

IN THE SUPREME COURT OF MISSISSIPPI  
BAND OF CHOCTAW INDIANS

FILED

SEP 23 2009

CHOCTAW SUPREME COURT  
BY:   
COURT CLERK

Mississippi Band of ) SC-2006-04  
Choctaw Indians, )  
Petitioners, )  
 )  
 )  
v )  
 )  
 )  
Kathy Clemons, )  
Respondent )

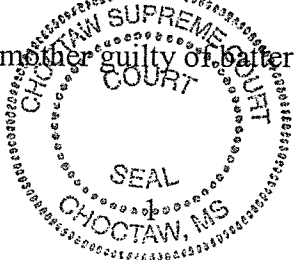
**OPINION AND ORDER**

DATE OF JUDGMENT: 09/23/09  
TRIAL JUDGE: DONNA L. MORRIS  
COURT OF ORIGIN: TRIBAL CRIMINAL COURT  
ATTORNEY FOR APPELLANT: ASHLEY R. LEWIS  
ATTORNEY FOR APPELLEE: TERRY L. JORDAN  
NATURE OF THE CASE: JURISDICTION  
TRIAL COURT DISPOSITION: 11/15/06

**BEFORE:** Chief Justice Hilda F. Nickey, Associate Justice Robert Jones and Associate Justice Brenda T. Pipestem.

**FOR THE COURT:** ASSOCIATE JUSTICE BRENDA T. PIPESTEM

On August 15<sup>th</sup>, 2005, a physically and mentally handicapped student at Choctaw Central High School informed her physical therapist that she had been beaten with a belt. The therapist, after viewing bruises and marks on the child's thighs, reported the alleged child abuse to the Choctaw Police Department. A Choctaw Police Investigator investigated the report at Choctaw Central High School and, based on her findings, filed criminal charges of domestic battery against the mother, the Appellant. On August 6, 2006, Judge Donna L. Morris held a bench trial, which included testimony from the physical therapist, and found the mother guilty of battery. The court assessed the mother



a fine of \$250 and ninety days in jail suspended upon payment of the fine on or before January 5, 2007. In addition, the mother was sentenced to serve six months probation and to submit to a behavioral health evaluation and complete any recommended programs.

During the trial, the mother's counsel objected to the physical therapist's testimony on the basis that it was hearsay, which the court denied. At the close of the trial and verdict, the mother moved for directed verdict based upon the absence of an affirmative showing that the alleged conduct had occurred within the Mississippi Choctaw Reservation. The court denied the motion.

The mother appeals based on two issues.

1. Did the Trial Court err in determining that the Tribe had met the required burden of proof to establish that the alleged offense occurred within the confines of the Choctaw Indian Reservation and within the jurisdictional reach of the criminal court of the Mississippi Band of Choctaw Indians?
2. Did the physical therapist's testimony include inadmissible hearsay evidence that would require reversal?

The Court agrees with Appellant that the case should have been dismissed for the lack of an affirmative showing of tribal court jurisdiction. We do not reach the second question.

Criminal jurisdiction of tribal courts is based on personal jurisdiction over the defendant and territorial jurisdiction over the situs of the offense. Article II of The Constitution and By-Laws of the Mississippi Band of Choctaw Indians (MBCI) states that "the jurisdiction of the MBCI shall extend to all lands now held or which may hereafter be acquired by or for which may be used under proper authority by the MBCI, and to all persons who are now or may hereafter become members of the MBCI." The Choctaw Tribal Code §1-2-3 is also very specific about jurisdiction:

- (2) Subject to any contrary provisions, exceptions or limitations contained in either federal law, the tribal Constitution, or as expressly stated elsewhere in this tribal Code, the Courts of the Mississippi Band of Choctaw Indians shall have civil and criminal jurisdiction over the following persons, who shall also be subject to the rules, regulations, and procedures established in this Tribal Code:
- ....
- (b) Any Indian person for any charge of criminal offense prohibited by this Code or other ordinance of the tribe when the offense is alleged to have occurred **within the reservation**. (Emphasis added).
- ....
- (h) Any Indian person who commits a criminal offense prohibited by this Code or other ordinance 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; (emphasis added) ....

This Court in *Mississippi Band of Choctaw Indians v. Williamson*, No. 2001-23 (2004), outlined the standard of review absent legislatively devised standards to be followed in criminal appeals. The standard of review enunciated 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. 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.”

Appellant is correct in that this Court is silent on the level of proof necessary to establish tribal jurisdiction. The facts of this case do not necessitate that we address this issue at this time.

Because the trial court judge issued a bench ruling without an opinion, we are left to review the complaint and the transcript of the hearing. Title II Choctaw Rules of Criminal Procedure Rule 4 (b)(2) requires that the Complaint identify “the place where the alleged offense was committed.” The Complaint, which is a standard form that provides a blank space for the Community, states that “within the confines and bounds of

the Choctaw Indian Reservation, in the Community of **Pearl River**, the above named defendant did willfully and unlawfully commit ....” The Complaint does not identify the place where the alleged offense was committed. As noted by this Court, “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...” (page 5 of opinion SC2001-23).

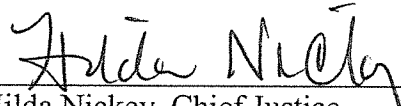
A review of the transcript reveals that Appellee cites *State v. Fabian*, 263 So.2d 773 (Miss. 1973), for the proposition that sufficient circumstantial evidence was presented to confer the court with a rebuttable presumption of jurisdiction in this case. However, *Fabian* stands for a rebuttable presumption of territorial jurisdiction in cases of murder where the body is found in the state of Mississippi. This Court is not bound by Mississippi law, and more importantly, *Fabian* does not apply to the facts of this case.

Appellee would have us believe that *Fabian* can help it overcome the fatal flaw of neglecting to identify the situs of the alleged offense. Appellee also maintains that “the trial court accepted the evidence presented through testimony of the Choctaw Police Officer and the victim’s therapist that Clemons committed battery on the reservation against her daughter.” (Appellee’s Reply Brief, page 16) However, the tribal court transcript reveals no testimony alleging the location, either on or off the reservation, of the alleged offense. In fact, the victim’s therapist testified that she had no knowledge of where the alleged battery took place. The Choctaw Police Officer’s testimony identified Pearl River as the location where the investigation took place and where the victim lived at that time. Officer Hutchinson provided no address or specific location (e.g., victim’s home, etc.) as the situs of the offense that was listed in the Complaint as having happened in the Choctaw Community of Pearl River. Additionally, upon cross-examination, the

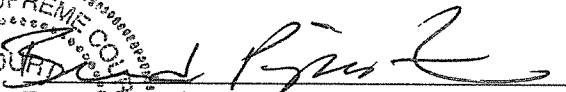
victim's therapist who reported the abuse stated that the victim did not tell her where the alleged offense took place.

After cross-examination, appellant made a motion for directed verdict based on the fact that the prosecution-appellee failed to prove jurisdiction. In response to Clemons' motion for directed verdict, Appellee acknowledged "I'm sure that there are probably no cases that has (sic) been in the Choctaw system in a criminal case where there has been less than positive proof about where the crime was committed." (transcript 41, lines 13-18). Upon review of the record, this Court holds that the prosecution failed to provide any evidence on an essential element of tribal court jurisdiction—the situs of the offense being within the territorial jurisdiction of the tribe. The appellant's motion for directed verdict is granted based on lack of tribal court jurisdiction. Therefore, the lower court decision is reversed and rendered.

IT IS SO ORDERED, this 23 day of September, 2009.



Hilda Nickey, Chief Justice



Brenda T. Pipestem, Associate Justice



Robert Jones, Associate Justice

