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

IN THE MATTER OF THE EXTRADITION OF
JONELLE MENZ, Alleged Fugitive from
the State of Montana,
Appellant.

Appeal No. 147

THIS APPEAL is from a November 1991 order of the Fort Peck Tribal Court to extradite Appellant Menz to the City of Sidney, County of Richland, State of Montana for purposes of standing trial on a misdemeanor charge; the Honorable A.T. Stafne, Chief Judge of the Fort Peck Tribal Court presiding.

This Court granted review and received briefs, including brief amicus curiae from the Fort Peck Tribes; oral arguments were heard on May 29, 1992.

APPEARING FOR APPELLANT JONELLE MENZ: Mary L. Zemyan, Attorney at Law, P.O. Box 1094, Wolf Point, Montana 59201.

APPEARING FOR FORT PECK TRIBES and the STATE OF MONTANA: Gary Beaudry, Esquire, Special Prosecutor, Fort Peck Tribes, and Ralph J. Patch, Esquire, Roosevelt County Attorney, P.O. Box 1079, Wolf Point, Montana 59201.

CIVIL

ARGUED: May 29, 1992
DECIDED: September 25, 1992

OPINION BY Chief Justice Gerard M. Schuster, joined by Associate Justice Debra A. Johnson and Associate Justice Florence Youpee.

HELD: THE ORDER OF EXTRADITION OF JONELLE MENZ IS REVERSED ON THE BASIS OF FAILURE OF THE STATE TO PRODUCE A COPY OF THE UNDERLYING CRIMINAL COMPLAINT FROM THE STATE.

FACTS

The basic facts of the this case are generally agreed upon by the parties. Appellant Jonelle Menz, a tribal member, was ordered to appear in City Court at Sidney, Montana on a misdemeanor theft charge. She allegedly failed to appear as ordered and the City Court issued a warrant for contempt of court. She was arrested by Tribal police on an extradition request warrant and a hearing was held on the extradition request in November of 1991, at the Fort Peck Tribal Court.

At the extradition hearing, Captain Robert Burnison, Assistant Chief of Police, Sidney, Montana, testified as to the alleged criminal activity of Appellant Menz, but did not provide a copy of the underlying criminal complaint. After hearing, the Tribal Court ordered the extradition of Appellant Menz to Sidney, Montana and this appeal followed.

ISSUE: WHETHER THE EXTRADITION PROCEDURE HELD IN TRIBAL COURT COMPLIED WITH APPLICABLE TRIBAL LAW.

DISCUSSION

The Fort Peck Tribal extradition procedures are set forth in **Title XII CCOJ §401-406**. The only issue before the Court is whether the requirement of the Tribal Code regarding extradition have been met. These requirements are set forth in § 405 as follows:

- (a) whether the accused Indian is the person charged with the commission of a crime;
- (b) whether there is evidence of criminality;
- (c) whether the circumstances surrounding the charge indicate that the accused Indian was the victim of racial discrimination;
- (d) whether the demanding jurisdiction can assure the accused of nondiscriminatory and safe treatment in their jail;
- (e) whether the demanding jurisdiction can assure the accused Indian of a fair trial;
- (f) whether the criminal charges were in good faith, and not for the purposes of compelling the payment of a civil debt or other improper motive;
- (g) whether under all the facts and circumstances, justice would be served by delivering the accused Indian to the demanding jurisdiction.

We hold that the designation of Roosevelt County Sheriff Grainger and Roosevelt County Attorney Patch as authorized agents for the Governor of Montana is permitted and authorized by Tribal law. **XII CCOJ § 402 and XII CCOJ 401(b)**. However, the Governor (or his agent) must support the request

with a copy of the underlying criminal complaint or other judicial evidence, charging any Indian with having committed a crime within the jurisdiction of the demanding jurisdiction. **XII CCOJ 402.** We concur with the position of the Fort Peck Tribe’s amicus brief that probable cause is best established by production of the underlying indictment or complaint, and that the code requires production of such evidence.

Here, Captain Burnison testified orally as to the underlying criminal complaint, but a copy of the complaint was not produced at the hearing. **REF. Transcript of Extradition Hearing, Page 17.**

It is clear from the transcript that the other requirements of §405 were met here, and that Judge Stafne made the proper conclusion from the testimony offered.

We reverse the decision of the Tribal Court on the sole grounds that the State of Montana failed to produce the underlying judicial documents at the extradition hearing.

DATED this _____ day of October, 1992.

BY THE COURT OF APPEALS:

GERARD M. SCHUSTER, CHIEF JUSTICE

DEBRA A. JOHNSON, ASSOCIATE JUSTICE

FLORENCE YUPEE, ASSOCIATE JUSTICE
