
**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. 090

JESSE MARTELL,
Defendant/Appellee.

THIS APPEAL is by the Fort Peck Tribes from an Order Denying Jurisdiction of the Defendant's alleged violation of III CCOJ 208, 209 and 214(a). Honorable A.T. Stafne, Associate Judge, presided.

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

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

CRIMINAL: UNDER THE CURRENT CCOJ, THE TRIBES HAVE JURISDICTION OF OFFENSES WHERE ELEMENTS HAVE OCCURRED ON AND OFF THE RESERVATION; AND AN ORDER DISMISSING WITH PREJUDICE CRIMINAL CHARGES IS INAPPROPRIATE WHERE THE TRIBES' COMPLAINTS APPEAR SUFFICIENT AND THE ORDER PREMATURELY DENIES THE TRIBES THE OPPORTUNITY TO MEET THEIR BURDEN OF PROOF.

Argued: March 2, 1990 Decided: March 2, 1990

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

HELD: THE TRIBAL COURT'S MOTION TO DISMISS THE TRIBES' COMPLAINTS AGAINST THE DEFENDANT IS REVERSED. THIS MATTER IS REMANDED TO TRIBAL COURT FOR AMENDMENTS TO THE CHARGES AND A TRIAL ON THE MERITS.

FACTS:

On April 12, 1989, Ron Arneson, Special Prosecutor for the Fort Peck Tribes, filed two (2) Criminal Complaints against Defendant Martell. One complaint alleges Martell committed the offense of Rape when he violated III CCOJ 208. The other complaint alleges Martell committed the offense of Statutory Rape (Plead in the Alternative) when he violated III CCOJ 209.

On or about April 7, 1989, Martell is alleged to have used coercive methodology to have intercourse with a 14 year old female. Martell is alleged to have transported the 14 year old female to Havre, Montana and use alcohol and or drugs in the process to coerce the 14 year old to have intercourse with him. Martell was also alleged to be an adult tribal member.

The file contained the investigation report of Officer Mike Lamey. The report states the parents of the 14 year old girl do not want to press charges. The reason indicated is the girl would be under great stress and maybe in danger from defendant's relatives. The officer indicated he

was advised threats had already been made.

On June 6, 1989, defendant's lay counselor filed a Motion to Dismiss Criminal Charges and Statement. On June 8, 1989, and Addendum to Motion for Dismissal was filed.

The motion to dismiss contends the tribal court lacks jurisdiction for the following reasons:

The complaints filed by Special Prosecutor Ron Arneson are not correct in that the Prosecutor states in all complaints that defendant Martell is a member of the Fort Peck Tribes. Defendant Martell not a member of these tribes nor is he a ;member (sic) of any tribe anywhere. The alleged victim is not an indian (sic), there are no grounds or reason for these tribes to assert jurisdiction in this matter.

The addendum to the motion contends the tribal court lacks jurisdiction under I CCOJ 106 because the alleged offense did not occur on this reservation.

On June 19, 1989, the prosecutor filed a Motion for Continuance of the trial scheduled for June 21, 1989. In the motion, he informed the tribal court Martell had signed a statement for Tim Smith and Captain Headress that he would subject himself to tribal court jurisdiction. On June 21, 1989, the tribal court granted the motion. On June 21, 1989, the tribal court also issued an Order for Briefing Schedule.

On November 6, 1989, a hearing was held on the motion. The parties filed briefs the tribal court received a Memorandum for the Indian Law Clinic on the issue of Prosecution of Extraterritorial Crime. On November 28, 1989, the tribal court granted defendant's motion to dismiss with prejudice. The reason given for the dismissal was it could not be reasonably argued that any element of the offenses charged were committed on the reservation.

The tribal court's order of dismissal presented several issues and what appear to be statements of law and/or fact. A statement of the issue is, "Whether the Fort Peck Tribes have subject matter jurisdiction of a crime allegedly committed partly off reservation or partly on reservation.

The relevant statements of fact discussed in the order are discussed in the following. It is alleged one or more elements of a certain crime occurred on reservation, while other elements occurred off reservation. The Tribes intend to prove defendant removed the alleged victim from this reservation to have intercourse with her off the reservation and return her to the reservation.

The relevant statement of law is discussed in the following. There seems to be no barrier in Tribal or Federal Law to prosecution in extra—territorial crimes.

The issues to be addressed by this Court are as follows:

1. Whether the tribal court has jurisdiction of a criminal offense where elements of the offense occurred on and off the reservation.
2. Whether the tribal court properly granted defendant's Motion to Dismiss with prejudice.

I.

The Fort Peck Tribes' jurisdiction over criminal offenses is set forth in the tribal code at I CCOJ 106. This section reads:

The Court shall have jurisdiction over all offenses by an Indian committed within the boundaries of the Fort Peck Indian Reservation against the law of the Tribe as established by duly enacted ordinances of the Tribal Executive Board.

In reviewing the briefs and memorandum certain matters are uncontested. There is no barrier in tribal law to the exercise of the Fort Peck Tribes' jurisdiction over criminal offenses where elements of the offense are committed partly within the reservation. From the Indian Law Clinic Memorandum, there is no barrier in federal law to the exercise of jurisdiction by the Fort Peck Tribes over an offense committed partly within the reservation.

In addition, the Fort Peck Tribes' constitution does not prohibit the exercise of criminal jurisdiction over an offense when part of that offense occurred off the reservation. The constitution does not specifically address the issue, however, Article VIII, Section 5 authorizes the Tribal Executive Board to enact a law and order code. This section reads in full:

To provide, subject to the review of the Secretary of the Interior, or his authorized representative, for the maintenance of law and order and the administration of justice by establishing tribal courts and police force, and defining the powers and duties of same, and to promulgate criminal and civil codes or ordinances governing the conduct of the members of the tribes and non-member Indians residing within the jurisdiction of the tribes.

In any event defendant was charged with rape under III CCOJ 208. This section reads in applicable part as follows:

A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of rape if:

(a) the defendant compels the other person to submit by force or by any threat that would render a person of reasonable firmness incapable of resisting; or

(b) the defendant or someone else, with the defendant's knowledge, has substantially impaired the other person's power to appraise or control that person's conduct by administering or employing, without the other person's knowledge, intoxicants, drugs or another similar substance with intent to prevent resistance; or

....

The facts alleged in the complaint charging rape are as follows: (1) The defendant is a tribal member and is an adult over 19 years old. (2) Using coercive methodology the defendant did have intercourse with a 14 year old female. (3) The defendant transported the 14 year old female to Havre , Montana on or about 4-7-89. (4) The defendant did use alcohol and or drugs in the process t coerce the 14 year old female to have intercourse with him. (5) The use of alcohol and or drugs was done with the intent to lever (sic) the resistance level of the victim if indeed she was legally capable of resisting. Elements of the offense as charged could have occurred on and off the reservation.

In conclusion, if the facts demonstrate elements of the offenses of rape or statutory rape occurred partly on the reservation, then the tribal court could properly exercise jurisdiction. However, it is recommended that to avoid jurisdiction challenges in situations similar to the instant case, ordinances should be adopted addressing the same.

II.

On November 28, 1989, the tribal court did not properly grant Defendant Martell's Motion to Dismiss with prejudice. The dismissal with prejudice was not proper because it effectively prohibits the Tribes from further prosecution of defendant for his conduct on the April 7, 1989.

There has been no trial of Martell on the charges and all the facts of this case have not been presented to the trier of fact. The jury trial is the appropriate forum to determine whether the prosecution has met its burden of proof on the charges against Martell. After the conclusion of the Tribes' case in chief, the tribal court could properly entertain a motion to dismiss based on lack of jurisdiction if the facts do not establish any element of the offenses occurred on the reservation.

In addition to the above, this Court recognizes that the facts of this case indicate the filing of other charges may be appropriate, i.e.

Harboring a child, a violation of III CCOJ 206. The tribal court's motion to dismiss in effect precludes the Tribes from filing this additional charge.

In conclusion, the tribal court's dismissal with prejudice was premature and improperly precludes the tribal court from filing other appropriate charges against defendant as a result of his conduct on April 7, 1989. Therefore, a remand of this matter to tribal court for a trial on the merits permitting the Tribes to amend its charges and attempt to meet the burden of proof for each charge is appropriate.

THE TRIBAL COURT'S MOTION TO DISMISS THE TRIBES' COMPLAINTS AGAINST THE DEFENDANT IS REVERSED. THIS MATTER IS REMANDED TO TRIBAL COURT FOR AMENDMENTS TO THE CHARGES AND A TRIAL ON THE MERITS.

RECOMMENDATION

THE TRIBAL EXECUTIVE BOARD AND THE TRIBAL ATTORNEYS SHOULD BE ADVISED OF THE INSTANT CASE AND REQUESTED TO DETERMINE WHETHER ORDINANCES WOULD MORE APPROPRIATELY ADDRESS THIS SITUATION AND SIMILAR SITUATIONS AND DRAFT AND ADOPT THE SAME.

DATED this ____ day of March, 1990.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

James Gary Melbourne, Associate Justice

Floyd G. Azure, Associate Justice
