

**IN THE SUPREME COURT
OF THE MISSISSIPPI BAND
OF CHOCTAW INDIANS**

No. 2001-23

Mississippi Band of)
Choctaw Indians,)
Complainant-Appellee,)
)
V.)
)
)
Wilburn Williamson,)
Defendant-Appellant.)

**OPINION
AND
ORDER**

FILED

SEP 28 2004

CHOCTAW SUPREME COURT
BY: Melissa Finley
COURT CLERK

Appearances: Jim Frasier, for the Appellant-Defendant, Wilburn Williamson; and
Melissa Carlton, for the Mississippi Band of Choctaw Indians.

Before: Rae Nell Vaughn, C.J., Carey N. Vicenti, A.J., and Frank R.
Pommersheim, A.J.

C. N. Vicenti, Associate Justice, for a unanimous Court.

This case came before this Court upon a Notice of Appeal. This Court accepted
briefs and held oral argument to consider the merits of the claims raised within the Notice
of Appeal. Having fully considered the issues raised by this case this Court hereby
affirms the ruling of the trial court and remands this matter for further proceedings
consistent with our ruling herein.

I. Jurisdiction.

A verdict was entered in this case by the trial court on September 17, 2001. The
Notice of Appeal in this matter was submitted to this Court on September 26, 2001. In
accordance with Section 7-1-3 (a) C.T.C., therefore, this Court has jurisdiction to hear
this case.

II. Statement of the Facts.

This case constitutes an appeal from a criminal charge brought against the
Appellant, Wilburn Williamson. The charge was brought under Section 3-4-17, Class A,
constituting the crime of theft. At the time charges were filed against the Appellant he

was then employed with the Silver Star Casino. His regular duties there required him to monitor the operation of slot machines and ensure their proper functioning including, as the case may be, making sure that machines fully pay out all winnings. In order to fully accomplish these duties the Appellant was given full access to the interior of the machines.

On June 1, 2001, at 3:26 a.m. the Appellant was detected on a video camera along with an unidentified male taking a cup of coins out of one of the slot machines designated as #63881. The unidentified man cashed the coins in, the coins amounting to \$284.00. A separate camera later showed the Appellant splitting those coins in a restroom. It was from these basic facts that the charges were filed against the Appellant.

When this case came before the trial court the Appellant raised no objection to the sufficiency of the complaint. The case was tried before the judge. The videotapes were shown to the trial court. After the prosecution completed the presentation of its case, the Appellant made no motion for a directed verdict. After the verdict of guilt was entered, the Appellant, for the first time upon the Memorandum of Appeal, November 14, 2001, raised the issue of the sufficiency of the complaint.

In response, the Tribe has asked this Court to determine the appropriate standard of review in a criminal case. The Tribe has also argued that by his failure to raise the issue of the sufficiency of the complaint during trial that he has waived his right to appeal the verdict. Finally, the Tribe has urged this Court to conclude that the complaint was not defective.

The issues before this Court are three-fold. First, what is the standard of review to be given to verdicts rendered in a criminal case? And second, what are the minimum requirements of pleading a criminal complaint without violating a defendant's rights to Due Process of Law as set forth in the Mississippi Band of Choctaw Indians Constitution, Art. X, Sec 1 (h)? And third, is a Defendant required to raise the defectiveness of a criminal complaint in order to preserve a right to appeal upon that basis?

III. Discussion.

A. Standard of Review.

Even though the threshold requirement of submitting a timely Notice of Appeal upon a final order has been met, this does not necessarily result in a full review of a verdict rendered in a criminal case. An appeal is not an absolute right, rather it is conditioned upon such legislatively created factors, or considerations within the equitable powers of the courts.

Courts of Appeal must leave many cases untouched out of respect for the workings of a trial court. That respect is limited, however, by the Due Process requirements of the Tribe's Constitution. Art. X, Sec 1 (h). If it can be maintained that something that is done by a trial court violates a defendant's enumerated rights, this Court must be willing to review that decision.

But the dynamics of that intervention must account for the proper functioning of the trial court as counterbalanced by those rights. To put it another way, this Court cannot intervene overzealously in trial court decision-making lest we create a chilling atmosphere that prevents the trial court from independently venturing to interpret various aspects of the Tribe's law, or, that we inadvertently cause the trial court to create a proliferation of procedures that bog down the functioning of the trial court. This can only be avoided if we recognize that certain duties fall upon the Tribe's trial court to be self-governing and vigilant to respect the rights of defendants, and that certain duties fall upon the defendant to protect his or her own constitutionally guaranteed interests. We also recognize that within these dynamics that we describe here, we cannot fully disable the Tribe from presenting facts that it has gathered within its own self-limiting observation of a defendant's civil rights and by the general practical limitations of investigative forensics.

A standard of review takes these factors into consideration. It gives a certain deference to the fact-finding mission performed by the trial court. The appellate court is not in a position to determine the demeanor and the veracity of witnesses, or of the defendant himself, who, in this case did testify in his own defense. It recognizes as well that the prosecution and defense are both relying on the trial court to make reasonable inferences from the evidence that they bring forward. A standard of review takes into account that the defendant himself is playing a vigilant role to question the evidence

presented by the prosecution. In sum, a vibrant standard of review recognizes the full dynamics of the trial process.

The standard of review we choose to adopt here is that the Supreme Court will consider an appeal if the findings of fact are not supported by substantial evidence in the record or if a conclusion regarding the applicable law is clearly erroneous.¹ Further, we will show deference to such common sense or reasonable inferences made by the trial court that are supported by any evidence that may appear in the record.

Applying this standard to the present case, and recognizing that the basis of this appeal is in regards to the factual findings of the trial court, this Court recognizes that the prosecution did not introduce testimony that the Silver Star Casino owned the money that is the subject of this case, in other words, as required by Section 3-4-17 C.T.C., that the Appellant did "take...the movable property of another". Williamson and his compatriot clearly removed the money from a slot machine *not* by the obviously valid method, i.e. winning such money, but by the privileged use of a key followed by a course of dealings that can reasonably be inferred to constitute a collusion. The splitting of the money did not take place in front of the cashier or a supervisor but within the privacy and cover of a restroom. These are acts of persons who clearly are attempting to avoid detection of their activities by "another". Finally, just as in the case of a groundskeeper who removes movable property from a locked garage, or a security officer who removes movable property from a locked residence, it is reasonable to presume that such property belongs to the owners of the real property. On this basis alone, therefore, we are unwilling to overturn the decision of the trial court.

B. Minimum Standards of Pleading

Rule 4 of the Choctaw Rules of Criminal Procedure sets forth the basic requirements of a properly pled criminal complaint. It must contain:

- (1) The name of the person alleged to have committed an offense (hereinafter the "defendant"), if known, or if not known, then such

¹ Jackson v. Virginia, 443 U.S. 307 (1979), notwithstanding. We recognize that it is preferable that the legislative branch of the Tribe articulate the appropriate standard of review since the legislative process affords greater opportunity for various players in the trial process, as well as the general public, to weigh in on the various considerations we cited above. However, even such legislatively devised standard must withstand Constitutional scrutiny.

description of said person as is known; by which such person can be identified with reasonable certainty;

- (2) The place where the alleged offense was committed;
- (3) A short statement of the specific acts or omissions to act complained of;
- (4) The date and approximate time of the commission of the offense, if known;
- (5) The general name and Code designation of the offense;
- (6) The signature of the person filing the complaint, attesting under oath the truth of the matter stated in the complaint;

Rule 4 is straight-forward. It does not require specificity. It clearly does not require an identification of a victim. The purpose of the complaint is two-fold: first, to place a court upon notice that the government has identified a violation of its criminal law and desires to invoke the special powers of the court in the apprehension and prosecution of the perpetrator, and, second, to place a known defendant on notice of the nature and cause of an accusation of a violation of the criminal law that is being brought against such defendant.

C. Failure to Move for a directed verdict or a dismissal.

Rule 13 (2) of the Choctaw Rules of Criminal Procedure describes precisely the effect to be given to a failure to point out or object to a defect in the complaint:

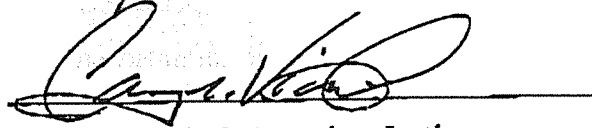
“...defenses and objections based on defects in the complaint...may be raised by motion only before trial or such shall be deemed waived, unless the court for good cause shown grant relief from such waiver.”

Since this Court finds that there is no defect in the complaint and there have been proper inferences drawn from the evidence and testimony, we need not address this issue any further.

IV. Conclusion

For the foregoing reasons this Court affirms the decision of the trial court and remands this matter for execution of the judgment or such further proceeding as deemed just by the trial court.

IT IS SO ORDERED, this 28th day of September, 2004.



Carey N. Vicenti, Associate Justice