

IN THE SUPREME COURT OF THE MISSISSIPPI BAND
OF CHOCTAW INDIANS

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SC 2005-8

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CHOCTAW SUPREME COURT
BY: *Melissa J. Jolley*
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MISSISSIPPI BAND OF CHOCTAW INDIANS,)
Plaintiff/Appellee)
VS.)
ROGER ANDERSON,)
Defendant/Appellant)

MEMORANDUM
OPINION AND ORDER

Per Curiam (Chief Justice Rae Nell Vaughn and Associate Justices Roseanna Thompson and Frank Pommersheim)

I. Introduction

On May 15, 2005, there was a family dispute that took place at the residence of Karen Thomas in the Conehatta Community, which is located within the boundaries of the Mississippi Band of Choctaw Indians Reservation. As a result of the dispute, which involved Ms. Thomas' minor daughter F.T., Tribal law enforcement officials were summoned to the residence.

Shortly thereafter, Mr. Roger Anderson, Defendant/Appellant, and the father of Karen Thomas also arrived at the residence. Apparently, Mr. Anderson advised his granddaughter F.T. to 'run away.' As a result of this conduct, Mr. Anderson was told by Officers Eric Billy and Joey Cotton he was under arrest.¹ While it was disputed whether Mr. Anderson (because of a hearing impairment) heard Officers Billy and Cotton, he nevertheless got into his pickup truck and drove away from Ms. Thomas' residence.

¹ The specific charge was Contributing to the Delinquency of a Minor, which is a Class C offense set out at Section 3-3-10 of the Choctaw Tribal Code.

Mr. Anderson was subsequently pursued by Officers Billy and Cotton. While in pursuit, the police vehicle struck Mr. Anderson's vehicle, which unexpectedly had stopped in the road. Mr. Anderson then drove to his house that was located close by. Tribal officers followed Mr. Anderson to his residence. When informed (again) that he was under arrest, Mr. Anderson stated he could not be arrested because he was no longer on the Reservation.

A scuffle ensued as a result of the attempt to handcuff Mr. Anderson. Local county law enforcement officials were also summoned.² As a result of Mr. Anderson's complaining of shortness of breath, he was not taken to the Tribal jail, but to the local hospital. Upon his subsequent release, Mr. Anderson was charged with the following offenses:

- (1) Contributing to the Delinquency of a Minor, Class C, Section 3-3-10 Choctaw Tribal Code;
- (2) Driving with a Suspended Driver's License, Class B, Section 4-5-3 Choctaw Tribal Code;
- (3) Reckless Driving, Class B, Section 4-5-8 Choctaw Tribal Code;
- (4) Battery, Class B, Sections 3-3-3 Choctaw Tribal Code;
- (5) Assault, Class C, Section 3-3-2 Choctaw Tribal Code;
- (6) Criminal Trespass on Land, Class C, Section 3-4-7 Choctaw Tribal Code;
- (7) Resisting Lawful Arrest, Class B, Section 3-8-8 Choctaw Tribal Code;
- (8) Evading, Class A, Section 4-5-11 Choctaw Tribal Code; and
- (9) Injury to Government Property, Class C, Section 3-4-14 Choctaw Tribal Code.

Various pre-trial motions were filed – including jurisdictional challenges – and were heard on October 29, 2005. All motions were denied.

² No state criminal charges were ever filed against Mr. Anderson in this matter.

A jury trial was held on November 3, 2005. The jury found Mr. Anderson not guilty of the charges of Reckless Driving, Battery, Assault, Criminal Trespass and Injury to Government Property. The jury found Mr. Anderson guilty of: Resisting Lawful Arrest, Evading, Contributing to the Delinquency of a Minor, and Driving with a Suspended Driver's License and he was sentenced as follows:

- (1) Resisting lawful arrest, Class "B" Offense, a fine of \$250.00 and thirty (30) days in jail, suspended, the Defendant to be placed on four (4) months unsupervised probation;
- (2) Evading, Class "A" Offense, a fine of \$250.00 and thirty (30) days in jail, suspended, Defendant to be placed on four (4) months unsupervised probation, concurrent with the resisting lawful arrest, a Class "B" offense;
- (3) Contributing to the delinquency of a minor, Class "C" Offense, a fine of \$100.00; and,
- (4) Suspension of driver's license, Class "B" Offense, a fine of \$250.00 for a total fine of \$850.00 and Court costs to be payable at the rate of \$200.00 per month.

A timely notice of Appeal was subsequently filed. The Notice of Appeal challenges only the convictions of eluding and resisting lawful arrest.

Oral argument was heard before this Court on January 19, 2007.

II. Issues

This appeal raises two issues, namely:

- A) Whether the named offenses occurred within the boundaries of the Mississippi Band of Choctaw Indian Reservation; and

- B) Whether there was sufficient evidence to support the jury verdict of guilt or the charges of evading and resisting arrest.

Each issue will be discussed in turn.

III. Discussion

A. Jurisdiction

There is no doubt that Tribe does not have criminal jurisdiction for offenses that are committed wholly outside the boundaries of the Mississippi Band of Choctaw Tribal Reservation. In fact, the Choctaw Tribal Code is quite specific on this point where it affirmatively states that:

Any Indian person who commits a criminal offense prohibited by the Code or other orders of the Tribe, by his own conduct or the conduct of another for which he is legally accountable, if:

* * *

- (I) The conduct occurs either wholly or partly within the Reservation.
Sec. 1-2-3(2)(h)(I) Choctaw Tribal Code

Therefore the essential question in this appeal is whether – given the uncontested fact that Mr. Anderson was arrested outside the boundaries of the Reservation – the offenses appealed, namely evading arrest and resisting arrest, were committed wholly or partly within the Reservation. This is a question of fact and the prosecutor’s evidence of this fact was the testimony of the arresting Tribal officers Eric Billy and Joey Cotton that Mr. Anderson committed the Tribal offense of contributing to the delinquency of a minor (which is not part of this appeal) wholly within the confines of the Reservation, then refused to submit to arrest by Officers Billy and Cotton for this offense and then departed the scene of the crime in his vehicle. Mr. Anderson’s failure to heed the commands of Officers Billy and Cotton led to the subsequent pursuit of Mr. Anderson. Mr. Anderson’s arrest was effectuated thereafter near his residence, which is located off the Reservation.

This sequence of events is generally referenced and as a matter of fresh or hot pursuit. The doctrine of fresh pursuit refers to the general situation where an individual commits an offense within one jurisdiction and attempts to immediately apprehend the suspect fail. As a result, the suspect is pursued forthwith and apprehended soon thereafter in a nearby jurisdiction. See *Judith v. Royster and Rory SnowArrow Fausett, Fresh Pursuit Onto Native American Reservations: State Rights 'To Pursue Savage Hostile Marauders Across the Border*, 59 U. Colo. L. Rev. 191 (1988).

The caselaw involving the doctrine of fresh pursuit is uniform in upholding its legitimacy to deal with the exigencies involving a fleeing suspect. Such is the case at bar which involves a routine case of fresh pursuit. Note that this case does not involve the more difficult question of jurisdiction over offenses that in the course of fresh pursuit are allegedly committed wholly outside the boundaries of the original jurisdiction. See e.g. the case of *State v. Spotted Horse*, 462 N.W.2d 463 (SD 1990), where the South Dakota Supreme Court held the State would have jurisdiction over Mr. Spotted Horse for his offenses committed off the reservation which initiated the fresh pursuit (e.g. not displaying current license plate tags) but not his alleged offenses committed wholly within the boundaries of the reservation (e.g. driving while intoxicated).

In this regard, it is also important to note that there is no cooperative agreement between the State of Mississippi and the Mississippi Band of Choctaw Indians that identifies the appropriate protocol in such matters. In addition, it is significant to recall that county law enforcement officers were summoned to assist in this matter, but they made no claim of any right to arrest Mr. Anderson nor did they charge him with any violation of state law.

In sum, this is a case – admittedly of first impression for this Court – about the issue of fresh pursuit and this Court adopts the well known doctrine of fresh pursuit. The Court further finds that all its essential elements have been satisfied in this instance.³

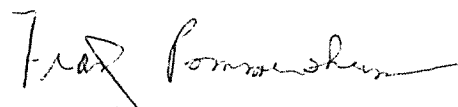
B. Sufficiency of the Evidence

When challenging the sufficiency of the evidence to support a jury verdict in a criminal case, the standard of review requires that the evidence be viewed in the light most favorable to the prosecution and reversal is only permitted if no fair and reasonable jury could find the defendant guilty. *Jones v. State*, 669 So.2d 1883 (Miss. 1995). Such a rule provides appropriate respect for the responsibility of the jury within the Tribal criminal justice system. In the case at bar, all the evidence was testimonial and there has been no adequate showing that the jury’s conclusion of guilt was in any manner ‘unreasonable.’ In essence, the jury apparently believed the testimony of the arresting officers and not the testimony of the defendant. Such matters of credibility alone provide no basis for the reversal of the Tribal jury’s finding of guilt.

IV. Conclusion

For all the above stated reasons, the decision of the jury in this matter is affirmed.

FOR THE COURT



Frank Pommersheim
Associate Justice

Dated: February 9, 2007

³ There is no claim in this matter that the Tribal law enforcement officers lacked probable cause to arrest Mr. Anderson since all charged offenses were committed in the presence of these officers. See e.g. *Mississippi Band of Choctaw Indians v. Anderson* (SC 2004-9).