

Appellate Court
Fort Peck Indian Reservation
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**FORT PECK COURT OF APPEALS
ASSINIBOINE AND SIOUX TRIBES
FORT PECK INDIAN RESERVATION
POPLAR, MONTANA**

WACEY SAVIOR VS. FORT PECK TRIBES	CAUSE NO. AP # 753 ORDER VACATING CONVICTION AND REMANDING FOR NEW TRIAL
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Appeal from the Fort Peck Tribal Court, Judge Youpee presiding

Appellant appeared pro se.

Appellee appeared by and through Tribal Prosecutor

Before Smith, Chief Justice, and Shanley, Associate Justice

Background

¶1 This Matter comes before the Fort Peck Court of Appeals on a Petition for Review filed October 16, 2017 from a verdict of guilty on the charge of Partner Family Member Assault, in violation of 7 CCOJ §244, after a bench trial held October 5, 2012. The Appellant submits the Judge erred in giving credibility to the victim's statement when she is an

alcoholic. He also asserts the Prosecutor did not afford the victim an opportunity to tell her side of the story.

Statement of Jurisdiction

¶2 The Fort Peck Appellate Court reviews criminal convictions a matter of right when a notice of appeal is filed. 2 CCOJ §205 (a).

Summary of Issues

¶3 The following issues is raised by this appeal: Did the procedures utilized by the lower court during Appellants trial on the charge of Partner Family Member Assault violate due process rights of the Appellant?

Standard of Review

¶4 This Court reviews de novo all determinations of the lower court on matter of law, but will not set aside any factually determination which is supported by substantial evidence. 2 CCOJ §202.

Discussion

¶5 Upon reviewing the Petition, the recording of the trial and lower court file, this Court finds Appellant's due process rights were violated when he proceeded to trial without legal representation. Appellant was advised at the time of arraignment that he may be entitled to legal

representation if he was charged with an offense involving domestic violence and could not afford his own legal counsel. Nothing in the record indicates Appellant waived his right to counsel nor that he could afford his own legal counsel. Based on the record it does not appear that he was represented by legal counsel at any point in these proceedings. Although it appears Appellant was charged under 7 CCOJ §244, the language of found in 7 CCOJ §249 makes it clear that *any person* who has been charged with committing an act of Domestic Violence, as defined by 7 CCOJ§244 “against an Indian victim within the Indian country of the Assiniboine and Sioux Tribes” shall be afford the rights guaranteed under this statute. 7 CCOJ §249 (d). Indian Civil Rights Act equal protection concerns, 25 U.S.C. §1302 (8), may be triggered by providing similarly situated defendants with differing levels of rights. According to the language used by the legislature in 7 CCOJ § 249, Appellant must be afforded all the protections given to any other person charged with the same or sufficiently similar offense involving domestic violence.

¶6 In accordance with 7 CCOJ §249, Appellant had “the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution,” 7 CCOJ §249(d)(2)(A), as well as to have

appropriate legal counsel appoint for him if he was indigent CCOJ §249(d)(2)(B). Since nothing in the record establishes any legal bases for denying Appellant these recognized rights in this situation and there no clear and unequivocal waiver of this right by the Appellant, this Court must vacate the finding of guilt and remand for a new trial.

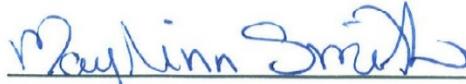
ORDER

¶7 The lower court's finding of guilt is vacated. This matter is remanded back to the lower court for a new trial which ensures Appellant's due process rights are satisfied and which meets the standards established for all individuals charged with the offense of domestic violence.

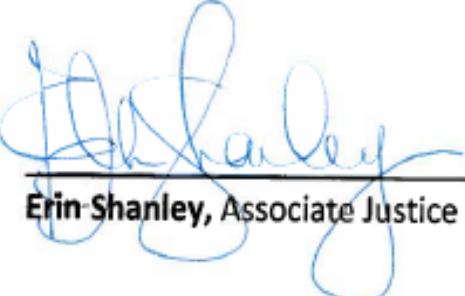
Dated this 30th day of November 2017,

FORT PECK COURT OF APPEALS

BY



Maylinn Smith, Chief Justice



Erin Shanley, Associate Justice