SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS
COURT OF APPEALS

People of the Sault Ste Marie Tribe of Chippewa Indians
Plaintiff, Appellant
v.
Brenda Holloway
Defendant, Appellee
APP-19-01

BEFORE: Feleppa, Corbiere, Dietz, Jump, and Wichtman, Appellate Judges.

OPINION AND ORDER

Feleppa writing for the Court, joined by Appellate Judges Corbiere, Dietz, Jump, and Wichtman. This Court heard oral arguments on this matter June 21, 2019.

As explained more fully explained below, this Court affirms the Tribal Court's December 26, 2018 Order Closing Case.

Facts and Procedural History

Defendant/Appellee was employed by the Sault Ste. Marie Tribe of Chippewa Indians Early Head Start program as teacher.

On August 3, 2018 the Tribal Prosecutor, acting on behalf of the People of the Sault Ste, Marie Tribe of Chippewa Indians ("Appellant") filed a complaint against Defendant/Appellee under Section 71.1402(1)(a) of the Sault Tribal Code and a warrant was issued for her arrest.[1] (See *Complaint* and *Warrant*, Case No. 18-46). Defendant/Appellee was arrested on August 6, 2018. On August 7, 2018, Defendant/Appellee entered a plea of not guilty and was released on personal recognizance bond with conditions until trial. (See *Interim Order Pending Pre-Trial*, Case No. 18-46). On August 15, 2018, the Court entered an *Order Appointing Attorney* for the Defendant/Appellee. A Pre-Trial Hearing was held on September 3, 2018 and Bench Trial was scheduled for November 6, 2018. (See *Pre-Trial Summary Order*, Case No. 18-46). At the Final Pre-Trial Hearing, the Bench Trial was adjourned to November 8, 2018 followed by two subsequent adjournments and was held on December 21, 2018. (See *Order of Adjournment dated October 24, 2018 and Stipulated Motion and Proposed Order to Adjourn Trial dated November 16, 2018*) . At the December 21, 2018 bench trial ten witnesses testified and nine exhibits were

[1] STC § 71.1402 (1)(a): Child Abuse (punishable by 1 year in jail and/or $5,000 fine, or both). "A person commits the offense of child abuse, if [s]he knowingly, intentionally, or negligently, and without justification, causes or permits a person under the age of eighteen (18) years to be: (a) placed in a situation that may endanger its life or health,; …"

received by the Court. On December 26, 2018 an Order Closing Case was entered by the Tribal Court finding that the "[Tribal Prosecutor] failed to establish proof beyond a reasonable doubt that the Defendant had committed the offense of Child Abuse, defined in Tribal Code §71.1402(1)(A). (See *Order Closing Case*, Case No. 18-46).

A Notice of Appeal was timely filed 29 days later on January 25, 2019 followed by an Amended Notice of Appeal on February 14, 2019.

Jurisdiction and Standard of Review

This Court has exclusive jurisdiction in this matter, as it is reviewing the decision of the Tribal Court. STC § 82.109.

The issues before this Court are strictly issues of law, and as such are reviewed *de novo*. STC § 82.124(5). "A matter which is within the discretion of the Tribal Court shall be sustained if it is reflected in the record that the Tribal Court exercised its discretionary authority; applied the appropriate legal standard to the facts; and did not abuse its discretion." *In the Matter of JK*, APP-06-02, p.5 (January 9, 2009). A matter committed to the discretion of the Tribal Court shall not be subject to the judgment of the Court of Appeals. STC § 82.124 (8).

Discussion

Double Jeopardy

Overturning a dismissal at the conclusion of a trial violates the principles of double jeopardy under the 5th Amendment of the United States Constitution[2] through extension under Article VIII of the 1975 Constitution and Bylaws of the Sault Ste. Marie Tribe of Chippewa Indians ("Tribe's Constitution"). Particularly, "No member shall be denied any of the rights or guarantees enjoyed by citizens under the Constitution of the United States. . . "

Appellants, citation to *United States v DiFrancesco*, 101 S.Ct. 426 (1980) is not controlling. *DiFrancesco* involved the appeal of a sentence and went through great lengths to distinguish the ability to appeal a sentence instead of appealing a verdict. "The double jeopardy considerations that bar prosecution after an acquittal do not prohibit review of a sentence." *Id,* 437. When appealing a sentence, the questions of guilt (or innocence) is already decided and there is no longer a question of guilt or innocence. The issue decided in *DiFrancesco* was how big a punishment, not whether a crime occurred for which a punishment could be meted.

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[2] No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; *nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb*; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. 5th Amendment U.S. Constitution

In contrast, the Appellant is asking this Court to redetermine innocence or guilt of a Defendant found not guilty by the Tribal Court. This task is not permitted by the laws of the Tribe which make clear that this Court has no authority to disrupt the factual findings of the Tribal Court or to decide on its own "a matter clearly left to the discretion of the trial court. STC § 82.124 (8). The record below reflects that on December 21, 2018, at the conclusion of a trial, the Tribal Court decided the Defendant's innocence or guilt - a matter "within the discretion of the Tribal Court" to which it applied "the appropriate legal standard to the facts [presented]; and did not abuse its discretion." *In the Matter of JK*, APP-06-02, p.5 (January 9, 2009). Furthermore, the Defendant was told in open court that, the Tribal Court was ". . . dismissing the case." December 21, 2018 Transcript, page 108. To allow the same charges to be brought against the Defendant a second time invokes the very, "public interest in the finality of criminal judgments" discussed in *DiFrancesco*, an interest "so strong that an acquitted defendant may not be retried even if 'the acquittal was based upon an egregiously erroneous foundation.'" *DiFrancesco*, 433, citing *Fong Foo v United State* 369 US 141, 143. Indeed, "[t]here is no exception permitting retrial once the defendant has been acquitted, no matter how egregiously erroneous . . . the legal rulings leading to that judgment may be." *Sanabria v US*, 437 US 54, 75 (1978).

On appeal, both parties in *Fong Foo* concurred that the trial court did not have the authority to dismiss based upon alleged improper trial conduct by the prosecutor. *Fong Foo*, 369 US 141, 143. *Fong Foo* makes clear that even when the court commits such a plain error and did not have the ability dismiss, that dismissal could not then be overturned due to Fifth Amendment concerns. (Id.) An alleged 'mistake of law' as argued by the prosecution in this case does not create a side-door to skirt the Defendant's Fifth Amendment rights under the United States Constitution and the rights afforded Tribal members under the Tribe's Constitution to not be "subject for the same offence to be twice put in jeopardy of life or limb". While it is true that an aggrieved prosecutor may appeal a sentence, suppression of evidence, or other pre-trial orders on an interlocutory basis, no such mechanism, in Tribe's laws or otherwise, exists to appeal an acquittal once jeopardy attaches. Here, the Appellant alleged that the Defendant threw a two-year old child to the ground causing injury. *Complaint*, Case No. 18-46. At trial, no witness testified to seeing the Defendant "throw" the child to the ground causing injury. At trial, a surveillance video was properly admitted as evidence in which the Tribal Court found to be lacking in quality and substance. ("The only view that the Court could clearly see of the incident... clearly, the only view the Court could see is the one that's shown now on the screen. The other view did not by the Court's viewing show the incident, shows the after." Transcript p. 107). As explained previously, this Court is not in position to second-guess the factual findings of the Tribal Court. STC §82.144 (8). Simply put, the Appellant failed to meet the high burden of proof of "beyond a reasonable doubt" necessary to obtain a conviction at trial.

The miscarriage of justice and error of law arguments raised by the Tribal Prosecutor are not required to be addressed by this Court under these circumstances as double jeopardy forecloses such arguments where it is clear that the Tribal Court considered the law and the gravity of the situation; then applied the law to the facts before it, ultimately concluding that the evidence presented did not amount to the crime charged. While sympathetic to the jurisdictional challenges existing in Indian County, as well as the disproportionate rate at which women and

children in Indian Country experience violent crime, this Court recognizes that those are issues left to the Tribal Government, not the Court.

Conclusion

For the reasons outlined above, the relief requested by the Appellant is denied and the decision of the Tribal Court is affirmed. The December 26, 2018 order closing the case of the Tribal Court stands.