

ROSEBUD SIOUX SUPREME COURT
ROSEBUD SIOUX RESERVATION
ROSEBUD, SOUTH DAKOTA

*Criminal
-jury instructions*

JAMES R. WALN,
Defendant/Appellant

CASE NO. 97-02

vs.

Memorandum Opinion

ROSEBUD SIOUX TRIBE,
Plaintiff/Appellee

and Order

INTRODUCTION

Appellant/Defendant James R. Waln was convicted by jury trial of Domestic Abuse, a crime specified in the Rosebud Sioux Law and Order Code, Section 5-38-2. Waln admitted that he slapped and kicked the victim committing the offense of Domestic Abuse (Trial Record on Appeal p. 95). At the oral argument the Public Defender argued that the only contested factual issue in the trial was whether the defendant had acted in self-defense.

During the course of the trial neither the Appellant nor his attorney directly raised the issue of self-defense or requested or submitted a jury instruction for the affirmative defense. In addition, the Rosebud Sioux Tribal Court did not instruct the jury on the law of self-defense. (ROA 104-108). Further, when attorney for the Appellant petitioned the court with a Notice of Appeal and Stay of Judgment he did not raise the issue of self-

defense or the failure of the trial court to present jury instructions on self-defense. The issue was raised for the first time eighteen months after the trial through an Amended Notice of Appeal.

ISSUES

On November 24, 1998 the Rosebud Supreme Court heard oral arguments on two issues:

- (1) Whether a lay advocate should be held to a different standard than a professional attorney; and
- (2) Whether the trial court erred in failing to give a jury instruction on self-defense and the correct legal standard for review.

DISCUSSION

- (1) Standard for a Lay Advocate practicing in the Rosebud Sioux Tribal Court.

Appellant's attorney suggests that the standard for a lay advocate practicing in the Rosebud Sioux Tribal Court should be a lesser standard than a professional attorney. He also suggests without really saying that his client received ineffective assistance of counsel because he was not represented by professional counsel. He stated that the "Tribal Court's obligation is to be more than ever vigilant, and active, in protecting the fundamental trial rights of a defendant. The rationale for the waiver rule is that a licensed attorney is on hand to protect the defendant's interests and rights, where no lawyer is defending the appellant in a criminal trial, that rule should not be applied." (Appellant's

Reply Brief, p. 11).

The Court, however points to the establishment of the Sicangu Oyate Bar Association (SOBA) which provides standards for anyone practicing in the Rosebud Sioux Tribal Court. SOBA also requires licensing for lay advocates, as well as continuing legal education to maintain their license. It is clear that Appellant had the choice of hiring a professional attorney but chose instead to hire a lay advocate. Creating a different standard for lay advocates would create confusion in the court system and it would be inherently unfair to hold a lay advocate to a different standard than a professional attorney practicing in the same court.

Therefore, the Court finds that lay advocates are not held to a lesser standard than professional attorneys. Both advocates are subject to the same licensing requirements and standards of practice under SOBA.

(2) Legal Standard for Review on Trial Court Failure to Give a Jury
Instruction on Self-defense.

The proper standard of review on questions of law regarding jury instructions is limited to plain error, that the error is one that has substantially affected a defendant's rights, resulting in a miscarriage of justice. United States v. Schmidt, 922 F.2nd 1365, 1369 (8th Cir. 1991). Under this standard the court can grant relief if the error would result in a miscarriage of justice if left uncorrected. United States v. Carey, 898 F.2d 642, 644 (8th Cir. 1990).

In Schmidt, the Appellant claimed that the district court erred by not instructing the jury that a mere buyer-seller relationship does not establish a conspiracy and that the government must prove beyond a reasonable doubt that Schmidt had full knowledge of the the conspiracy's general scope and purpose. The court citing United States v. Figueroa, 900 F.2d 1211 (8th Cir. 1990), stated that since district courts have wide discretion in formulating jury instructions and since the district court issued jury instructions that covered the substance of both Schmidt's buyer-seller theory and the proper elements of conspiracy, it held that the jury instructions did not contain plain error.¹

However, in this case, the Appellant's attorney did not raise the issue of self-defense nor request such a jury instruction and the Court did not instruct the jury on the law of self-defense. The Appellant admitted the essential elements of the offense and the only reason for a jury trial was on the issue of self-defense. Therefore, in this case it was egregious error for the Court not to provide the jury instruction on self-defense and fatal to a fair trial. The Appellant was denied a fair trial by not receiving the jury instruction.

The Court wants to make it clear that this does not mean the failure to provide any jury instruction is automatically grounds for reversal but that the standard for review is plain error. Under this standard relief is granted if the error would result in a miscarriage of justice if left uncorrected.

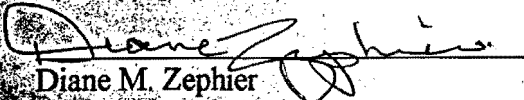
CONCLUSION

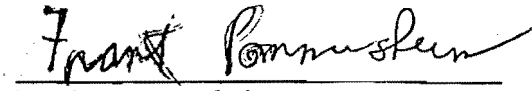
Therefore and for all the above stated reasons, the decision of the trial court is reversed and remanded for a new trial should the Rosebud Sioux Tribal Prosecutor decide

¹ Note that no tribal court decision was cited in this suit by either party on the relevant issue and therefore the Court has looked to federal cases for persuasive reasoning.

to retry the case.

Dated this 12th day of January 1999.


Diane M. Zepher
Associate Justice


Frank Pommersheim
Associate Justice


Leroy Greaves
Associate Justice

