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

FORT PECK ASSINIBOINE AND SIOUX TRIBES,
Plaintiff/Appellant,

vs. **Appeal No. 083**

HAROLD GREY BULL,
Defendant/Appellee.

THIS APPEAL is from a judgment of "guilty" for Criminal Contempt, a violation of III CCOJ 410, entered against appellant on July 10, 1989 by the Honorable Howard Bemer, Chief Judge.

FOR APPELLEE/PLAINTIFF: Daniel Schauer, Tribal Prosecutor, P.O. Box 1027, Poplar, Montana 59255

FOR APPELLANT/DEFENDANT: Clayton Reum, Lay Advocate, 821-6th Ave. South, Wolf Point, Montana 59201

CRIMINAL: FOR AN ALLEGED CRIMINAL CONTEMPT OF A TRIBAL COURT ORDER OUTSIDE THE PRESENCE OF THE JUDGE A CRIMINAL COMPLAINT SHALL BE FILED WHICH FAIRLY AND ACCURATELY APPRISES THE DEFENDANT OF THE CHARGES AGAINST HIM; TRIBES MUST COMPLY WITH THE APPLICABLE SECTIONS OF TITLE II OF THE CCOJ IN PROSECUTING FOR CRIMINAL VIOLATIONS OF THE CCOJ; AND EVIDENCE MUST BE PRESENTED BY THE TRIBES TO SUPPORT A CONVICTION FOR CRIMINAL CONTEMPT TO SUSTAIN THE BURDEN OF PROOF AS TO ALL THE ELEMENTS OF THE OFFENSE CHARGED REQUIRED UNDER III CCOJ 103.

Argued: November 3, 1989 Decided: November 3, 1989

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

HELD: THE APPELLANT'S JUDGMENT OF CONVICTION IS REVERSED AND THE CHARGE AGAINST APPELLANT FOR CRIMINAL CONTEMPT OF THE TRIBAL COURT'S MAY 15, 1989 VERBAL RESTRAINING ORDER IS DISMISSED WITH PREJUDICE.

FACTS:

On July 7, 1989, Associate Judge Terry L. Boyd issued a Warrant to Apprehend for Harold Grey Bull, Jr., (hereinafter referred to as Grey Bull or appellant). The warrant claims a complaint had been filed in tribal court charging the offense of Criminal Contempt (Bench) in violation III CCOJ 410.

On July 10, 1989, appellant was made to appear before Chief Judge Howard Bemer and answer to the charge of criminal contempt. Appellant's lay counselor requested a statement of the charges. No statement was provided nor does the file provided to this Court contain a complaint.

At the hearing, the tribal court concluded that the court issued an order for Mr. Greybull to stay away from the juvenile. The tribal court also concluded that the prosecutor did not follow through with some of the orders of the court when he failed to prepare requested orders. Appellant then testified and with no other evidence, he tribal court found him in contempt and imposed a sentence of thirty (30) days confinement. Appellant appeals the judgment of guilty and sentence imposed by the tribal court raising the following questions:

> "Should the lower court have informed the defendant why he was being arrested and provided a statement of charges?
>
> "Has the defendants right to liberty been imposed on by the court's action?
>
> "Was the arrest lawful?
>
> "Should the defendant been afforded the right to plead to the charge?
>
> "Should the lower court have informed the defendant the names of his accussers (sic) and been allowed to confront said people?
>
> "Was the defendant afforded equal protection?
>
> "Was the defendant afforded due process?"

This Court will address the following issues:

> 1. Whether appellant was denied due process of law when found guilty of Criminal Contempt a violation of III CCOJ 410 when no complaint was filed and the tribal court proceeded under a Warrant to Apprehend when the alleged offense was committed outside the presence of the tribal court.
>
> 2. Whether appellant was denied due process of law when the Tribes were not required to sustain their burden of proof and present evidence of a violation of III CCOJ 410.

I.

Appellant was denied due process of law when he was found guilty of Criminal Contempt, a violation of III CCOJ 410 and no complaint was filed. Appellant was also denied due process of law when the tribal court proceeded under a Warrant to Apprehend when the alleged offense was committed outside the presence of the tribal court.

A Warrant of Arrest dated July 7, 1989 was issued by Terry L. Boyd, Associate Judge against appellant. The warrant charged that appellant committed the offense of Criminal Contempt (Bench) in violation of III CCOJ 410. The warrant specifically states:

> "TO ANY AUTHORIZED PEACE OFFICER:
>
> WHEREAS, a Complaint has been filed in the above entitled Court Charging that the offense of Criminal Contempt (Bench) in violation of Chapter 4 Title III Section 410 of the Tribal Code of Justice of the Fort Peck Indian Reservation, has been committed and accusing the above defendant thereof, you are commanded to apprehend and bring the said defendant before a Judge of this Court to show cause why he should be held for trial."

The warrant reflects appellant was arrested on July 7, 1989 and held without bond. There is no complaint accompanying the warrant in the file presented to this Court. During arguments in the July 10, 1989 transcript and on November 3, 1989, the parties concurred that no complaint had been filed. II CCOJ 101 addresses the necessity of a complaint for an alleged criminal offense and requirements thereof. This section reads:

> "(a) A complaint is the written statement of the essential facts charging that a named individual has committed a particular criminal offense. All criminal prosecutions shall be initiated by a complaint filed with the Court signed by the prosecutor and sworn to before a judge. All complaints initiated by the prosecutor shall be based on probable cause that the crime charged happened and that the defendant(s) committed the crime charged. A judge shall have the authority to demand the filing of an information by the prosecutor or to hold a preliminary hearing to determine whether lawful probable cause as to the crime exists, and whether the appropriate defendant(s) exist prior to the issuance of a summons or warrant for the arrest of the defendant(s). (Emphasis Added.)
>
> "(b) Complaints shall contain:
>
> (1) A written statement of the violation describing in ordinary language the nature of the offense committed, including the time and place as nearly as may be ascertained. Statements or affidavits by persons having personal knowledge may be expressly referenced in and attached to the complaints.
>
> (2) The name and description of the person(s) alleged to have committed the offense.
>
> (3) A statement and description of the person(s) alleged to have committed the offense.
>
> (4) A description of the offense charged.

(5) The signature of the prosecutor sworn to before a judge.

(c) The Chief Judge may designate an individual or individuals who shall be available to assist persons in drawing up complaints and who shall screen them for sufficiency. Such complaints shall then be submitted without unnecessary delay to the prosecutor and, if he/she approves, to a judge to determine whether an arrest warrant or summons should be issued."

As stated above, there is no complaint in the file provided to this Court charging appellant with criminal contempt a violation of III CCOJ 410. This Court has previously held that a complaint was required for a criminal contempt which is committed outside the presence of the tribal court and an Order to Show Cause was not appropriate for bringing the defendant before the court. (See Tribes vs. Calvin First, Appeal No. 084, October 3, 1989.) A appellant must be apprised in a complaint of his specific offense under III CCOJ 410. This section reads as follows:

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

"(a) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; or

"(b) disobedience or resistance to any process, order, subpoena, warrant or command of the Court.

"Criminal contempt is a Class A misdemeanor."

Appellant's counsel continually made reference to the lack of a complaint charging appellant with criminal contempt and requested a statement of any charges. There was no statement which could be considered to have been provided appellant of what constituted the criminal contempt in the transcript of the July 10, 1989 hearing. Furthermore, a recess had to be taken to check the transcript of the May 15, 1989 hearing for the oral restraining order which was to have been put into written form by the prosecution and appellant was alleged to have violated. This colloquy went as follows:

Clayton Reum:	Your Honor, before we begin, I ask the court if there is statement of any charges. I understand that all Mr. Greybull received a warrant with nothing attached to it. It said Criminal Contempt but we don't know particularly what act that he was supposed to have committed that would be in contempt of this court.
Judge Bemer:	Okay. Apparently, this is a Show Cause Hearing based on a Warrant that was issued by Terry Boyd, one of the Judges, and charges Mr. Greybull with Criminal Contempt for being in the presence of a minor, when the last time he was in court he was ordered to stay away from said minor.

Clayton Reum: Your Honor, even on that particular situation, we were there and reached a pleader agreement at that time. I believe the record will show that the only thing that Mt. (sic) Greybull and myself, and the prosecution, and the court had entered into was sixty (60) days probation that was suspended and a fine that was to be paid. There was no order tht (sic) I recall, either written or verbal that restrained Mr. Greybull from anything, outside of the conditions of the probation itself.

Judge Bemer: As I recall, and I heard a particular matter involving Mr. Greybull I don't know how many times he has been here, but at least this one particular time I ordered him from the bench to stay from the juvenile, and if its necessary, I guess we can order a recess and search through the records and fine (sic) a recorded transcript of that, and replay it.

Clayton Reum: Yes, Your Honor. Can we do that?

Judge Bemer: Alright. I'll order a recess until the clerk can find that.
(Transcript p. 1, 1. 5 to p. 2, 1.10.)

After returning from recess, the colloquy between Clayton Reum and Judge Bemer continued. In this colloquy lay counselor continues to raise the issue of the complaint and also argues a lack of due process in the handling of the proceedings. This colloquy went as follows:

Judge Bemer: The Tribal Court is back in session, and for the record, the clerk has played the tape for the Judge and the Defense Counsel on May 15, 1989, regarding the arraignment of Harold Greybull, Jr. , concerning a Disorderly Conduct Charge and a Contributing to the Delinquency of a Minor Charge. At that date the defendant was released O.R. after pleading not guilty to Contributing to the Delinquency of a Minor. He was released O.R. and was ordered by the Judge to stay away from the minor in question. At the same time, the Bench ordered the prosecution to prepare as restraining order and I believe..... is that correct?

Clayton Reum: Yes, Your Honor.

Judge Bemer: This is where we're at right now, in the matter of a Show Cause Hearing concerning Harold Greybull, Jr., and he was brought in before the court on a warrant to apprehend, charging him with Criminal Contempt. Do you have any testimony Mr. Reum?

Clayton Reum: Yes. We do have some arguments, before we get to the testimony, Your Honor.

Judge Bemer: Okay.

Clayton Reum: There appears to be a lack of Due Process, Your Honor. If it was a condition of probation, and I don't know exactly I'll probably ask the court to clarify (continued) it, that we still would require service or notice and the opportunity for a hearing, to Mr. Greybull. Then, if criminal contempt if we were to file under the statute under criminal offenses, he would still have to be served with statement of charges, and either issued a warrant as the only... I, it is my understanding, Your Honor, there was just a warrant issued.... bench warrant with nothing attached to it still would require some type of notice given to Mr. Greybull as to what type of charges exactly what he is in contempt of. Also, it would be my argument, Your Honor, that on the day that Mr. Greybull appeared for the court and entered a plea of guilty to the disorderly conduct, and not guilty to the contributing, that the court had the word of the prosecution that he would prepare a restraining order. In that case, Your Honor, I would assume that the prosecution would prepare that order and as in any other process, Your Honor, then that order would be served upon Mr. Greybull, or a copy would be served to myself. As it stands now, as far as the record is concerned, Your Honor, that

restraining order was never processed and was never served upon Mr. Greybull. I don't know know..., the criminal section, Your Honor, ... the Code doesn't really refer to those...that particular instance particularly, but in... under the civil section.. (continued) I know in the ... before the judgments become final.. .that they are to be filed with the Clerk of Court, in order.. .before they're enforced. I don't know how the procedure on criminal.. .as far as ordered from the bench is concerned.., in this particular order, though, Your Honor, it was understood there would be a restraining order prepared, and under restraining orders, if they are issued ex parte, and I assume that it wasn't because Mr. Greybull was present. It would still require an order issued. It then should have been served upon Mr. Greybull, which it has not been. And, later on in the court, we appeared again on the contributing.... at which time we entered a plea agreement with the prosecution and it was approved by the court. At that time, Your Honor, we entered into a probation and there was, to my recollection, no further orders from the court regarding any restraining order or any inquiry whether or not the prosecution had in fact prepared a restraining order. There was never any prepared, and the conditions of his probation was not specifically ordering Mr. Greybull from anything other than leaving the reservation, refraining from alcohol, and so forth... So, it would be my argument, Your Honor, that there was lack of due process in this matter. And, I would ask the court to dismiss it.
(Transcript p. 3, 1. 1 to p. 5, 1.25.)

Despite the arguments of counsel on the obvious lack of due process, the tribal court ignored the same and proceeded with what the judge termed a show cause hearing. At this hearing, appellant presented the only testimony. Appellant's counsel then again argued procedure and the prosecution responded and presented the Tribes' position in the following:

Clayton Reum: I know from the warrant to apprehend... it charges criminal contempt... it cites the section and statute 410, under criminal procedures. Normally, the process is that a person is charged with criminal offense.. they're given a statement of the charges along with the warrant, and brought into court. In this case, Your Honor, there was no statement of charges. And, the due process requires that Mr. Greybull be given a statement of charges. In any case, your Honor, (continued) as far as the restraining order with the alleged contempt... .there was.... I think it just comes down to the fact that the Prosecution failed to complete the orders of the court that day. Clearly, on the tape, it says that he shall prepare an order, and there is no order prepared, no was there any order served. In any other case, You Honor, in the case of divorce or any other type judgment, the court will issue an order and parties will be served, duly filed with the clerk of court. In this case, none to that has been done, and I think there is a lack of due process, Your Honor.

Daniel Schauer:

Your Honor, the inherent power of the court....the court has the power to charge contempt of court, and the individual has been notified directly in fron (sic) of the court... and he was present at the time the order was issued from the bench. The defense never mentioned the court order or restraining order at the trial date. Prosecution feels that the original order of ...to stay away from a juvenile is still in effect... all orders of the court are in effect until after they are dismissed by the court. And, prosecution also feels that the bench warrant issued is legitimate..., all the elements are present. There is direct disobedience, or resistance to a process order of the court and the (continued) inherent power of the court has the right to charge an individual with all of these. Individual was properly notified by the warrant. He knew the charge was contempt. The contempt charge being that he disobeyed the order of the court, issued on May 15, 1989.

Clayton Reum: Your Honor, I bring up one other point for the court to take notice of.. .that under extraordinary writs.., it also states... requires when the court issues a restraining order that they have the date and time of issuance and the time that it shall be ordered for.. until such time the court issues a preliminary injunction or takes any further action, and must specify the amount of time that the person is to be restrained, and I assume that process... .and this is something probably I'm not clear on, Your Honor, because the Code doesn't specifically spell it out. Orders from the bench... as far as restraining orders goes.. .whether or not an order from the bench would still require service, proof of service, or some kind of process in which the court would maintain a record or its orders....in that the court, even at that time, did not specify what time frame or how long Mr. Greybull would be restrained, and that the .... also I think I would ask the court to take notice that Mr. Greybull appeared t (sic) that hearing without counsel, which is reason to believe that he (continued) didn't understand everything. Maybe he didn't know. I don't know. But, I'm sure he's not acquainted with the process that has to take place in order to ... for the court to carry on its business, but as far as the argument... is inherent power... .Mr. Greybull did nothing before the court that was contemptuous acting... .any misconduct or any disrespect to the court, and if he, in fact, violated any specific order of the court, it would have been the restraining order, which is nonexistent.

Daniel Schauer: Your Honor, again counsel is again addressing a temporary restraining order where he states dates and times that a temporary restraining order does have....a certain limit set on it. The order of a court can stand for five, ten fifteen years...whatever the court directs. However, there was no dates set on this order to restrain. It's just a direct order to the individual stating that he stay away from the said minor, and it's a matter of interpretation for the court on how the order should have been taken. Although there was no paperwork delivered to the individual, the individual did have personal knowledge that he was to stay away from all juveniles. And, therefore, he is in contempt of court, and prosecution remains that he shall stand trial on charges for contempt of court. (Transcript p. 9, 1. 16 to p. 12, 1. 25.)

In the above arguments, the prosecutor contends appellant was properly notified of the criminal contempt charge by the warrant. The prosecutor also argued the tribal court has the inherent power to punish for contempt when it is not in the presence of the tribal court. However, the prosecutor made no reference to a specific incident of criminal contempt giving appellant notice of a date and time of his violation of the tribal court's verbal order dated May 15, 1989. Therefore, the tribal court improperly entered a judgment against appellant of guilty of the criminal contempt for violating the verbal restraining order in the following:

Judge Bemer:

> Okay. I think the court has heard enough argument on this... .on this... the matter of whether or not there is contempt. Okay. And, I will issue my opinion at this time. I think it's clear that the court issued an order for Mr. Greybull to stay away from the juvenile. I think that Mr. Greybull should have the common sense to realize that he was being charged with the criminal offense which is Contributing to the Delinquency of a Minor, which clearly should reflect in his mind that he should not be in the presence of that minor and the acts tht (sic) he was being prosecuted for were directly related to him being with that minor. and, I believe that Mr. Greybull was aware of the situation, all the way through, and he chose to ignore it. I can't ignore the fact that the guardians of the minor in question her, which is involved in he situation, did not want Mr. Greybull to be anywhere near the juvenile female, and that he was ordered by the bench. I also acknowledge the fact that the prosecutor did not follow through with some of the orders of the court, and I believe that the prosecutor should realize that he has a duty also, to comply as closely as he can with the orders of the court. I make no excuses for that. However, the fact still stands that Mr. Greybull, by his own admission, was aware of the order, and (continued) until told otherwise... or shown otherwise, this court is of the assumption that an order from the bench is as good as a final word. And... therefore, I find Mr. Greybull in contempt of an order from this court, and I sentence him to thirty (30) days confinement for criminal contempt. And, the Statute is Section 410 and it reads: Disobedience or resistance to any process, order, subpoena, warrant or command of the court.... and I think this clearly falls under Order or Command of the Court. So, court is adjourned on this matter. (Transcript, p. 13, 1. 1, to p. 14, 1. 11.)

In conclusion, appellant was denied due process of law when Associate Judge Terry L. Boyd issued a Warrant to Apprehend against the appellant without also filing a complaint as required by II CCOJ 101. Without the required complaint, appellant had no written statement of the essential facts of the alleged criminal contempt, therefore, the judgment of conviction for criminal contempt is reversed.

II.

In addressing issue no. 2, appellant was denied due process of law when the Tribes were not required to sustain their burden of proof and present evidence of a violation of III CCOJ 410. The proceeding conducted July 10, 1989 was incorrectly handled as an order to show cause hearing.

In the instant case, the appellant was served with a Warrant to Apprehend. The laws which pertain to the handling of arrests under a Warrant to Apprehend are II CCOJ 201, 202 and 203. The applicable portions of II CCOJ 201 read as follows:

> "(a) Arrest is the taking of a person into police custody in order that he/she may be held to answer for a criminal offense.
>
> "(b) No law enforcement officer shall arrest any person any person for a criminal offense except when:
>
> "(1) a judge has signed a warrant commanding the arrest of such person, and the

arresting officer has the warrant in his/her possession or knows for a certainty that such a warrant has been issued; or

"...."

In the instant case, Associate Judge Terry L. Boyd had signed a Warrant to Apprehend dated July 7, 1989 commanding the arrest of appellant. Title II CCOJ 202 governs what must be contained in an arrest warrant and how the same is properly served. This section reads as follows:

"(a) Judges shall have authority to issue warrants to arrest if they find that there is probable cause to believe that an offense against tribal law has been committed by the named accused, based on sworn written statements or sworn oral testimony.

"(b) The arrest warrant shall contain the following information:

"(1) Name or description and address, if known, of the person to be arrested.

"(2) Dated of issuance of the warrant.

"(3) Description of the offense charged.

"(4) signature of the issuing judge.

"(c) The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his/her possession at the time of the arrest, but upon request shall, as soon as possible, show it to the defendant.

"...."

In the instant case, the Warrant to Apprehend meets the requirements of II CCOJ 202 and was properly executed. The effect of the warrant was to have consisted of bringing appellant before the Court to inform him of his rights pursuant to II CCOJ 203 and the alleged violation of the tribal court's order of May 15, 1989. Title II CCOJ 203 reads in full as follows:

"Upon arrest the suspect shall be advised immediately of the following rights:

(1) That he/she has the right to remain silent.

(2) Than (sic) any statements made by him/her may be used against him/her in court.

(3) That he/she has the right to obtain counsel at his/her own expense.

(4) That he/she has the right to make a least one (1) completed telephone call to a friend and at least one (1) complete call to a lay counselor or attorney immediately after being registered and identified at the jail, or sooner if there is an unreasonable delay in taking the

accused to jail or in processing at the jail.

The record before this Court does not reveal whether appellant was ever advised of his rights under II CCOJ 203, however, the next step in proper procedure was to conduct an arraignment pursuant to II CCOJ 401. This section reads as follows:

> "(a) Arraignment is the bringing of an accused before the Court, informing him/her rights and of the charge against him/her, receiving his/her plea, and setting conditions of pre—trial release as appropriate in accordance with this Code.
>
> "(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of Court.
>
> "(c) Before an accused is required to plead to any criminal charges the judge:
>
> (1) Read the complaint to the accused and determine that he/she understands the complaint and the Section of the Tribal Code which he/she is charged with violating, including the maximum authorized penalty (Emphasis Added.) and
>
> (2) Advise the accused that he/she has the right (a) to remain silent, (b) to have a speedy and public trial where he/she will be confronted with witnesses against him/her after he/she has had sufficient time to prepare hi/her defense if he/she pleads "not guilty," (c) to be tried by a jury if the offense charged is punishable by imprisonment, and (d) to be represented by counsel at his/her own expense, before he/she pleads to the charge.
>
> "(d) If the arrest was without a warrant, and the defendant is to be continued in custody, the judge shall also determine during arraignment whether there is probable cause to believe that an offense against Tribal law has been committed by the named accused.
>
> "(e) The judge shall call upon the defendant to plead to the charge:
>
> "(1) If the accused pleads "not guilty" to the charge, the judge shall then set a trial date and consider conditions for release prior to trial as provided in Section 402.
>
> "(2) If the accused pleads "guilty" to the charge, the judge shall accept the plea only if he/she is satisfied that the plea is made voluntarily and the accused understands the consequences of the pleas, including the rights which he/she is waiving by the plea. The judge may then impose sentence or defer time in order to obtain any information he/she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the Court prior to sentencing.
>
> "(3) If the accused refuses to plead, the judge shall enter a plea of "not guilty" on his/her behalf.

The transcript of the July 10, 1989 hearing does not reflect the reading of the complaint (or any specific statement) or determination by the tribal court that appellant understands the complaint and III CCOJ 410. Furthermore, the hearing does not reflect appellant was afforded his rights under II CCOJ 501 and

III CCOJ 103. Title II CCOJ 501 reads as follows:

> "No person shall twice be put in jeopardy for the same offense, not shall he/she be compelled in any criminal case to be a witness against himself/herself. The accused shall have the right to a speedy and public trial, the right to be confronted with witnesses against him/her, the right to assistance of counsel at hi/her own expense and the right to demand trial by an impartial jury if the offense, or combination of offenses, charged is punishable by imprisonment."

In applying this section in a discussion of the errors of the tribal court at the July 10, 1989 proceedings, appellant was the only witness called and he was not confronted by any of the witnesses against him of the alleged incident of criminal contempt. Furthermore, the transcript does not reflect where appellant and his counsel were informed of and afforded the right to demand a trial by an impartial jury since criminal contempt was punishable by imprisonment.

The final right of appellant to be addressed is the burden of proof of the Tribes under III CCOJ 103. This section reads in applicable part as follows:

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

The transcript does not reflect where the Tribes presented any evidence so they could not have sustained the above burden of proof. In concluding the discussion of issue no. 2, the jurisdiction of this Court should again be made clear. The jurisdiction of this Court is set forth in I CCOJ 202 which reads in applicable part as follows:

> "The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Trial 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 conclusion, this Court's jurisdiction includes reviewing de novo determinations of law which includes not only the procedure followed, but burdens of proof required by the tribal court and CCOJ in a particular case. Therefore, appellant was denied due process when no evidence was presented against him and the Tribes were not required to sustain its burden of proof. Therefore, it is this Court's determination that dismissal of the charge with prejudice for criminal contempt of the May 15, 1989 verbal restraining of the tribal court brought against appellant is warranted and appropriate in the instant case.

IT IS THE UNANIMOUS DECISION OF THIS COURT TO DISMISS WITH PREJUDICE THE CHARGE AGAINST APPELLANT FOR CRIMINAL CONTEMPT OF THE TRIBAL COURT'S MAY 15, 1989 VERBAL RESTRAINING ORDER.

DATED this _____ day of January, 1990.

BY THE COURT OF APPEALS:

_____
Arnie A. Hove, Chief Justice

_____
Gary James Melbourne, Associate Justice

_____
Floyd G. Azure, Associate Justice