

IN THE
INDIANA COURT OF APPEALS

20A-CR-00357

TYLER WESLEY RIGGLE)	Appeal From The
)	St. Joseph Superior Court
Appellant-Defendant)	
)	Lower Cause Number
vs.)	71D03-1902-F6-000113
)	
STATE OF INDIANA)	Honorable Jeffrey L. Sanford,
)	Judge
Appellee-Plaintiff)	

APPELLANT’S BRIEF

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TABLE OF AUTHORITIES

CASES:

United States v McBratney, 104 US 621 (1881) p. 6

Smith v State, 675 NE2d 693 (1996) p. 8

Williams Et Uk v Lee, 358 U.S. 217 (1959) P. 8

STATEMENT OF ISSUES

The issue to be determined is whether the State of Indiana, and St. Joseph County, is the proper venue for a criminal proceeding regarding a criminal act which occurred on Pokagon Tribal property.

STATEMENT OF THE CASE

On February 4, 2019, the State of Indiana filed an Information for Unlawful Possession of a Syringe in Violation of I.C. 16-42-19-18(a) a level 6 Felony, against the Appellant. (App. 3) The appellant appeared before Judge Sanford on July 12, 2019, at which time the case was set for trial on October 30, 2019, with a record date of October 14, 2019. (App. 4)

The trial was commenced and concluded on October 30, 2019, resulting in a verdict of guilty. A status date was scheduled for December 12, 2019, at which time pre-sentence report was ordered, and sentencing set for January 15, 2020. (App. 6) On January 15, 2020 the Appellant was sentenced to time serve, 464 days with 232 days credit. (App. 7) He was found indigent for purposes of appeal and appointed the public defender on January 27, 2020. (App. 8) Notice of Appeal was filed on February 14, 2020. (App. 8)

STATEMENT OF FACTS

In July of 2018, Jessica Seals was leaving the Four Winds Casino in South Bend after having met her husband there. As she approached the entrance she saw a man laying facedown. (Tr.P. 18-4) She stopped at the police station and made a call for help. (Tr.P.19-6) After the officers and EMT's arrived she left. (Tr.P. 20-3)

Lauren Byrnes, an employee of Bridges, an assisted living facility was arriving at Four Winds, when she saw a man lying face down in a fetal position. (Tr.P. 23-7) She checked for a

pulse, and called 911, when the tribal police arrived, (Tr.P. 23-13) Her boyfriend, Josh, recorded the event on his phone, which was admitted as an exhibit. (Tr.P. 24-24)

Office Matthew Johnson of the Pokagon Tribal Police, also a St. Joseph County Special Deputy, arrived at the scene, which was at the front entrance on casino property, where his partner, Officer Wawra, was checking the appellant's vitals. (Tr.P. 31-15) He was unresponsive, with short gasps of air. (Tr.P. 32-9) After a sternum rub (Tr.P. 30-5) they radioed for narkan. Sgt. Schaaf arrived and administered narkan. (Tr.P. 33-21) The victim began to breathe better and his color came back. (Tr.P. 45-24) When the EMT arrived they took over treatment. (Tr.P. 46-3)

Christopher Manzuk, a firefighter and EMT with the South Bend Fire Department responded to the call on July 10, 2018 at 8:0 p.m. (Tr.P. 51-20) Once he arrived, he administered another dose of narkan by I.V. (Tr.P. 54-1)

Once the Appellant recovered, he was patted down for safety by Office Johnson. (Tr.P. 35-11) He found one syringe with a liquid in it and two which were empty. (Tr.P.) 35-19) The Pokagon Tribe has its own court system and criminal code, but the appellant was not taken into custody or charged by the Tribe. (Tr.P. 40-21)

The swab from the syringe was sent to the Forensic Lab at Andrewes University where John Rorabeck, the Director, analyzed it as heroin. (Tr.P. 66-17), which he said was a Schedule I drug. (Tr.P. 67-15)

At the close of the State's case the Appellant moved for a judgment on the evidence. One of the arguments whether the offense occurred in the State of Indiana or on an Indian reservation. (Tr.P. 73-16) Primarily, the Court stated that without a statute giving the State authority to prosecute crimes which occur on tribal land, he believes the State has failed to show it is the

proper forum. (Tr.P. 80-16) The State stated that they believe there to be a formal agreement between St. Joseph County and the Pokagon Band of Police seceding their authority in matters of criminal activity not involving Pokagon citizens. (Tr.P. 82-10) The Court permitted the State to reopen its case to recall Sgt. Schaaf. (Tr.P. 83-19)

Sgt. Schaaf testified that the Pokagon Trial Court has no jurisdiction in criminal matters over a non-native person. (Tr.P. 91-10) Tribal police are special deputies of St. Joseph County to enforce State laws on non-natives. (Tr.P. 91-18) He did acknowledge that the deputization agreement did not describe which laws were to be enforced. (Tr.P. 94-18) He acknowledge that no one checked the tribal membership to see if the appellant was a member. (Tr.P. 97-11)

The State further cited 18 U.S. Code 1151(a)(b) and (c), and United States v. McBratney, 104 US 621(1881) for authority to prosecute. (Tr.P. 98-1) The Court denied appellants motion. (Tr.P. 98-24)

SUMMARY OF ARGUMENT

The conviction should be reversed because the State of Indiana lacked jurisdiction to prosecute the Appellant and failed to establish that he was a non-native.

ARGUMENT

The State of Indiana lacked jurisdiction to prosecute the Appellant for an offense which occurred on Pokagon Tribal property.

Officer Johnson of the Pokagon Police, testified that the Pokagon Tribe has its own court system and own criminal code for offenses which occur on the reservation. (Tr.P. 40-15) The evidence seized was placed in an evidence locker on reservation land at the Tribal Police

Department. (Tr.P. 49-2) The evidence was then sent to the Tribal evidence lab in Berrien Springs. (Tr.P. 49-15) After the Appellant moved for judgment on the evidence, claiming that absent Federal authority, the state cannot enforce its laws on tribal lands. The State conceded that the State has to prove venue and that the statute needs to be strictly construed against the State. (Tr.P. 79-14)

In an attempt to address the issue, the State reopened its case and recalled Sgt. Schaaf. He testified about taking a class on Criminal Jurisdiction in Indian Country conducted by the U.S. Attorney's office in Grand Rapids. He testified that the Pokagon Tribal Court has no criminal jurisdiction over a non-native person. (Tr.P. 91-13) However, Sgt. Schaaf acknowledged that the principle that the tribal court did not have jurisdiction was not found in the Pokagon constitution or Pokagon criminal code. (Tr.P. 92-10) He believed it was in case law, but could not cite anything specific. (Tr.P. 92-18) He was not aware of any agreement between the State of Indiana and the Pokagon Nation as to jurisdiction of State laws on Indian lands. (Tr.P. 94-9) And did acknowledge that Indian lands are sovereign. (Tr.P. 93-16) Although there is a deputization agreement between the county and tribal police, it does not describe which laws are to be enforced. (Tr.P. 94-22) When asked whether he is aware of an enactment by the Pokagon Tribal Council that formalizes the deferral to state courts to enforce laws violated on tribal property, Schaaf said that he was not. (Tr.P. 95-1) According to Sgt. Schaaf, the Pokagon's could not prosecute a non-native for unlawful possession of a syringe. (Tr.P. 95-17)

The first problem is that the State did not qualify Sgt. Schaaf as an expert, and therefore failed to establish by a referral to authority, that the Pokagon's could not prosecute a non-native for crimes occurring on tribal land.

The second problem with the State's argument is that the State did not establish that the

Appellant is a non-native. In fact, the State conceded that if the Appellant were a native, he would be subject to the Pokagon jurisdiction, not that of the State of Indiana.

Sgt. Schaaf testified that “in all likelihood” Mr. Riggle is not a native because the police did not find an identification card from their band on him. (Tr.P. 96-3) He said the: “Generally Native Americans will carry an identification card from their band, their particular tribe, so that way they can receive their benefits and special treatments under the law.” (Tr.P. 96-4) However, the lack of a card does not prove the Appellant is not a Native American, or that he did not have a card. Sgt. Schaaf acknowledged that he was not aware whether or not anyone checked the rolls of the Pokagon Tribe, or any other, to see if the Appellant was a member. (Tr.P. 97-4) The State has failed to prove the Appellant was a non-native.

The State never adequately addressed whether land under control of a recognized tribe is subject to state jurisdiction in the absence of congressional authority. Where the law is ambiguous, a penal statute must be strictly construed against the State. Smith v. State, 675 NE2d 693 (1996) In reversing the Arizona Supreme Court, the United States Supreme Court in Williams Et Ux v Lee Doing Business as Ganado Trading Post, 358 U.S. 217 (1959) held that to all state jurisdiction would be to undermine the authority of tribal courts over Reservation affairs and infringe on their ability to govern themselves. The Court said: “It is immaterial that respondent is not an Indian.”

CONCLUSION

The conviction should be reversed due to lack of jurisdiction of the State of Indiana. The Pokagon Tribe had jurisdiction to prosecute.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby affirm under the penalties of perjury that I served a true copy of this Appellant's Brief and Appellant's Appendix upon the following counsel of record by e-service using the Indiana E-filing System, this 28th day of March, 2020.

Hon. Curtis T. Hill, Jr.
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