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

IN THE MATTER OF
FORT PECK ASSINIBOINE & SIOUX TRIBES
Appellee,

vs.

Appeal No. 148

JOSEPH HAROLD JONES,
Appellant.

THIS APPEAL is from an Order of the Fort Peck Tribal Court entered on November 26, 1991, finding Appellant Jones guilty of DUI and sentencing Appellant.

APPEARING FOR APPELLANT JOSEPH HAROLD JONES: Rita A. Weeks, Lay Law Advocate, 908 West Blain Street, Wolf Point, Montana 59201.

APPEARING FOR APPELLEE FORT PECK ASSINIBOINE & SIOUX TRIBES: Emmett Buckles, Tribal Prosecutor, P.O. Box 1133, Wolf Point, Montana 59201.

CIVIL

Argued: May 29, 1992

Decided: June 10, 1992

OPINION BY Gerard M. Schuster, Chief Justice and Debra A. Johnson, Associate Justice. Justice Gary James Melbourne disqualified himself from hearing said matter.

HELD: APPELLANT'S CONVICTION OF DUI, A VIOLATION OF IX CCOJ 107 IS REVERSED.

FACTS

The facts as we are able to determine from the transcripts are as follows:

On October 12, 1991, at approximately 9:30 o'clock P.M., Appellant Jones was arrested and charged with DUI, a violation of IX CCOJ 107 and refusal to submit to a chemical blood, breath or urine test, a violation of IX CCOJ 108.

The charge stemmed from an event earlier that day in which a white car traveling west of Wolf Point, Montana, on Highway No. 2 "ran a school bus in the ditch" TR., November 26, 1991, Page 2. The officer making the arrest testified that he had been advised that ... "Mr. Jones owns the same type of car, so I pulled into his residence, just to check out his car. When I pulled in, I found Mr. Jones passed out in the front seat of his car, keys in the ignition." **TR., Page 2.** Appellant Jones testified that he was not in the car at the time of the officer's arrival, but rather in his house. **TR., Page 9.** There was no other evidence offered at trial linking Appellant's vehicle with that involving the school bus incident, or any evidence indicating that Mr. Jones had been operating a motor vehicle on the day in question.

ISSUE

The basic issue before the Court is as follows:

WHETHER THE PROSECUTION MET ITS BURDEN OF PROOF WHICH WAS THAT DEFENDANT WAS IN ACTUAL PHYSICAL CONTROL OF A VEHICLE UPON THE HIGHWAYS OR ROADS OF THE RESERVATION WHILE HE COULD NOT SAFELY OPERATE A VEHICLE.

DISCUSSION

Jurisdiction: The jurisdiction of the Court of Appeals as stated in **1 CCOJ, 202** is:

"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

Therefore, this Court has jurisdiction to review **de novo** all determinations of the Tribal Court on matters of law, and will not set aside factual determinations by the Tribal Court supported by substantial evidence.

The Appellant was found guilty of violation IX CCOJ 107. This statute reads in part as follows:

"(a) It is unlawful and punishable for any person who is under the influence of intoxicating liquors, under the influence of any drug, or under the combined influence of alcohol and any drug, to a degree **which renders him incapable of safely driving a motor vehicle to operate or be in actual physical control of any motor vehicle upon the highways or roads of the Reservation.**" (emphasis made)

Pursuant to II CCOJ 103, the Tribe has the burden of proof in proving violations of the Tribal code. This section reads:

"(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 applying the law to the facts of this case, the record is clear that Appellant Jones was at the time of his arrest at his private residence (or the driveway thereof). **TR., Pages 2 and 9.** There is no indication in the record that Mr. Jones was at any time on the day in question "in actual physical control of a motor vehicle upon the highways or roads of the Reservation" **IX CCOJ 107.** The only testimony offered at trial linking Mr. Jones' car to that involved with the bus incident was this testimony:

Officer DeCoteau: "Well, I was looking for a white car.. I received a call about 20:00, looking for a white car that ran a school bus in the ditch earlier that evening, I was informed that Mr. Jones owns the same type of car, so I pulled into his residence, just to check out his car. When I pulled in, I found Mr. Jones passed out in the front seat of his car, keys in the ignition. And, I then arrested him for DUI". **TR. page 2.**

The Tribes here have the burden of proving each element of an offense beyond a reasonable doubt. **III CCOJ 103.**

We find that the burden of proving that Defendant was in actual physical control of a vehicle upon the highways and roads of the Reservation was simply not met here. According, we reverse the decision of the Court.

DATED this _____ day of June, 1992.

BY THE COURT OF APPEALS:

GERARD M. SCHUSTER, CHIEF JUSTICE

DEBRA A. JOHNSON, ASSOCIATE JUSTICE
