

ROSEBUD SIOUX SUPREME COURT)
ROSEBUD SIOUX RESERVATION) SS
ROSEBUD, SOUTH DAKOTA)

ROSEBUD SIOUX TRIBE, Plaintiff/Appellee
DOCKET # CA2005-01

VS.
NOTICE OF ENTRY OF ORDER

SEASON SUN HAWK, Defendant/Appellant

TO: THE ABOVE-NAMED PARTIES

Please take notice that on the 5th day of January, 2009, the Honorable Justice LEROY GRAVES presiding, The Court entered an ORDER. A certified copy of said Judgment of ORDER is enclosed and by this reference is incorporated herein and is herewith served upon you.

Dated this 5th day of January, 2009.

Denita Marshall
Clerk of Courts

CERTIFICATE OF SERVICE

I, Denita Marshall, Chief Clerk of Courts of Rosebud Sioux Tribal Supreme Court, hereby certify that I served a true and correct copy of the Notice of Entry of Order and copy of said Order upon the Appellant(s) and Appellee(s) as follows by placing in the U.S. Mail, postage prepaid, addressed as follows:

Rosebud Sioux Tribe, Attorney General's Office at Box 500, Rosebud, SD 57570
Season Sun Hawk at PO Box 182, Rosebud, SD 57570

Dated this 5th day of January, 2009.

Denita Marshall
Clerk of Courts

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

CA 2005-01

OPINION

ROSEBUD SIOUX TRIBE,)
Plaintiff/Appellee,)
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)
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)
SEASON SUN HAWK,)
Defendant/Appellant.)

vs.

This matter comes before the Supreme Court on appeal from a conviction of Appellant

Mr. Sun Hawk, in a bench trial on September 14, 2005 before the Honorable Sherman Marshall.

The Rosebud Sioux Tribe was represented by Virgil Hauff, and Mr. Sun Hawk, also

known as Conrad Black Bear, was represented by the then-Public Defender Travis Whirlwind

Soldier. The Tribe offered one witness, Officer Calvin Wain, Jr. who was the arresting officer.

He was duly cross-examined by the counsel of Mr. Sun Hawk. Mr. Sun Hawk only offered

himself as a witness in his defense.

At the bench trial, testimony was offered in which Officer Wain indicated that he

received a call of intoxicated individuals at the Spotted Tail dam, apparently with small children

with them. When he arrived, he found Mr. Sun Hawk parked in his vehicle, but with the keys in

full control of his vehicle, along with a female passenger. Officer Wain testified that Mr. Sun

Hawk smelled of alcohol from two feet away, that he had indicators of being intoxicated

including blood shot eyes, his head was shaking, he had slurred speech and was unstable on his

feet, and that he found four empty beer cans that still had "alcohol" liquid around the opening,

with two of them smashed, behind Mr. Sun Hawk's seat. The officer asked Mr. Sun Hawk to

submit to a field sobriety test, but Mr. Sun Hawk refused. After being taken back to the Rosebud

detention facility, Mr. Sun Hawk refused to take the intoxilizer again.

In Mr. Sun Hawk's case, essentially his defense was that Officer Wain was biased against him because of an incident that occurred at the Housing Board, of which Mr. Sun Hawk was a member, some time previous to this incident. Other than that, Mr. Sun Hawk primarily testified that all cars on the reservation smell like beer and that these were old cans from the night before and that he had a hangover but had not been drinking that morning.

The trial court found Mr. Sun Hawk guilty and sentenced him to thirty (30) days in jail and a fine of \$500, and \$25 in court costs. The jail time was suspended on condition of no violations for the next 180 days, having no intoxicants or being in a place where alcohol is sold. His drivers license was suspended for thirty (30) days but he was later given a work permit upon motion by his defense counsel.

Appellant raises insufficiency of the evidence in his *pro se* appeal, and later, in his reply brief, he also *pro forma* raises ineffective assistance of counsel, but does not argue anything in the record to indicated incompetency of counsel. This matter is reviewed *de novo* under a clearly erroneous standard.

First, it should be noted that Mr. Sun Hawk does not make any assignment of error of the trial court as required by Rule 5. In essence, he reargues the facts of his case below, but does not indicate anywhere in his pleadings as to the error by the trial court.

The Tribe has also raised the issue of the appellant brief not being filed in a timely manner, and that his brief, if it is construed as one, is lacking in conformity to the contents and form of briefs as required in Rule 7 of the Rules of Appellate Procedure, but this Court will not consider these deficiencies, as the Appellant filed *pro se*. This Court will also not consider the Appellant's late-designated allegation of ineffective assistance of counsel, as he fails to indicate one fact or argument as to why his counsel was ineffective.

As to the merits of the insufficiency of evidence claim on appeal, we find there was

sufficient, uncontroverted evidence to believe beyond a reasonable doubt that Mr. Sun Hawk was in control of his vehicle, that he was under the influence of alcohol, and therefore that he violated the laws of the Rosebud Sioux Tribe that prohibit driving under the influence of alcohol.

The conviction of the trial court, and the sentence, is hereby AFFIRMED.

Dated this 5th day of January, 2009.

BY THE COURT:

Charles Abourezk, Assoc. J.
Charles Abourezk, Assoc. J.
Cheryl Three Stars, Assoc. J.
Cheryl Three Stars, Assoc. J.
Leroy Greaves, Assoc. J.
Leroy Greaves, Assoc. J.

ATTEST:

Denita Marshall, Chief Clerk of Courts
Denita Marshall, Chief Clerk of Courts

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