the appeal on two (2) issues. The issues were as follows:

"1. Ronald Keiser did know Henry LaRoque for 34 years and did see Henry LaRoque carry

his guns from Ronald Keiser home to Henry LaRoque pick-up?"

"2. That the Motion for Judgment of acquittal was wrote up 10th day of October, 1986 the only thing changed is the 10th to 17th and month from October to December."

I.

In criminal cases, the Tribes are given the right to appeal in certain circumstances. Title I, Section 205 of the Comprehensive Code of Justice of the Assiniboine and Sioux Tribes (hereinafter CCOJ) 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 Tribes filed a written notice of appeal which basically meets the requirements of I CCOJ 206. 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...."

Because of the above, this Court has jurisdiction of this appeal in that the Motion for Judgment of Acquittal was granted and is in effect a judgment of "not guilty" rendered by the Tribal Court without a jury.

III CCOJ 103 places the Burden of Proof on the Tribe in criminal cases and reads in full as follows:

"Burden of proof.

(a) The Tribes have the burden of proving each element of an offense beyond a reasonable doubt.

(b) Whenever the defendant introduces sufficient evidence of a defense to support a reasonable belief as to the existence of that defense, the Tribes have the burden of disproving such defense beyond a reasonable doubt, unless this code or another ordinance expressly requires the defendant to prove the defense by a preponderance of evidence."

In having set forth what this Court feels is the applicable law in this case on jurisdiction and Appellant's grounds for appeal,

the Court will now address the first issue as it understands the issue. The issue appears to be as follows:

1. Whether Appellant (the Tribes) failed to sustain the burden of proof and prove each element of the offense beyond a reasonable doubt.

The law under which Appellee was charged and acquitted was III CCOJ 304 and reads in full as follows:

"Theft.

Whoever:

(a) intentionally takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof; or

(b) intentionally obtains the property of another by misrepresentation or deception; or

(c) intentionally obtains the property of another by threat; or

(d) receives, retains or disposes of the property of another knowing that it has been stolen or believing that it has probably been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner; or

(e) comes into control of property of another than the defendant knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, and with intent to deprive the owner thereof, fails to take reasonable measures to restore the property to a person entitled to have it; or

(f) intentionally obtains services, known by the defendant to be available only for compensation, by avoiding payment for the services, or, having control over the disposition of services of another to which he or she is not entitled, knowingly diverts those services to the defendant's own benefit or to the benefit of another not entitled thereto; or

(g) intentionally disposes of, uses, or transfers any interest in property which has been entrusted to the defendant as a parent or guardian of a minor, or for any other reason, for other than the purpose or purposes for which the property was placed in trust; or

(h) intentionally misbrands or alters any brand or mark on any livestock of another person is guilty of theft.

Conduct denominated "theft" in this Section constitutes a single offense embracing the several offenses heretofore known as embezzlement, extortion, fraud, larceny, receiving stolen property, misbranding, and the like.

Theft is a felony if the amount involved exceeds \$100. Otherwise, it is a Class A

misdemeanor."

On December 17, 1986, and after the prosecution had presented its case, Appellee's Motion for Judgment of Acquittal was granted for the following reasons:

1. That the Tribes failed to introduce substantial evidence of an essential element to the offense charged, this being that the Tribes through their prosecutor have failed to show that at any time the Defendant, Henry LaRoque, intentionally took or exercised control over the property of the alleged victim;
2. They have further failed to show any evidence that a crime took place; and
3. The Tribes and their prosecutor have utterly failed to show any evidence other than circumstantial that Henry LaRoque was at any time exercising control over the property of Ron Keiser on the date and time in question.

Upon reviewing the transcript, pleadings and other documents filed in the case, reasons No. 1 and 2 were clearly erroneous and inappropriate to grant an acquittal. In the transcript, there is substantial evidence that Appellee intentionally took or exercised control over the property of the alleged victim in that Ron Keiser seen Appellee take his guns from his home to Appellee's pickup. Ron Keiser attempted to retrieve the guns from Appellee, his friend, and was unable to do so. (Furthermore, Judy White while working at the Highway Market in Wolf Point, testified that Appellee tried to sell her husband a . 243? that may have been taken from Ron Keiser's home.) Finally and in answer to reason No. 2, if guns are missing from a home and an individual was seen removing the guns, how can it be said that there was no evidence that a crime took place.

The Tribal Court's determination that the Tribe failed to introduce substantial evidence that an essential element of the offense charged was erroneous. Furthermore, The Tribal Court's determination that the Tribe failed to show any evidence that a crime took place was also erroneous. Therefore pursuant to I CCOJ 202, this Court must set aside the factual determination of the Tribal Court in that it is not supported by substantial evidence.

Before proceeding into the discussion on whether the Motion for Judgment of Acquittal was proper for reason No. 1., it is necessary to define what is direct evidence and what is circumstantial evidence. Ballentine's Law Dictionary (1969) defines each as follows:

Direct Evidence. Proof which speaks directly to the issue, requiring no support by other evidence; proof in testimony out of the witness' own knowledge, as distinguished from evidence of circumstances from which inferences must be drawn if it is to have probative effect.

Circumstantial Evidence. Facts and circumstances surrounding a transaction from which the jury or trier of the fact may infer other connected facts which reasonably follow, according to the common experience of mankind.

In addressing reason No. 3, there is direct testimony by Ronald Keiser that he observed Appellee removing the four (4) rifles from his home to Appellee's pick-up. Although Ronald Keiser found several other items missing from his home, he did

not see Henry LaRoque removing those items. This testimony is consistent with the Complaint signed by Mr. Keiser and in the Court's file. Ronald Keiser also testified that he and Mr. LaRoque were friends and that he went to Mr. LaRoque's residence to attempt to recover his weapons. Mr. Keiser observing Appellee remove Mr. Keiser's guns from Mr. Keiser's residence and Appellee not having and/or refused to return the same residence demonstrates Appellee intentionally exercised control over property of the victim, that a crime took place and was evidence other than circumstantial that Appellee exercised control over property of Ron Keiser on the date and time in question.

However, there is circumstantial evidence in testimony by Judy White which was offered by Appellant. Judy White who worked at the Highway Market in Wolf Point was approached by Appellee to purchase a rifle. Judy White did testify that Appellee offered to sell to her husband a .243 rifle for the sum of \$200.00 which is at least the same caliber as the gun taken from Mr. Keiser's residence.

Pursuant to I CCOJ 202, this Court has reviewed the Tribal Court's determination on the matter of law concerning direct and circumstantial evidence. Therefore, this Court rules that the Motion for Judgment of Acquittal was erroneously granted for reason No. 3 in that eyewitness testimony is direct evidence under the definitions hereinabove set forth.

II.

The second issue presented by Appellant is basically asking whether the Tribes were prejudiced by the different dates on the Motion for Judgment of Acquittal. This issue is meritless and this court will not expend time in addressing the same.

THEREFORE, IT IS THE UNANIMOUS DECISION OF THIS COURT TO ORDER THAT THE MOTION FOR JUDGMENT OF ACQUITTAL GRANTED BY THE TRIBAL COURT BE REVERSED. THIS CASE IS HEREBY REMANDED TO THE TRIBAL COURT FOR A NEW TRIAL.

DATED this ____ day of March, 1987.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

Gary James Melbourne, Justice

Daniel R. Schauer, Justice
