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

IN THE MATTER OF RAYMOND DUPREE,
Appellant/Defendant,

vs.

APPEAL No. 173

FORT PECK TRIBES,
Appellee/Plaintiff.

THIS APPEAL is from a jury verdict entered on October 1, 1992, in which Defendant Dupree was found guilty of three counts of child abuse, Fort Peck Tribal Court, Poplar, Montana, the Honorable A. T. Stafne presiding.

APPEARING FOR APPELLANT RAYMOND DUPREE: Melissa G. Buckles, Lay Law Advocate, P. O. Box 214, Wolf Point, Montana 59201.

APPEARING FOR APPELLEE FORT PECK TRIBES: Gary M. Beaudry, Special Prosecutor, P.O. Box 1027, Poplar, Montana 59255.

Argued: January 22, 1993

Decided: February , 1993

MAJORITY OPINION by Chief Justice Gerard M. Schuster and Associate Justice Debra A. Johnson. Associate Justice Florence Youpee dissents and files herewith her dissenting Opinion.

HELD: THERE WAS SUBSTANTIAL CREDIBLE EVIDENCE TO SUPPORT A FINDING OF GUILTY AND THEREFORE THE FACTUAL DETERMINATION OF THE JURY WILL NOT BE SET ASIDE.

HELD: THE COURT FINDS NO ERROR IN THE TRIAL COURT'S DETERMINATION OF LAW, AND THEREFORE THE DETERMINATION OF LAW ARE UPHELD.

FACTS

Appellant Dupree was convicted by jury of three counts of child abuse in Fort Peck Tribal Court on October 1, 1992. On appeal, he raised **issues** which included the following:

1. The weight and sufficiency of certain evidence, ie., whether the presence and/or testimony of the alleged victim was required; whether certain physical evidence should have been in evidence; whether eye witnesses should have been called; and others.
2. The issue of Defendant's past criminal record.
3. The issue of who was to prosecute the case, and on which charge or charges.

ISSUE 1: THE WEIGHT AND SUFFICIENCY OF CERTAIN EVIDENCE.

DISCUSSION

Pursuant to 1 CCOJ 202, the jurisdiction of the Court of Appeals is defined 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."

The Court has consistently ruled that the factual findings of the trier of fact (in this case, the jury) will not be set aside if they are supported by substantial evidence. **REF.** for example, **IN THE MATTER OF PAUL SMITH vs. FORT PECK TRIBES**, Appeals No. 108, Fort Peck Court of Appeals. Here, the jury heard medical evidence as to the bruises of the children, **REF.**, page 49 et seq. trial transcript, page 51 et seq. trial transcript; and evidence as to the Defendant's actions in causing said injuries, **REF.**, page 14 et seq. trial transcript. The jury heard testimony of Donna Snodgrass regarding consistency of the physical evidence with the type of injury sustained. **REF.** eg. page 40 et seq. trial transcript.

Simply stated the jury heard the testimony, weighed the evidence, and found the Defendant guilty. **REF.** page 99, trial transcript. We will not substitute our judgment for that of the trier of fact. 1 CCOJ 202.

The issue of the weight to be afforded the evidence presented is also an issue before the trier of fact. Therefore, if the testimony of the alleged victim was not presented, and other physical evidence,

the jury had to consider the evidence before it. **REF.** page 96, 97 et seq. trial transcript. Again, this Court will not substitute its judgment for the judgment of the trier of fact on this issue.

ISSUE 2: DEFENDANT’S PAST CRIMINAL RECORD.

DISCUSSION

The record of Defendant’s past criminal conviction was used in Defendant’s sentencing. **REF.** page 101 trial transcript. it had no bearing on the trier of act (the jury). In addition, any reference to the Defendant’s past record falls within the exception of Federal Rule 404(3)(b) as showing absence of mistake or accident.

ISSUE 3: WHO WAS TO PROSECUTE THE CASE AND ON WHAT CHARGES.

DISCUSSION

We find this issue to be without merit. The question of who prosecutes the case is administrative in nature and not a matter to be raised on appeal, as is the question of the Count or Counts to be tried.

CONCLUSION

It is the opinion of this Court that there was substantial credible evidence to support a finding of guilty by the jury. It is the opinion of this Court that the trial Court made proper determinations of law.

The judgment of the trier of fact and trial Court is affirmed.

DATED this 26th day of February, 1993.

BY THE COURT OF APPEALS:

GERARD M. SCHUSTER, CHIEF JUSTICE

DEBRA A. JOHNSON, ASSOCIATE JUSTICE
