

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

IN THE MATTER OF THE
COMMITMENT OF:

CA 99-03

LAWRENCE LEE JR.

NOTICE OF ENTRY

TO: ALL INTERESTED PARTIES

PLEASE TAKE NOTICE that an ORDER was duly entered by the Supreme Court of the Rosebud Sioux Tribe, Todd County, State of South Dakota, the Honorable Chief Justice RAMON ROUBIDEAUX and Associate Justice PATRICK A. LEE and FRANK POMMERSHEIM presiding in the above-entitled matter on the 4TH day of AUGUST, 2000.


Appellate Clerk of Courts

CERTIFICATE OF MAILING

I, Carla A. Brave, Appellate Clerk of the Supreme Court of the Rosebud Sioux Tribe, hereby certifies that I mailed a certified copy of the MEMORANDUM OPINION AND ORDER in the above-entitled matter to the following:

MR. ROBERT BROWN
ROSEBUD TRIBAL COURT
PROSECUTOR
P.O. BOX 129
ROSEBUD, SD 57570

MR. NEIL CARSRUD
DAKOTA PLAINS LEGAL SERVICES
P.O. BOX 727
MISSION, SD 57555

by first-class mail, postage prepaid on the 4th day of AUGUST, 2000.

FILED

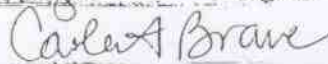
(10/16)

DAKOTA PLAINS LEGAL SERVICES

Supreme Court of the Rosebud Sioux Tribe

Notice of Entry of Judgment and Order

4 August 2000




Appellate Clerk of Courts

**IN THE SUPREME COURT
OF THE ROSEBUD SIOUX TRIBE
ROSEBUD, SOUTH DAKOTA**

In the Matter of the)	
Commitment of)	Memorandum Opinion
Lawrence Lee, Jr.)	and Order
)	
)	#CA-99-03
)	

Per Curiam (Before Chief Justice Roubideaux and Associate Justices Lee and Pommersheim)

I. Introduction

On September 14, 1999, Gladys Lee, mother of Lawrence Lee, Jr., Appellant herein, filed a petition in the Rosebud Sioux Tribal Court seeking the involuntary commitment of her son Lawrence as mentally ill. The trial court issued an order that took Mr. Lee into custody for purposes of a psychological evaluation to be conducted by Indian Health Services (IHS). The trial court also appointed Neil Carsrud of Dakota Plains Legal Services as counsel for Mr. Lee.

A hearing was held before Judge Marshall on September 14, 1999. The hearing included the presentation of testimony by Gladys Lee, Appellant's mother, and Dr. Rosemary G. Webb, Clinical Psychologist for the Indian Health Service, who conducted the court ordered evaluation of Mr. Lee. At the conclusion of the hearing, Judge Marshall issued findings of fact and conclusions of law and ordered that Mr. Lee be "committed to the Indian Health Services Mental

Health Program” for the purposes of receiving services and care. The court’s order also required a review hearing within ninety days.

The Appellant filed a timely Notice of Appeal on September 20, 1999.

II. Issues

This appeal presents two issues namely:

- A. Whether the trial court properly applied the “choice of law” provision identified at Sec. 4-2-8 of the Rosebud Sioux Tribal Code; and
- B. Whether the trial court denied the Appellant “due process” under the Indian Civil Rights Act, 25 USC § 1302(8)

III. Discussion

Each issue will be discussed in turn.

A. “Choice of Law”

The Rosebud Sioux Tribal Code “choice of law” provision provides at § 4-2-8:

Law Applicable to Actions in Tribal Court - The tribal court shall apply the applicable laws of the Rosebud Sioux Tribe and the United States in actions before it. Any matter not covered by applicable tribal or federal laws shall be decided according to the customs and usage of the Tribe. When doubt arises as to customs and usages of the Tribe, the Court may require advise (sic) of persons generally recognized in the community as being familiar with such customs and usages. In any matter in which the rule of law is not supplied by any of the above, the Tribal Court may look to the law of any tribe or state which is consistent with the policies underlying tribal law, custom and usage.

The core of the Appellant's claim is that trial court erred as a matter of law because it failed to apply the "customs and usage of the Tribe" in resolving this matter. This argument, while not without superficial attraction, is seriously flawed.

The Appellant's argument may be summarized succinctly. The trial court's use of state law¹ violated the dictates of the tribal code that permit the use of state law only when there is no applicable federal or tribal law (including "customs and usages of the tribe."). Appellant contends that this alleged failure to apply tribal custom and usages renders the ultimate application of state law a violation of § 4-2-8 of the Tribal Code.

¹ The trial transcript indicates the following exchange at p. 2:

MR. CARSRUD: Ah, number one, ah, I'd like to make an inquiry as to particular sections of the tribal code from which these proceedings are being held. And, my understanding there is no mental health proceedings in the code. . .tribal code.

THE COURT: I think this is used under choice of law provision in the tribal code which allows the tribe to incorporate South Dakota Law or any other law that is appropriate.

MR. CARSRUD: Okay. (Inaudible)

THE COURT: So, it basically follows the state type of proceedings, except we don't use a hearing panel, we use a judge instead of a hearing board.

The error of Appellant's argument is in the assertion that the trial court applied state law. It did not. At oral argument in this case, the Court took judicial notice - without exception by either side - that the trial court routinely decided 'mental commitment' cases with the application of 'state' law principles.² However, when the trial court applied 'state' law principles in the past to matters of 'mental commitment', those state precepts of law became tribal law. More specifically, they became principles of tribal common law. Therefore, in the case at bar, despite the inartful language used by trial court, it did apply tribal (common) law not state law. Therefore, the trial court did not violate § 4-2-8 of the tribal code in deciding this case.

In addition, it is important to note that the Court's decision in this case is in no way forecloses a party in a future case from arguing and proving³ the existence and content of "tribal custom" that would supplant current tribal common law to the contrary. It goes without saying that tribal custom is a potentially rich source of tribal law. Yet it cannot become part of the braid of tribal (common) law until it is asserted and established in a specific case. The mere potential of tribal custom cannot be used as a kind of charm or talisman to defeat existing tribal law.

B. *Due Process*

² This application of 'state' law principle, apparently derives from the fact that the tribe has no statutory or other positive tribal law on point and the application of 'state' law facilitates the potential of access to services for the committed individual at state facilities.


³ The Appellant in this case did not even make an offer of proof, much less actually prove anything about the potential existence and content of "tribal custom" in the mental health commitment arena.


The Appellant also asserts a very weak due process claim under the Indian Civil Rights Act, 25 USC § 1302(8). Appellant apparently believes that if the trial court misconstrued § 4-2-8 in its choice of law application that this also would constitute a denial of due process. This is not correct. The erroneous application or interpretation of substantive law by a trial court is reviewable *de novo* in accordance with the appropriate standard of review, but it does not constitute a denial of due process. In this case, Appellant received notice, had court appointed counsel, and obtained an extensive hearing with the right to call and cross-examine witnesses. He received complete due process.


IV. Conclusion

For all the above reasons, the decision of the trial court is affirmed.

IT IS SO ORDERED.


 Ramon Roubideaux
 Chief Justice

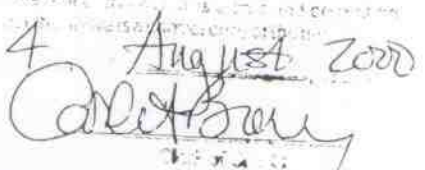

 Patrick Lee
 Associate Justice


 Frank Pommersheim
 Associate Justice

7-12-2000
 Dated

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 IN 825
 DISTRICT COURT OF APPEALS
 The undersigned Clerk of the District of Sioux Tribal Court
 hereby certifies that the above document was filed
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4 August 2000

 Carl Braun
 Clerk of the District Court of Appeals

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