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

FORT PECK ASSINIBOINE AND SIOUX TRIBES,
Petitioner/Appellant,

vs.

Appeal No. 075

JOHN STORMY,
Respondent/Appellee,

THIS APPEAL is from the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. The Honorable Terry Boyd presided.

FOR APPELLANT: Ron Arneson, Special Prosecutor, P. O. Box 1133, Wolf Point, Montana 59201.

FOR APPELLEE: Melissa G. Melton, Lay Advocate, P. O. Box 214, Wolf Point, Montana 59201.

CRIMINAL: PURSUANT TO I CCOJ 205(a) THE TRIBES HAVE A RIGHT TO APPEAL FROM A JUDGMENT OF "NOT GUILTY" RENDERED BY THE TRIBAL COURT WITHOUT A JURY; AND THERE WAS SUBSTANTIAL EVIDENCE TO CONVICT APPELLEE THEREFORE HE IS ADJUDGED GUILTY.

ARGUED: June 23, 1989. **DECIDED:** June 23, 1989.

Opinion by Arnie A. Hove, Chief Justice, joined by Gary James Melbourne, Associate Justice and Floyd Azure, Associate Justice.

HELD: THERE WAS SUBSTANTIAL CREDIBLE EVIDENCE TO SUPPORT A FINDING OF GUILTY AND THEREFORE THE FACTUAL DETERMINATION OF THE TRIBAL COURT THAT APPELLEE WAS NOT GUILTY IS SET ASIDE. APPELLEE IS HEREBY ADJUDGED GUILTY OF THE OFFENSE OF NEGLECT OF A CHILD, A VIOLATION OF III CCOJ 214(d) AND THIS MATTER IS REMANDED TO TRIBAL COURT FOR IMPOSITION OF AN APPROPRIATE SENTENCE WITHIN THIRTY (30) DAYS OF THE FILING OF THIS OPINION.

FACTS:

On or about March 11, 1989, the Appellee was charged with the offense of Child Neglect, a violation of III CCOJ 214(d).

Neighbors reported to the Roosevelt County Sheriff's Office that Appellee was intoxicated and tried to fight the male occupant in Apt #6, yelling at 2 small children in his apartment and leaving them alone while he went to get booze. Appellee was to alleged to have been belligerent and refused to let investigating officers into the apartment to check on the children's safety.

Upon entering the apartment, the officers observed beer cans on the floor and table and an empty pint of liquor on the table. Appellee and his co—defendant, Anna Crazy Bull were arrested for neglecting the children in their apartment while in an intoxicated condition. The young children, one a baby in diapers, were temporarily removed from the home.

On March 13, 1989, Appellee entered a plea of not guilty. On April 13, 1989, a bench trial was held. The trial was a joint trial with co—defendant Anna Crazy Bull. As witnesses, Appellant called Deputy Sheriff Mike Lamay and a BIA Sergeant John Yellowrobe. As a witness, Appellee called Anna Crazy Bull.

Upon hearing the testimony and reviewing any evidence, the Honorable Terry Boyd stated, "With respect to John Stormy, I think that the prosecution has failed to prove anything other than that he was present outside the apartment so I will find John Stormy not guilty on the charge of Child Neglect." The Tribes appeal from the verdict of not guilty rendered by the tribal court. In filing a Motion for Appeal of a finding of Not Guilty in a Judge Trial on a Charge of Neglect of a Child on April 17, 1989, Special Prosecutor stated, "The Tribe has an appeal right from a judgment of "not guilty" by a judge of the Tribal Court , I CCOJ 205(a). The reason for the appeal is there was evidence beyond a reasonable doubt of guilty as charged of the within defendant."

The sole issue presented by Appellant and to be addressed by this Court is as follows:

"Whether there was substantial credible evidence to support the tribal court's finding 'that the prosecution has failed to prove anything other than that he was present outside the apartment so I will find John Stormy not guilty on the charge of Child Neglect.

The issues raised by Appellee were as follows:

"1. The arrest was made in absence of a warrant as well as absence of personal knowledge as required by the Comprehensive Code of Justice in regards to a misdemeanor.

"2. Written statements/affidavits of persons with personal knowledge were not attached to or referenced in the Complaint.

"3. Probable Cause is not proper basis for arrest in a misdemeanor Nor is it conclusive evidence that a crime was committed.

"4. The witnesses provided at the trial be prosecution were the arresting officers who in testimony could not offer any evidence that an actual crime had been committed by the Appellee."

The Tribes have a right to appeal in a criminal case as provided in I CCOJ 205 which reads in part as follows:

"(a) 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 by and through their Special Prosecutor Ron Arneson have appealed from a judgment of "not guilty" rendered by the Tribal Court without a jury. The Motion for Appeal of a Finding of Not Guilty in a Judge Trial on a charge of Neglect of a Child was filed on April 17, 1989 and within the required fifteen working days from the judgment appealed from as required by I CCOJ 206. In addition thereto, the motion complies with I CCOJ 206(c) in that it specifies the party taking the appeal, designates the judgment appealed from and contains a short statement of reasons for the appeal. Therefore, pursuant to I CCOJ 202 this Court has jurisdiction to hear this appeal.

Title I CCOJ 202 reads in part as follows:

"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...."

In the instant case, the issue is whether the factual determination, the Tribal Court's determination that Appellee was not guilty, is supported by substantial evidence. The only evidence this Court has to review is the trial transcript of the testimony of Appellant and Appellee's witnesses. The following will review the testimony of each of the prosecution's witnesses to determine if there is substantial evidence to support the tribal court's determination that Appellee is not guilty of violating III CCOJ 214(d).

As stated above, Appellee was charged with "Neglect of a child", a violation of III CCOJ 214(d). This statute reads as follows:

"Any parent, guardian, or custodian of a child under eighteen (18) years of age who neglects that child as defined in Section 102(d) of Title V of this Code shall be guilty of neglect of a child.

Neglect of a child is a Class A misdemeanor.

Title V CCOJ 102 reads in part as follows:

" ...

"(d) Neglected child. A child:

(1) whose parent, guardian or custodian fails to provide the minimal care which a

reasonably prudent parent would provide in the circumstances for the subsistence, education, and welfare of the child; or

(2) who has special physical or mental conditions for which the child's parent, guardian or custodian neglects or refuses to provide a reasonable level of special care; or

(3) whose parent, guardian or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity.

A child shall not be deemed neglected if the reason for failing to provide adequate care for the child is the indigence of the parent or guardian.

Minimal care shall mean provision of adequate food, clothing, shelter, medical care, and day-to-day supervision. In determining whether minimal care has been provided, the Court shall apply the standards prevailing in the community.

" "

The testimony of Mike Lamay established that it was reported to the Roosevelt County Sheriff's Office the baby in the apartment may have been neglected during the day. This testimony went as follows:

Ron Arneson: And would you describe for us what the dispatcher told you?

Mike Lamay: He said that there is a disturbance ... the neighbors called ... I cannot remember the name of the individual that called but he stated that they called and said that Anny Crazy bull (sic) and them ... there was a Bordeaux and a White Hawk, I believe ... Bordeaux and White Hawk were the neighbors that called and said that they were having some kind of a dispute with Anna Crazy Bull and her boyfriend or her husband and that there were children involved. The children had been screaming all day and that they were all drunk and intoxicated (sic) and everything.

Ron Arneson: Do you recall about what time this was and also, the date of this day?

Mike Lamay: I do not recall the day, as I said it was shortly after shift change between probably two (2) and three-thirty (3:30).

Ron Arneson: Okay!

Mike Lamay: In the afternoon."

[Trial Transcript, Page 8, Line 23 to Page 9, Line 16.]

Officer Lamay's testimony establishes several factors which warrant setting aside of the factual determination of the tribal court that Appellee was outside the apartment and therefore not guilty. Officer Lamay's testimony established the following: (1) his observations of Appellee and the apartment confirmed what was reported to the Roosevelt County Sheriff's Office; (2) upon attempting to enter the apartment he and other officers were met at the door by Appellee who was inside the apartment; (3) Appellee was drunk and unresponsive; (4) Appellee had to be arrested since he refused to allow the officers to enter the apartment and check on the welfare of the children; (5) Officer Lamay took Appellee to the car and had to forcibly place him in the same; and (6) Officer Lamay could hear a baby crying in the apartment from the car while he was with Appellee (Trial Transcript, Page 14, Lines 16—18).

In reviewing the testimony of BIA Sgt. John Yellowrobe, it was consistent with the testimony of Officer Lamay and confirmed that neighbors had reported to the Roosevelt County Sheriff's Office that Appellee was drunk and the baby may have been neglected during the day. Yellowrobe's testimony went as follows:

- Ron Arneson: Would you describe for us how you first came in contact with the defendants on or about the date of 3-13-89.
- John Yellowrobe: Yes. I called to the Mack Lack apartments on a disturbance and on arrival, Mr. Bordeaux and Ms. White Owl came out and advised us that the kids had been crying all day and that Mr. Stormy had been over bothering Mr. Bordeaux, trying to fight him. At that point, they said the kids were in there for sure but that they weren't sure where the parents were at. If they had gone after some more booze or if they were in there, in the apartment.
- Ron Arneson: Excuse me, did you have any reason to doubt what the neighbors were telling you was not in fact, factual?
- John Yellowrobe: The neighbors were both sober so we figured that it was true, Sir!
[Trial Transcript, Page 17, Line 23 to Page 18, Line 11.]

John Yellowrobe was also one of two (2) officers who entered Appellee's apartment and testified to what he observed. Yellowrobe first testified that before entering the apartment, the officers were met by Appellee. Yellowrobe testified Appellee wasn't responding and uncooperative and a bit belligerent. Yellowrobe also testified Appellee's eyes were glazed and red, you could smell booze on him and he wasn't steady on his feet and the officers then began to worry about the children [Trial Transcript, Page 19, Line 1-15].

Yellowrobe described the condition of the apartment and children in the following:

- Ronald Arneson: Would you describe for us next, as to when you entered the home?
- John Yellowrobe: Yeah! It was . . . it was filthy, there were beer cans strewn around the floor and there was a pint of something on the table . . some kind of alcoholic beverage, I didn't really check on it.
- Ronald Arneson: And at this time, where was the defendant, MS. (sic) Crazy Bull?
- John Yellowrobe: Ms. Crazy Bull was asleep on the bed with one of the babies.
- Ronald Arneson: Okay! And in terms . . did you proceed to awake Ms. Crazy Bull?
- John Yellowrobe: Yes, it took her ahile (sic) to come around.
- Ronald Arneson: Would you describe that for us?
- John Yellowrobe: Well, it was like, she was intoxicated before she went to sleep and she had a hard time coming out of it.
- Ronald Arneson: And would you give us any other descriptive (sic) observations that you were seeing as to her demeanor and behavior at that point?
- John Yellowrobe: Yes. You could smell the alcohol on her and she had problems tying her shoes together. Tying the shoelaces into bows.
- Ronald Arneson: And you said that she was sleeping with a small child at that point?
- John Yellowrobe: Yes, Sir!

Ronald Arneson: And what was the approximate age of that child?

John Yellowrobe: Maybe, about a year. It was still in diapers yet.

Ronald Arneson: And would you describe for us as to what you observed as to the demeanor and so on of the small child that you saw?

John Yellowrobe: Yes. He was not clean and you could smell him.

Ronald Arneson: Smell him, meaning what?

John Yellowrobe: He really had a dirty diaper, Sir!

Ronald Arneson: What did you next do then?

John Yellowrobe: We removed all the subjects fromt (sic) he apartment to the patrol car.

Ronald Arneson: Was there another child involved in this circumstance?

John Yellowrobe: I believe there was . . . one that was walking.

Ronald Arneson: And what about your observations as to that child?

John Yellowrobe: I don't remember too much about that child.

Ronald Arneson: And would you describe for us what you next did as it relates to the defendant and Ms. Crazy bull (sic)?

John Yellowrobe: There (sic) were both placed under arrest and read their rights.

Ronald Arneson: And what happened next?

John Yellowrobe: There (sic) were transported to roosevelt (sic) County Sheriff's office.

Ronald Arneson: And what did you charge them with? The defendants both Mr Stormy and Ms. Crazybull (sic).

John Yellowrobe: Child Neglect, Sir!

Ronald Arneson: And what did you next do, as it relates to the care and custody of the children?

John Yellowrobe: We got a hold of Social Services, I believe it was.

Ronald Arneson: AT that point, Officer, do you have any other information which may be relevant to the facts before this Court, in which I have not asked you questions about?

John Yellowrobe: No, Sir! I don't believe, Sir!

[Trial Transcript, Page 20, Line 6 to Page 22, Line 9.]

From the testimony of Officers Lamay and Yellowrobe, it would appear the determination of the tribal court that Appellee was not guilty is not supported by substantial evidence. Appellee was in the apartment and refusing to allow the officers entrance to check on the welfare of the children. Appellee appeared to be claiming some right to the apartment by this refusal and at oral argument, Anna Crazy Bull admitted Appellee was not the father of the children and claimed ownership of the apartment. However, Anna Crazy Bull, who was seated next to Appellee, claimed he had been residing with her and the children in the apartment.

The testimony of the officers established the condition of Appellee and Anna Crazy Bull. The parties were unable to provide minimal care of adequate clothing and day-to-day supervision of the children when in their intoxicated state they were unresponsive to the officers and could not even hear the baby, who was lying next to the Anna Crazy Bull, crying because of a dirty diaper.

The factual determination of the tribal court that the prosecution has failed to prove anything other than that he was present outside the apartment is not supported by substantial evidence. In addition, there is substantial evidence to support a conviction of Appellee for neglect of a child, a violation of III CCOJ 214(d). Therefore this Court must determine what relief the Tribes and Appellee are legally entitled to in the instant case.

Appellee was subjected to a bench trial on April 13, 1989 and a judgment of "not guilty" was entered. Under the Indian Civil Rights Act of 1968 the Appellee should not be tried again for this offense. The applicable part of the Indian Civil Rights Act at 25 U.S.C.S. Section 1302 reads as follows:

"No Indian tribe in exercising powers of self-government shall --

(3) subject any person for the same offense to be twice put in jeopardy.

The rendering of an appropriate decision in this matter places this Court in a precarious position. In the event this Court should remand this matter to the tribal court for a new trial, there is raised the issue of whether this Court has violated Appellee's civil rights and placed him in double jeopardy. In the event this Court reverses the judgment of the tribal court and hereby adjudges Appellee guilty of violating III CCOJ 214(d) the same issue may be raised despite I CCOJ 202 which authorizes this Court to set aside factual determinations of the tribal court not supported by substantial evidence and I CCOJ 205(a) which gives the Tribes the right to appeal a judge's judgment of not guilty.

In conclusion, the remand of this matter to the tribal court for a new trial would surely be a violation of Appellee's civil rights. Therefore, it is the decision of this Court to set aside the factual determination of the tribal court that Appellee is "not guilty" and hereby enters judgment finding Appellee guilty of the offense of neglect of a child, a violation of III CCOJ 214(d). This matter is remanded to the tribal court for imposition of an appropriate sentence within thirty (30) days of the filing of this opinion.

IT IS THE UNANIMOUS DECISION OF THIS COURT THERE WAS SUBSTANTIAL CREDIBLE EVIDENCE TO SUPPORT A FINDING OF GUILTY AND THEREFORE THE FACTUAL DETERMINATION OF THE TRIBAL COURT THAT APPELLEE WAS NOT GUILTY IS SET ASIDE. APPELLEE IS HEREBY ADJUDGED GUILTY OF THE OFFENSE OF NEGLECT OF A CHILD, A VIOLATION OF III CCOJ 214(d) AND THIS MATTER IS REMANDED TO TRIBAL COURT FOR IMPOSITION OF AN APPROPRIATE SENTENCE WITHIN THIRTY (30) DAYS OF THE FILING OF THIS OPINION.

DATED this ____ day of July, 1989.

BT THE COURT OF APPEALS:

ARNIE A. HOVE, Chief Justice

GARY JAMES MELBOURNE, Associate Justice
