LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL COURT OF APPEALS

Ryan L. CHAMPAGNE v. People of the LITTLE RIVER BAND OF OTTAWA INDIANS

No. 06-178-AP (June 6, 2007)

Summary

The Little River Band of Ottawa Indians Tribal Court of Appeals affirms the defendant's conviction of the crime of attempted fraud.

Full Text

Before EDMONDSON, FLETCHER and KRAUS, Justices

Opinion and Order

Order

The Opinion and Judgment per Judge Brenda Jones Quick and dated December 1, 2006 convicting Hon. Ryan L. Champagne of the crime of attempted fraud is *Affirmed* in its entirety.

Opinion

I. Introduction

There are many trickster tales told by the Anishinaabek involving the godlike character Nanabozho. One story relevant to the present matter is a story that is sometimes referred to as "The Duck Dinner." *See, e.g.*, John Borrows, RECOVERING CANADA: THE RESURGENCE OF INDIGENOUS LAW, 47-49 (2002); Charles Kawbawgam, *Nanabozho in a Time of Famine*, in OJIBWA NARRATIVES OF CHARLES AND CHARLOTTE KAWBAWGAM AND JACQUES LEPIQUE, 1893-1895, at 33 (Arthur P. Bourgeios, ed. 1994); Beatrice Blackwood, *Tales of the Chippewa Indians*, 40 FOLKLORE, 315, 337-38 (1929). There are many, many versions of this story, but in most versions, Nanabozho is hungry, as usual. After a series of failures in convincing (tricking) the woodpecker and muskrat spirits into being meals, Nanabozho convinces (tricks) several ducks and kills them by decapitating them. He eats his fill, saves the rest for later, and takes a nap. He orders his buttocks to wake him if anyone comes along threatening to steal the rest of his duck dinner. During the night, men approach. Nanabozho's buttocks warn him twice: "Wake up, Nanabozho. Men are coming." KAWBAWGAM, *supra*, at 35. Nanabozho ignores his buttocks and continues to sleep. When he awakens to find the remainder of his food stolen, he is angry. But he does not blame himself. Instead, he builds up his fire and burns his buttocks as punishment for their failure to warn him. To some extent, the trick has come back to haunt Nanabozho—and in the end, with his short-sightedness, he burns his own body.

The relevance of this timeless story to the present matter is apparent. The trial court, per Judge Brenda Jones Quick, tried and convicted the defendant and appellant, Hon. Ryan L. Champagne, a tribal member, an appellate justice, and a member of this Court, of the crime of attempted fraud. Justice Champagne's primary job during the relevant period in this case was with the Little River Band of Ottawa Indians. Part of his job responsibilities included leaving the tribal place of business in his personal vehicle to visit clients. While on one of these trips, Justice Champagne took a personal detour and was involved in an accident. The Band and later the trial judge concluded that his claim for

reimbursement from the Band was fraudulent. Judge Quick found that Justice Champagne "attempted to obtain money by seeking reimbursement from the Tribe for the loss of his vehicle by intentionally making a false assertion that he was on his way to a client's home at the time of the accident." *People v. Champagne*, Opinion and Judgment at 6, No. 06-131-TM [35 Indian L. Rep. 6003] (Little River Band Tr. Ct., Dec. 1, 2006) (*Champagne III*). Justice Champagne was neither heading toward the tribal offices nor toward a client's home.

Like Nanabozho, Justice Champagne perpetrated a trick upon the Little River Ottawa community—a trick that has come back to haunt him. It would seem to be a small thing involving a relatively small sum of money, but because the Little River Ottawa people have designated this particular "trick" a criminal act, Justice Champagne has burned himself.

Among the many legal arguments made before this Court at oral argument that will be addressed later in this Opinion and Order, Justice Champagne argues that the tribal customs and traditions of the Ottawa people do not recognize the crime of "attempt." Justice Champagne further appears to argue more generally that the Little River Band statute adopting relevant Michigan state criminal law is inconsistent with Anishinaabek traditional tribal law and therefore this Court should not apply it to him. *Cf. LaPorte v. Fletcher*, No. 041 42AP, at 9-10 (Little River Band Tribal Court of Appeals, 2006) (Champagne, J.) ("It is the custom of the Little River Band of Ottawa Indians to believe that society must be mended to make whole again."). These are laudable and compelling arguments relating to the seeming contradiction between tribal goals to develop a modern and sophisticated legal system based on Anglo-American legal models while attempting to preserve the cultural distinctiveness of Ottawa culture through the development of tribal law and the preservation of tribal customs and traditions. *See generally* Michael D. Petoskey, Tribal Courts, 67 MICHIGAN BAR JOUR- NAL, May 1988, at 366, 366-69; Frank Pommersheim, BRAID OF FEATHERS: AMERICAN INDIAN LAW AND CONTEMPORARY TRI- BAL LIFE, 66-67 (1995). As such, we take these arguments seriously. In other factual and legal circumstances, we might be compelled to consider such an argument as dispositive, but this matter does not oblige us to question current tribal law. As Justice Champagne all but admitted at trial and at oral argument, he attempted to procure money that was not owed him by the Little River Band for his own purposes. It is not obvious to this Court that Justice Champagne's failure in his attempt should excuse him from liability. More importantly, Justice Champagne does not and cannot identify an Ottawa custom or tradition that would excuse him for his actions. In fact, it would be a sad day for this community to acknowledge that an action reflecting an intention of an individual to fraudulently procure money from the Band is excused because the word "attempt" does not exist in Anishinaabemowin, as Justice Champagne alleged at oral argument.

As the remainder of this Opinion and Order shows, we have no choice but to *Affirm* the judgment below.

II. Scope of Review

This Court's review of the judgment of the trial judge over matters of fact is extremely limited. Section 5.401(A) of the appellate court rules provides that "[a] finding of fact by a judge shall be sustained unless clearly erroneous." Other than one minor factual question raised at oral argument and discussed below, Justice Champagne has not challenged the findings of fact made by Judge Quick. *See* People's Response to Appellant's Failure to Submit Brief on Appeal (March 11, 2007). As such, this Court's review is limited to the legal arguments made by Justice Champagne at various times during the litigation. We review the trial court's conclusions of law *de novo* in accordance with Section 5.401(E).

III. Discussion

Justice Champagne offered several legal challenges to the complaint filed against him by the Little River Band. Justice Champagne's challenges derive from his pre-trial motions that, respectively, asserted that the complaint should be dismissed for (1) lack of a criminal statute; (2) lack of probable cause; and (3) lack of jurisdiction. On August 21, 2006, the trial court denied the motions to dismiss and filed an Opinion and Order. *See People v. Champagne*, Opinion and Order, No. 06-131-TM (Little River Band Tribal Court, Aug. 21, 2006) (*Champagne I*). Justice Champagne sought review of these motions to dismiss from this Court. We declined to address the merits of the motions at that time. *See Champagne v. People*, Opinion and Order, No. 06-178-AP (Little River Band Tribal Court of Appeals, Oct. 24, 2006) (*Champagne II*). Justice Champagne raised additional legal arguments in his notice of appeal and at oral argument on May 4, 2007.

We address each of these legal arguments in turn.

A. Jurisdiction

As always, we must begin our analysis with jurisdiction, for this Court has no authority without jurisdiction. *See generally* Const. Art. VI, § 8. Justice Champagne asserts that the Little River Band does not have territorial jurisdiction over this matter. We disagree.

The Constitution of the Little River Band of Ottawa Indians provides that "[t]he territory of the Little River Band of Ottawa Indians shall encompass all lands which are now or hereinafter owned or reserved for the Tribe ... and all lands which are now or at a later date owned by the Tribe or held in trust for the Tribe or any member of the Tribe by the United States of America." Const. Art. I, § 1. The Tribal Council has defined the criminal jurisdiction of this Court to include the territory of the Band and all American Indians. *See* Law and Order—Criminal Offenses—Ordinance §§ 4.02-4.03, Ordinance # 03-400-03 (last amended July 19, 2006); Criminal Procedures Ordinance § 8.08, Ordinance # 03-300-03 (effective Oct. 10, 2003). In other words, this Court has jurisdiction over all crimes committed on both reservation lands and trust lands of the Little River Band. Such lands include the lands upon which the Little River Band's governmental and commercial entities rest.

The Constitution provides that the Band must exercise jurisdiction over the Band's territory, subject to three limitations. Specifically, the Constitution provides that "[t]he Tribe's jurisdiction over its members and territory shall be exercised to the fullest extent consistent with this Constitution, the sovereign powers of the Tribe, and federal law." Const. Art. I, § 2. As to the *first* limitation, the Constitution mandates that this Court take jurisdiction over criminal matters arising within the territory of the Band that involve tribal members. The Constitution provides that this Court must "adjudicate all ... criminal matters arising within the jurisdiction of the Tribe or to which the Tribe or an enrolled member of the Tribe is a party." Const. Art. VI, § 8(a)(1). *See also* Tribal Court Ordinance § 4.01, Ordinance # 97-300-01 (Aug. 4, 1997). As the trial court correctly concluded, the locus of the crime was the territory of the Little River Band, not the accident location or Justice Champagne's residence. *See People v. Champagne*, Opinion and Order, No. 06-131-TM, at 5-6 (Little River Band Tribal Court, Aug. 21, 2006) (*Champagne I*). The act of attempted fraud against the tribal government committed by a tribal member such as Justice Champagne is within this definition of the Band's jurisdiction.

As to the *second* limitation, the Constitution authorizes the Tribal Council "to govern the conduct of members of the Little River Band and other persons within its jurisdiction" through the enactment of ordinances and resolutions. Const. Art. IV, § 7(a)(1). The Little River Band is a sovereign nation capable of exercising the inherent governmental powers that every sover-

eign retains in accordance with its governing, organic documents. In this instance, the Constitution authorizes the government to exercise criminal jurisdiction over its members. The Tribal Council has adopted a criminal code and authorized a prosecutor to exercise the sovereign powers of the Band to prosecute the criminal code. *See* Tribal Court Ordinance § 8.02, Ordinance # 97-300-01 (Aug. 4, 1997). *See also* Law and Order—Criminal Offenses—Ordinance § 4.02-4.03, Ordinance # 03-400.03 (last amended July 19, 2006). As such, the sovereign powers of the Band as defined by the Constitution and the ordinances of the Tribal Council authorize the prosecution of this matter.

As to the *third* limitation, federal law, nothing in federal law prohibits the prosecution of Justice Champagne for this crime. Congress reaffirmed the federal recognition of the Little River Band in 1994. *See* Pub. L. 103-324; 25 U.S.C. § 1300k-2(a). In that statute, Congress expressly reaffirmed "[all] rights and privileges" of the Band. 25 U.S.C. § 1300k-3(a). Federal law has long recognized the rights and authority of federally recognized Indian tribes to exercise criminal jurisdiction over American Indians for crimes committed within Indian Country. *See, e.g.*, 25 U.S.C. § 1301(2) (recognizing tribal authority "to exercise criminal jurisdiction over all Indians"); *United States v. Lara*, 541 U.S. 193 [31 Indian L. Rep. 1011] (2004); *United States v. Wheeler*, 435 U.S. 313 [5 Indian L. Rep. A-33] (1978); *Cohen's Handbook of Federal Indian Law* § 9.04 (Nell Jessup Newton, et al., eds. 2005). In short, the Band possesses ample authority recognized under federal law to prosecute Justice Champagne.

In his pre-trial motion, Justice Champagne argued that the State of Michigan should have exclusive jurisdiction in this matter. At oral argument, Justice Champagne asserted that the federal government should have exclusive jurisdiction. Justice Champagne is incorrect on both counts. As Judge Quick pointed out:

> Defendant is a member of the Tribe. The allegation against Defendant is that he engaged in criminal conduct against the Tribe. To assume a sovereign other than the Little River Band of Ottawa Indians has jurisdiction over this matter would be tantamount to determining that the Tribe has no power to govern its own affairs. Certainly, the Tribe's right of governance is unquestionable. The Little River Band of Ottawa Indians, through its inherent power to rule itself, does have jurisdiction over this matter.

Champagne I, *supra*, at 6. Regardless of whether either the State of Michigan or the United States has jurisdiction over this matter,[1] this Court is obligated by the Constitution of the Little River Band and by the ordinances of the Tribal Council to assert jurisdiction.

B. Right to Jury Trial

Justice Champagne was tried by the trial court below without a jury on the basis that the tribal prosecutor declined to seek jail time in this matter. Justice Champagne now asserts that he had the right to be tried by a jury of his peers under the Indian Civil Rights Act (ICRA). Justice Champagne is mistaken.

Persons subject to the criminal jurisdiction of the Band and charged with "an offense punishable by imprisonment" have the right to a six-person jury trial in accordance with tribal law. Const. Art. III, § 1(j) ("The Little River Band in exercising the powers of self-government shall not ... [d]eny to any person accused of an offense *punishable by imprisonment* the right, upon request, to a trial by jury of not less than six (6) persons.") (emphasis added). Assuming without deciding that ICRA applies to the Little River Band, the constitutional provision here mirrors the provision contained in the Act. *See* 25 U.S.C. § 1302(10) ("No Indian tribe in exercising powers of self-government shall ... deny to any person accused of an offense *punishable by imprisonment* the right, upon request, to a trial by jury of not less than six persons.") (emphasis added). The Tribal Council has determined that where the tribal prosecutor informs the Court and criminal defendants before trial that the People will not seek jail time, no right to a jury trial attaches. *See* Criminal Procedures Ordinance § 8.02, Ordinance # 03-300-03 (effective Oct. 10, 2003). We concur in this assessment about the right to a jury trial. *See* Const. Art. VI, § 8(a)(2). As such, no right to a jury trial ever attached in this matter.

C. Lack of a Criminal Statute

The Little River Band's Tribal Council has both adopted an indigenous criminal code and incorporated provisions of the Michigan state criminal law statutes as a means of exercising its constitutional authority "to govern the conduct of members of the Little River Band...." Const. Art. IV, § 7(a)(1). The Band charged Justice Champagne with attempted fraud in accordance with the Law and Order—Criminal Offenses—Ordinance § 11.02, Ordinance # 03-400-03 (last amended July 19, 2006) (criminalizing and defining "fraud") and the Tribal Court Ordinance § 8.02, Ordinance # 97-300-01 (Aug. 4, 1997) ("Any matters not covered by the laws or regulations of the Little River Band of Ottawa ... may be decided by the Courts according to the laws of the State of Michigan."). Through the state law incorporation statute, Section 8.02, the Band asserted that Michigan Compiled Laws Section 750.92 also applies to Justice Champagne. Section 750.92 is the State's "attempt" statute and provides, "Any person who shall attempt to commit an offense prohibited by law, and in such attempt shall do any act towards the commission of such offense, but shall fail in the perpetration, or shall be intercepted or prevented in the execution of the same, when no express provision is made by law for the punishment of such attempt, shall be punished...." The Little River Band's criminal law statute has no parallel provision criminalizing "attempt." Justice Champagne, who attempted to defraud the Band but failed, was charged under this collection of statutes.

Justice Champagne forcefully argues that the lack of an indigenous "attempt" statute excuses his actions. His argument rests on the basis that the Little River Band's choice to incorporate elements of Michigan's criminal code is an abrogation of tribal sovereignty and a violation of tribal customs and traditions. This appears to be a facial attack on the validity of Section 8.02. As Judge Quick noted, however, "It does not diminish a sovereign's power to enact, by incorporation, laws as set forth by another jurisdiction, particularly when it is a matter of convenience.... Certainly, when the Tribal Council enacted specific laws, it could have done away with Ordinance # 97-300-01, § 8.02. This, it did not do. There, the Ordinance is binding on Defendant." *Champagne I*, *supra*, at 2. Regardless, whether or not the Tribal Council's decision to adopt state law was wise is irrelevant—the statutes apply to Justice Champagne as a member of the Band. We are bound to apply the law of the Little River Band. *See* Tribal Court Ordinance § 8.01, Ordinance # 97-300-01 (Aug. 4, 1997).

At oral argument, Justice Champagne referred this Court to his separate opinion in our 2006 decision in *LaPorte v. Fletcher*, No. 04-142-AP (Little River Band Tribal Court of Appeals

[1] It is unlikely either the State of Michigan or the United States would exercise jurisdiction over this matter. Judge Quick noted that Michigan state law requires "that a criminal matter that involves fraudulent misrepresentations must be tried where the victim of the crime resides, and not where the defendant made the misrepresentations." *Champagne I*, *supra*, at 6 (citing *Schiff Co. v. Perk Drug Stores*, 270 N.W. 738 (Mich. 1936)). *See also* Mich. Comp. L. Ann. § 762.2-762.3 (noting jurisdiction and venue in criminal cases based on where the criminal act(s) occurred, not the residence of the defendant). Moreover, it unlikely that the federal government would have jurisdiction in this matter as the amount of money involved is insufficient (or barely sufficient) to reach federal requirements—$5,000. *See* 18 U.S.C. § 666(a)(1). *E.g.*, *United States v. Heddon*, 2001 WL 406430(6th Cir., April 3, 2001).

2006) (Champagne, J.). Justice Champagne represented the opinion to mean that the tribal courts should refrain from applying state law, especially where it is inconsistent with tribal customs and traditions. That opinion, the reasoning of which both of the other justices deciding that matter explicitly rejected, has no precedential value to this Court. Moreover, the subject of the separate opinion—whether the losing party to a closely contested civil suit should receive an award of attorney fees—is all but irrelevant to this matter. Finally, the separate opinion arguing on a general level that tribal law should be used to bring the parties together to make the parties whole—tends to support a view that does not favor Justice Champagne's position in this matter. As noted in the introduction to this opinion, it does no justice to the tribal community to excuse the actions of a presiding appellate justice in attempting (and failing) to defraud the Little River Band.

D. Demand for Traditional Judges

Justice Champagne argues that the trial court incorrectly denied him a trial before "traditional judges." At oral argument, Justice Champagne suggested that his case should have been heard before the Peacemaker's Court or perhaps through a sentencing circle. However, Justice Champagne offers nothing in either the Constitution nor tribal statute or regulation that creates an entitlement to be tried before "traditional judges." Without an entitlement guaranteed by tribal law, there is no right. *E.g.*, *Pineiro v. Office of the Director of Regulation*, 1999.NAMG.0000001, at ¶ 19 (Mohegan Gaming Disputes Tr. Ct. App. 1999), available at http://www.tribal-institute.org/opinions/1999.NAMG.0000001.htm ("A person has a legitimate claim of entitlement to a benefit and is entitled to due process protections, if there are rules or mutually explicit understandings that support a claim of entitlement to the benefit."); *Delorge v. Mashantucket Pequot Gaming Commission*, 1997.NAMP.0000038, at ¶ 34 (Mashantucket Pequot Tr. Ct. 1997), available at http://www.tribalinstitute.org/opinions/ 1997.NAMP 0000038.htm ("The entitlement to compensation is based on a finding of a violation of a legal right."). Justice Champagne's claim to a right to a trial before "traditional judges" must fail.

E. Witness Irregularities

The tribal court offers a small stipend to witnesses subpoenaed to appear before the court for trial testimony. In this case, the tribal prosecutor allegedly offered twenty dollars cash to a witness—a man who purchased Justice Champagne's vehicle after the accident—for lunch. Justice Champagne argues that the cash offered to this witness constitutes a bribe. However, Justice Champagne offers no evidence or argument that he has been prejudiced by this action, even assuming it was somehow invalid. This Court finds that the error—if any (and it is doubtful)—is harmless. As one tribal court noted, "Harmless error is error which is trivial, formal, or academic." *In re Welfare of A.S.*, 1996.NACC.000017, at ¶ 26 n.2 (Colville Confederated Tribes Ct. App. 1996), available at http://www.tribalinstituteorg/opinions/1996.NACC.0000017.htm. *See also Fort Peck Assiniboine and Sioux Tribes v. Bull Chief*, 1989.NAFP.0000006, at ¶ 66 (Fort Peck Ct. App. 1989), available at http://www.tribalinstitute.org/opinions/1989.NAFP0000006.htm, (holding that "harmless error" signifies that the defendant's criminal procedure rights were not violated by the error); *Dorchester v. Fort McDowell Yavapai Nation*, 2003.NAFM.0000001, at ¶ 20 (Fort McDowell Yavapai Nation Sup. Ct. 2003), available at http://www.tribal institute.org/opinions/2003.NAFM.0000001.htm (holding that appeals based on "harmless error" are insufficient to merit reversal of a criminal conviction).

F. Challenges to the Trial Court's Findings of Fact

Justice Champagne offers no argument in any briefs filed before this Court that the findings of fact made by Judge Quick at trial were clearly erroneous. At oral argument, however, Justice Champagne argues that the Little River Band made an admission on an insurance form that he was, in fact, on company time when he was involved in the accident. Justice Champagne further asserts that his accident was caused by his sleepiness, which in turn derived from his "sleep apnea" condition. We are reluctant to address these arguments, given that the tribal prosecutor could not have prepared a response to these arguments in anticipation of oral argument as they were not briefed. But given that these arguments amount to an attempt to offer additional or supplementary testimony to that which was given at trial, we can dispose of these arguments easily.

In short, Justice Champagne's attempt to reargue the question of fault and causation is fundamentally irrelevant. The trial court did not rely upon the pre-trial statements or the trial testimony about who was at fault in the accident. Judge Quick wrote, "I believe the prosecution proved Defendant lied about his responsibility for causing the accident; however, *I gave this fact no weight in determining whether or not Defendant was guilty of the charges against him.*" *Champagne III*, *supra*, at 3 (emphasis added). Instead, the trial court relied upon the fact that Justice Champagne misrepresented to his employer about his destination to hold that he was guilty of attempted fraud. *See id.* at 3-6. Judge Quick concluded:

> Cumulatively, I found the testimony of these three witnesses and the accompanying exhibits to overwhelmingly prove, beyond any reasonable doubt, that Defendant was traveling west through the intersection at the time he broadsided Ms. Joseph's vehicle, and was not making a wide right turn onto Maple as he claimed.
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> ...
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> Since I was convinced, beyond a reasonable doubt, that Defendant was heading due west at the time of the accident rather than attempting to turn north as he claimed, and that traveling in that direction actually took him away from the home where he claimed he was headed, I found that he was not being truthful when he made the assertion that he was going to a client's home at the time of the accident.

Id. at 5-6 (emphasis in original). As noted by the tribal prosecutor at oral argument and by Judge Quick at trial, Justice Champagne's claims about "sleep apnea" do not support his defense to the claim that he attempted to deceive his employer about his destination at the time of the accident. *See id.* at 6. In short, nothing compels this Court to find that Judge Quick's findings of fact were clearly erroneous.

Conclusion

This Court is aware of the gravity of a criminal case involving a sitting appellate justice as a defendant. It is a sad day for the Little River Band Ottawa community and to this Court to be forced to sit in judgment of one of its own, but we are obligated to do so. At oral argument, Justice Champagne raised the possibility that his prosecution was "political." We have no doubt that Justice Champagne's assertion is true, but not in the way he means it. As one of the leaders of the community—*ogemuk*—Justice Champagne was held—and should be held—to a higher standard of conduct. *See generally* Const. Art. VI, § 2(a); Art. VI, § 6(b)(1)-(2). As to Justice Champagne's claim that he was singled out by other leaders of this community, we have no competence or authority to make judgments as to the sound discretion of the tribal prosecutor to initiate a criminal proceeding. For the above reasons, we *Affirm* the judgment of the trial court.