

TRIBAL DOMESTIC VIOLENCE CASE LAW

Annotations for Selected Tribal Cases Related to Domestic Violence



Prepared by:
Tribal Law and Policy Institute

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The Tribal Law and Policy Institute was created in 1996 through the combined efforts of those concerned with the improvement of tribal court systems and the fair administration of justice in Indian Country. The Institute focuses upon collaborative programs that provide critical resources for tribal court systems, victim's assistance programs, and programs involved in promoting the improvement of justice in Indian Country. The Institute seeks to facilitate the sharing of resources so that Indian Nations and tribal justice systems have access to low cost resources that they can adapt to meet the individual needs of their communities.

The Tribal Law and Policy Institute seeks to establish programs which link tribal justice systems with other academic, legal, and judicial resources such as law schools, Indian law clinics, tribal colleges, Native American Studies programs, Indian legal organizations and consultants, tribal legal departments, other tribal courts, and other judicial/legal institutions. The underlying philosophy is that tribal courts and Native people are best served by shared access to existing information and resources- so that each tribe need not "reinvent the wheel."

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INTRODUCTION

This compendium is designed to assist tribal judicial officers in understanding how some tribal governments have handled certain legal issues within the context of domestic violence cases. While a great deal of research has been done on case law in the state systems, little to no analysis has been done on the tribal judicial approach to domestic violence. This compendium, developed as part of an overall code-writing workshop curriculum for tribal governments, will assist tribal legislators as well. Understanding how laws are interpreted by the court systems may impact the development of laws that provide safety to tribal citizens.

This compendium does not include every tribal court opinion on domestic violence. It is limited to those tribal court opinions that have been published and disseminated to the public, including cases found in the Indian Law Reporter, the Oklahoma Tribal Court Reports, and the Northwest Regional Appellate Court Reporter, as well as cases available on the internet. Tribal courts that do not publish opinions are not included in this compendium.

HOW TO USE THE COMPENDIUM

The decisions listed in this compendium are not binding on any jurisdiction other than the one which issued the decision. Whether or not a particular tribal court chooses to cite to another tribal court's opinion (as persuasive authority) is dependant upon a number of factors, including tribal statutes, cultural similarities, and precedence. Citing to any case outside the pertinent tribal legal system should only be done after careful analysis of the relevance and impact on sovereignty.

Note: Domestic violence is most often defined as "intimate partner violence" – but many tribes define domestic violence much more broadly.

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I. CIVIL CASES

A. CHILD CUSTODY

❖ Eastern Band of Cherokee Indians Supreme Court

Arneach v. Reed, 2000.NACE.0000003

<http://www.versuslaw.com>

Facts: Arneach (Father) and Reed (Mother) have three children in common. Father is an enrolled member of the Eastern Band of Cherokee Indians (EBCI) and resides on Cherokee trust lands. Mother is a citizen and resident of Ohio and is not an enrolled member of the Tribe. Although Father and Mother previously lived together on Cherokee trust lands, they were never married. The youngest child, daughter S.A., never lived on tribal land and was not an enrolled member in the tribe, although she is listed on her birth certificate as being part Indian. The two boys, W.A. and S.A., are both enrolled members of the tribe and both have lived on reservation land.

Mother filed for an emergency domestic violence restraining order against Father in a state court in Ohio and was granted temporary custody of the three children. Two days later, Father filed a custody suit with the Court of Indian Offenses (now the Cherokee Court). Ten days afterward, Mother filed a Consent Agreement and Domestic Violence Protection Order in the Ohio Courts. She was granted temporary custody of the children with visitation to Father. She motioned to dismiss the custody determination in the Court of Indian Offenses. The Court filed its order on January 27th, 1999, finding jurisdiction over custody matters involving the children of the parties under the Eastern Band of Cherokee Indians Tribal Ordinance No. 168 (1994).

Holding: The domestic violence restraining order from Ohio conferred parental rights and responsibilities to Mother; however, the custody assignment was temporary. The Ohio order additionally stated that any valid order issued by a court of competent jurisdiction on issues of custody or visitation would supersede. Therefore, EBCI Court has jurisdiction over the custody of tribal children. The Eastern Band Cherokee Court has jurisdiction for the purposes of determining child custody over the sons, W.A. and S.A., but the court does not have jurisdiction over the youngest child, daughter S.A. (because she is not enrolled and has not lived on the reservation).

Practical Application: A tribal court custody order may supersede a temporary custody assignment in a state protection order.

❖ Supreme Court of the Navajo Nation

Davis v. Crownpoint Family Court, 2003.NANN.0000012

<http://www.versuslaw.com>

Facts: Davis (Mother) has two minor children. At the time of this litigation, Halloway (Mother's intimate partner) had never established paternity. Halloway alleged that he was the victim of domestic abuse by

Mother. The Crownpoint Family Court granted an ex parte temporary restraining order to Holloway, giving him custody of the two children. The Crownpoint Court further found that Mother was an unfit parent and she was detained at the Crownpoint Public Safety Facility. No proof was offered by Holloway to show that Mother was indeed abusive and Mother was not afforded the opportunity to rebut the presumption of unfitness. Holloway subsequently removed the children from the state and enrolled them in a new school. Mother challenged the court ruling and requested that the Supreme Court order the children returned to the Navajo Nation.

Holding: The Supreme Court reversed the decision of the Crownpoint Family Court and issued a writ of habeas corpus to have the children returned to Mother. The lower court violated Mother's due process rights by finding that she was unfit without a hearing or without proof that she committed acts of abuse. The Supreme Court further ruled that a family court has no jurisdiction to grant custody of a child without a legal determination of paternity. Mere claim of biological parenthood is not enough to entitle a parent to child custody. The best interests of a child are paramount in custody decisions and a determination of paternity.

Practical Application: A legal finding of unfitness should be based on evidentiary proof and a mother who is alleged to be unfit should have the opportunity to rebut that presumption. The law specifically allows this opportunity to the mother, as the Navajo Nation is matrilineal and there is a preference for child placement with the mother.

Sombrero v. Keahnie-Sanford & Crank, 2003.NANN.0000011

<http://www.versuslaw.com>

Facts: Sombrero (Mother) was granted a temporary protection order (TPO) against Sandoval Crank, an intimate partner. In her initial filing, Sombrero stated that Crank was the natural father as the basis for her claim to child support. At the hearing, the court entered the parties' stipulated mutual domestic abuse protection order. Crank was ordered to pay monthly child support. Following a home study, the Navajo Nation Division of Social Services recommended that Mother be given primary care of the child, Crank be given unlimited visitation rights on his non-work days, and child support be paid by Crank of \$214 per week. Crank alleged that Mother refused to allow access to the child for visitation. Crank sought enforcement of the orders in the court. The court enforced the orders and fined petitioner, as well as ordering petitioner to pay all attorney fees. Crank resorted to the courts twice to enforce the visitation order because petitioner continued to refuse him access to the child. At no time was a finding made concerning Crank's paternity. The record shows Crank did not contest being the father of the minor child. However, the court did not make a determination of paternity with this information.

Holding: Case was remanded to Kayenta Family Court for a finding of paternity. Custody and visitation should not have been decided without a determination of paternity even where, as here, the parties stipulate without a full evidentiary hearing. The family court erred when it granted custody and visitation without first making the jurisdictional determination concerning Crank's paternity.

Practical Application: In this case, the appellate court found that the child custody, support, and visitation orders were invalid without a finding of paternity. If the court does not make an actual legal determination of paternity where the parties are not married, then custody and visitation orders may not be enforceable, regardless of whether neither party objected to the presumption of paternity and regardless of whether either or both parties stipulated to paternity.

B. DEFINITION OF DOMESTIC ABUSE

❖ Supreme Court of the Navajo Nation

Morris v. Williams, 1999.NANN.0000012

<http://www.versuslaw.com>

Facts: A property dispute arose in which Williams allegedly trespassed on Morris' agricultural land and used abusive language towards Morris. Morris filed for a protection order against Williams. The case was tried as a Domestic Abuse case and was heard by the Window Rock Family Court. The family court found that there was a "recorded history of incursions" by Williams since the early 1980s, which included the unauthorized grazing of livestock, removal and destruction of a fence line, disruptive and unruly conduct towards Morris and her family, and granted the protection orders. Morris appealed the decision, attempting to enter evidence of land ownership into the case.

Holding: The Navajo Nation Domestic Abuse Protection Act (DAPA) was passed "to protect all persons: men, women, children, elders, disabled persons, and other vulnerable persons, who are within the jurisdiction of the Navajo Nation, from all forms of domestic abuse as defined by this Act and by Navajo Nation law." 9 N.N.C. § 1604(A) (1995). The term "domestic abuse" covers many kinds of misconduct, including harassment and damage to property." 9 N.N.C. § 1605(A)(1)(h), and (f) (1995). The Act does not provide for the distribution of property or the determination of ownership or boundaries of land. The Act is concerned only with the conduct of the parties.

Practical Application: The Navajo Nation code contains a very broad definition of domestic abuse. Thus, the law may apply to many kinds of relationships, including neighbors. The Navajo Nation Domestic Abuse Protection Act includes harassment and property damage as forms of domestic abuse.

C. JURISDICTION

❖ Ho-Chunk Nation Trial Court

Whiteagle-Fintak v. Fintak, available at:

<http://Hochunknation.com/government/judicial/opinions/dv9901.htm>

Facts: Whiteagle-Fintak (Mother) and her daughter are enrolled members of the Ho-Chunk Nation, and reside on the Ho-Chunk Nation Trust Land. Fintak (Husband), a non-Indian, also resides on the Ho-Chunk Nation Trust Land. Whiteagle-Fintak filed for a protection order against Fintak and established that Fintak had engaged in a pattern of physical and mental abuse, including intimidation.

Holding: The Court found that jurisdiction exists over Husband due to his residing on Ho-Chunk Nation Trust land. The traditional laws of the Ho-Chunk Nation require respect between all people. This mandate includes a prohibition against physical violence and intimidation.

Practical Application: Since tribal governments do not have criminal jurisdiction over non-Indians¹, it may be very important for a Native woman who is victimized by a non-Indian to have access to civil remedies. In this case, the trial court turned to traditional law to rule that it had civil jurisdiction over non-Indians who reside on trust land.

¹ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

D. TERMINATION OF PARENTAL RIGHTS

❖ Cherokee Nation Judicial Appeals Tribunal

E.P. v. Cherokee Nation, 7 Okla. Tribe. 517, WL 32099967 (Cherokee)(2002).

Facts: The Cherokee Nation initiated proceedings to terminate the parental rights of E.P. based on his history of violence against the child's mother. Evidence at a jury trial showed that E.P. had assaulted his wife with a metal chair. E.P. also abused alcohol and showed an unwillingness to put forth a good faith effort to comply with the standards set for him by child protection workers. A social worker testified at trial that future spousal abuse is likely. A jury trial resulted in the termination of the parental rights of E.P., who then appealed the decision.

Holding: The Appeals Tribunal affirmed the judgment of the lower court. Spousal abuse in child's presence is the same as abusing the child mentally and emotionally. Sufficient evidence was present for the jury to come to the conclusion that terminating EP's parental rights would be in the best interest of the child.

Practical Application: Abusing a spouse in the presence of a child can constitute child abuse. A parent who is not likely to stop using violence in a relationship presents a danger to the children, and the tribal government is justified in terminating parental rights in such cases.

❖ Northern Plains Intertribal Court of Appeals

In the Interest of [D], Jr., 17 ILR 6081 (1990).

Facts: At a trial for termination of Father's parental rights, the lower court, Mother was granted physical custody of the minor child (2 and a half years old) with legal custody being given to the Sisseton-Wahpeton Sioux Tribe. Mother has a history of alcohol abuse and has been in prison three times for misdemeanor offenses. Father also has a history of alcohol abuse and at time of trial was incarcerated for a severe beating he inflicted upon Mother. The minor child was witness to the severe beating. Father's parental rights terminated and he appealed to the Northern Plains Intertribal Court of Appeals.

Holding: The appellate court found that there was no evidence of emotional abuse upon the minor child by his action of severely assaulting the mother in the present of the minor child. The trial court decision was reversed, and denies a termination of parental rights of the natural father of a minor Indian child under the Indian Child Welfare Act.

Practical Application: This case ruled quite differently than E.P. v. Eastern Cherokee. The appellate court indicated that expert witnesses must testify that the child did indeed suffer emotional abuse as a result of having observed the physical abuse of one parent perpetrated by the other. This decision was written in 1990 and may not reflect the contemporary understandings of the impact of domestic violence on children.

❖ **Tribal District Court of the Ponca Tribe**

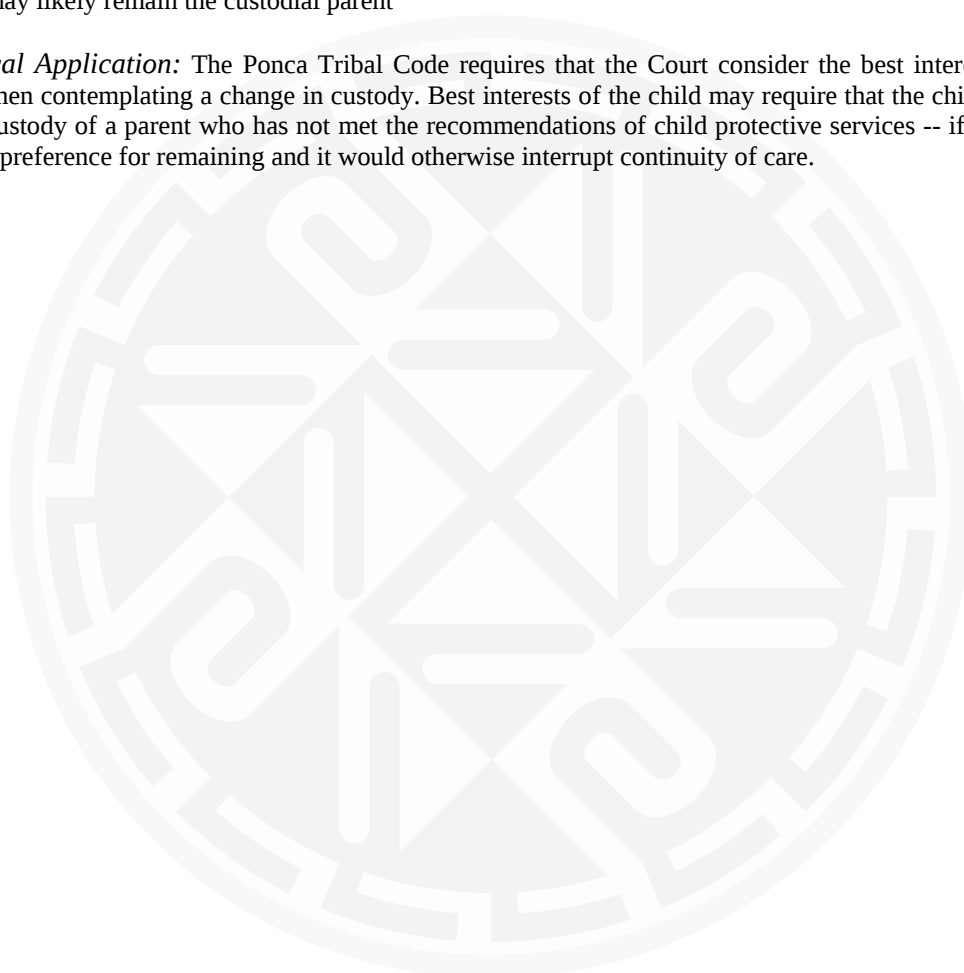
In re: T.D.W., 7 Okla. Trib. 300, WL 34090555 (Ponca D.Ct.)(2001).

Facts: This case concerns the best interests and custody of child T.D.W. Both parents testified to a history of alcohol abuse and the mother admitted to inhalant abuse. Father had been incarcerated for committing acts of domestic violence against Mother. Father also admits to having been involved in domestic violence incidents with Mother and with a girlfriend, but claims that he acted in self-defense. Mother has a 1993 protective order against Father, which is still in effect. There is no evidence of physical abuse toward the child by the father.

The child, when present, indicated to the Guardian ad litem and to the Court that he wished to stay with his father. The father showed numerous school records and awards to the Court and stated that the child would be attending camp during July. Indian Child Welfare recommends that the child remain with his father.

Holding: The Court concludes that it is in the best interest of the child to remain in his father's home and to have frequent visitation with his mother. The Court finds that both parents are equally at fault or have equivalent problems with alcohol and mutual abuse. Therefore, the parent with whom the child has been living may likely remain the custodial parent

Practical Application: The Ponca Tribal Code requires that the Court consider the best interest of the child when contemplating a change in custody. Best interests of the child may require that the child remain in the custody of a parent who has not met the recommendations of child protective services -- if the child states a preference for remaining and it would otherwise interrupt continuity of care.



E. VIOLATION OF A PROTECTION ORDER

❖ Supreme Court of the Navajo Nation

In re petition of Austin, 1998.NANN.0000006

<http://www.versuslaw.com>

Facts: Austin (Petitioner) was accused of sexual abuse of an elderly lady. The family court granted a Temporary Protective Order against Austin. At the hearing a few days later, Petitioner admitted to the allegations. The court then entered a Domestic Abuse Protection Order, which ordered (1) Petitioner to stay away from victim's residence and place of business, (2) Petitioner is prohibited from threatening, harassing, or abusing victim, (3) Petitioner is prohibited from contacting victim by any means, (4) Petitioner is prohibited from touching any of victim's property, (5) Petitioner shall serve 180 days in jail. Petitioner was then arrested and incarcerated. He filed a writ of habeas corpus, arguing that the detention was unlawful.

Holding: In this case, Petitioner was not charged with violating the protective order, nor was evidence presented that the appellant violated the protective order; therefore, the Navajo Supreme Court held that the Petitioner was wrongfully incarcerated and ordered his release. Navajo law requires a finding that a person violated a term of a protection order before jail becomes an option. The family court does not have the option of imposing a jail term based on the admission of allegations by the accused. In this case, the family court erred by imposing a jail sentence on the Petitioner without first finding that the Petitioner violated the order.

Practical Application: The court is not able to impose a jail term unless and until the protective order is violated. Jail terms should be based on contempt of the court's order and not on the allegation or admission of domestic violence in the application for a protective order. A separate criminal proceeding can be initiated to address the act of violence.

❖ Penobscot Nation Judicial System Appellate Division

Penobscot Nation v. Paul, 20 ILR 6101 (1993).

Facts: Ila Nicola, a Penobscot Nation enrolled member, was granted a protection from harassment order against Paul, also an enrolled member of the Penobscot Nation. The order was granted by the Penobscot Tribal Court in April 1992. In August 1992, Paul physically approached Nicola in Bangor, Maine and threatened her. The Penobscot Nation proceeded to charge Paul with violation of a protection order. Paul raised the defense of lack of jurisdiction because he was in Bangor, Maine at the time of the incident. The court denied his motion and found him guilty of violating the protective order.

Holding: The appellate court upheld the trial court's finding that Paul violated the protective order when he threatened Nicola in Bangor, Maine. The violation of the protective order is a contempt of court issue. As the United States Supreme Court has rejected the notion that a court's contempt power is limited to violations occurring within its territorial limits, Paul's argument that the Penobscot court lacked jurisdiction in this case did not succeed.

Practical Application: Tribal courts may retain jurisdiction over violations of a protective order regardless of whether the violations occur within its territorial limits, because such a violation is considered contempt of court.



II. CRIMINAL

A. ARREST

❖ Colville Confederated Tribes Court of Appeals

Manuel v. Colville Confederated Tribes, 2001.NACC.0000001

<http://www.versuslaw.com>

Facts: Defendant Manuel was convicted of battery against his live-in girlfriend. The defendant appealed, claiming that the arrest was invalid. In the course of investigating an incident of domestic violence, the victim gave tribal police permission to enter Manuel's residence. Victim shared the residence with Manuel. Manuel refused to answer the door after repeated knocking by police, and was subsequently charged with both domestic abuse and resisting arrest. Manuel filed a Motion to Suppress Evidence and Dismiss the Case based on tribal police officer's entrance into his home without a warrant.

Holding: The victim had common authority over the house involved, and thus had authority to give consent to law enforcement to validate entry into the house. The case was remanded to the Trial Court.

Practical Application: If a victim has common authority over the premises and the alleged abuser refuses entry or refuses to respond to police requests to exit the premises, then the victim can grant the police the necessary authority to enter the residence.

❖ Northern Plains Intertribal Court of Appeals

Devils Lake Sioux Tribe² v. Frederick, 21 ILR 6137 (1994).

Facts: Two tribal police officers responded to call for assistance from a victim and her mother. One officer removed Frederick from the premises. The other interviewed the victim. The victim stated that Frederick had slapped and pushed her. Neither officer observed Frederick slap or push the victim. The officers arrested Frederick without a warrant. He was charged with assault and battery and a 6-person jury returned a verdict of guilty as charged. Frederick appeals on the grounds of improper procedure. He claims that the warrantless arrest for an alleged offense not committed in the presence of a police officer was unlawful and, therefore, the court lacked jurisdiction over him.

Holding: The arrest was found to be lawful and the verdict of guilty was upheld. Devils Lake Sioux Law and Order Code § 3-2-104(2) authorizes a police officer to make arrests when the officer has probably cause to believe that the person has committed the charged offense. Furthermore, Devils Lake Sioux Law and Order Code § 3-7-161(3) states that a law enforcement officer shall arrest a person, anywhere with or

² Now known as the Spirit Lake Nation.

without a warrant if the officer has probable cause to believe (a) an assault has occurred; (b) an assault has occurred and has resulted in bodily injury to the victim whether the injury is visible to the officer or not; (c) that any physical action has taken place with the intention of causing another person reasonably in all probability serious bodily injury or death, and the victim is the person's family member, household member, or former household member.

Practical Application: The Devils Lake Sioux Tribe, through legislation, authorized law enforcement personnel to make warrantless arrests (based on probable cause) for offenses that they do not actually witness.



B. DETENTION

❖ Eastern Band of Cherokee Indians in the Cherokee Court Qualla Boundary

Eastern Band of Cherokee Indians v. [B.D.], 2003.NACE.0000002

<http://www.versuslaw.com>

Facts: Father was detained for domestic violence and B.D. [Mother], who was breastfeeding their infant child at the time, was given sole custody. At the hearing, however, it was determined that the mother was the primary aggressor of the violence. Eastern Band of Cherokee law requires a mandatory 72-hour detention period for perpetrators of domestic violence. Mother appealed the detention, arguing that she would not be able to breastfeed the infant with her while in detention.

Holding: The appellate court determined that a breastfeeding mother who was the primary aggressor in a domestic violence incidence could be detained in a location other than jail for the mandatory 72-hour detention period to allow her to continue to nurture and care for her minor child for whom she was the sole custodian. This decision is limited to the particular facts of this case.

Practical Application: This decision is limited to the facts in this case. If the facts are substantially alike, then the 72-hour mandatory detention does not have to be in jail but can be in an alternative location.



C. EVIDENCE

❖ Colville Confederated Tribes Court of Appeals

Waters v. Colville Confederated Tribes, 1996.NACC.0000007

<http://www.versuslaw.com>

Facts: Defendant was convicted of battery against his girlfriend at a jury trial. During the jury trial, the Colville prosecutor repeatedly attempted to present hearsay evidence of the victim's out-of-court statements, despite the trial court's ruling that such evidence was inadmissible. The trial court did not declare a mistrial, despite the fact that all the discussions regarding the evidence occurred in front of the jury.

Holding: The defendant's conviction was reversed and remand to the Tribal Court for a new trial. It constituted prosecutorial misconduct for the Tribes' prosecuting attorney to repeatedly attempt to introduce inadmissible hearsay testimony.

Practical Application: Attempting to introduce hearsay evidence that has been ruled inadmissible by the judge may result in a mistrial. Colville v. Swan (below) ruled that the decision in this case is limited to the facts.

Colville Confederated Tribes v. Swan, 2003.NACC.0000012

<http://www.versuslaw.com>

Facts: The defendant was charged with domestic violence against his stepdaughter. The victim recanted and changed her account of what happened. The prosecutor wanted to use an inconsistent statement for purposes of impeachment of the victim, but the court disallowed the introduction of her prior statement. The exclusion of this statement seriously weakened the prosecution's case. The prosecution, therefore, moved for a dismissal. The trial court dismissed the case with prejudice. The Colville prosecutor appealed the decision of the trial court to dismiss criminal charges with prejudice.

Holding: The Trial Court was found to have abused its discretion when it dismissed the case with prejudice. The Trial Court's effort to expedite the matter went too far by pre-judging what might be forthcoming during trial. This appellate court distinguished this case from the Waters case (see above) and indicated that the trial court's action would result in more victim of domestic violence recanting in order to avoid prosecution of the abuser.

Practical Application: It is not uncommon for victims of domestic violence to recant. Therefore, it can be important for prosecutors to be able to introduce prior inconsistent statements in order to secure a conviction. Dismissing a case with prejudice will prevent the prosecutor from moving forward with the case should the victim later decide to testify for the tribe.

❖ **Fort Peck Court of Appeals**

Fort Peck v. Darrell Reddog, Appeal No. 082 (1990)

<http://www.fptc.org/Appellate%20Opinions/082.htm>

Facts: Defendant was found not guilty of assault at a bench trial. The prosecutor appealed, arguing that the Tribes had met their burden of proof and that the trial court erred in allowing evidence of the victim's character. Evidence showed that the defendant assaulted the victim, knocking out several of her teeth. The defendant offered evidence that the victim had an alcohol problem and had engaged in mutual combat with the defendant.

Holding: The appellate court reversed the finding of not guilty of simple assault. The Tribes proved that defendant caused bodily injury to the victim. The appellate court found that the trial court attached too much weight to the evidence of the victim's character.

Practical Application: While character evidence of a victim may be admissible under Federal Rules of Evidence, the evidence of physical assault may outweigh any evidence of the victim's bad character.

Fort Peck Tribes v. Marvin Youpee, Appeal No. 237 (1998).

<http://www.fptc.org/Appellate%20Opinions/237.htm>

Facts: The defendant was found guilty of criminal mischief and criminal trespass at a jury trial. Two days prior to trial, defendant was notified that the prosecution would be presenting evidence of past acts of the defendant at trial. At trial, the victim testified as to prior confrontations with the defendant, including an incident where he attempted to strangle her. The prosecutor offered this testimony to show motive of the defendant.

Holding: The appeal court found that defendant's prior acts of domestic violence were admissible in the trial for criminal trespass and criminal mischief and that the trial court did not err in allowing the past acts into evidence. The appeal court further found that sufficient notice was given to appellant that the prior bad acts would be submitted as evidence at the trial.

The appeal court recognized that a Montana Supreme Court decision, *State v. Just*, 602 P2d 957, 184 Mont. 262 (1979) was persuasive. The 4 parts to the Just test are: (1) That the other crimes or wrongful acts are similar; (2) That the other crimes or wrongful acts are not remote in time; (3) That the other crimes or wrongful acts tend to establish a common scheme, plan or system; (4) That the probative value of the other crimes or wrongful acts is not substantially outweighed by their prejudice to the defendant. In this case: the past acts of domestic violence were admitted because they showed that a relationship existed between the appellant and victim. This relationship was pertinent to the charges of criminal mischief and criminal trespass.

Practical Application: Past incidents may be admissible against a criminal defendant to show motive.

❖ **Fort Peck Court of Appeals**

Fort Peck Tribes v. William Turcotte, Appeal No. 054 (1988)

<http://www.fptc.org/Appellate%20Opinions/054.htm>

Facts: Defendant was found guilty of attempted aggravated assault against his wife. Defendant appealed, arguing that the prosecutor did not meet the burden of proof of showing that he had taken “substantial steps” towards the commission of the offense. The victim testified at trial that “he hit me”, “...he had a hold of my hair...he had a gun at my head.” The gun, a .22 automatic pistol, was recovered and produced as evidence at the trial.

Holding: The evidence was sufficient for the jury to find the Defendant took “substantial steps” towards the commission of the offense of aggravated assault. It was a “substantial step” for Appellant to intentionally strike the victim in the face and hold her hair with a gun to her head.

Practical Application: The Fort Peck Tribes define “aggravated assault” as causing serious bodily injury. Since the defendant did not cause serious bodily injury to the victim, but did threaten her with a gun, the defendant was found guilty of attempted aggravated assault.

D. SELF-DEFENSE

❖ **Confederated Salish and Kootenai Tribes Court of Appeals**

Confederated Salish and Kootenai Tribes v. Finley, 27 ILR 6161 (2000).

Facts: Finley was accused of domestic violence against Victim. A verbal dispute between the two escalated to a physical altercation wherein Defendant bit Victim on the neck twice. Finley claims that he bit Victim in self-defense after she pulled his hair. The day prior to the trial, defendant asserted that his presentation of self defense would shift the burden to the tribe to disprove self defense beyond a reasonable doubt. The prosecution argues that the burden to prove self defense beyond a reasonable doubt rests with defendant. The trial court found that the defense did not provide “sufficient evidence” regarding the claim of self-defense.

Holding: The Trial Court’s rejection of self-defense was upheld for two reasons. First, the defendant did not produce sufficient evidence. Second, the defendant failed to establish that he had exhausted every reasonable step to escape alleged danger.

Practical Application: The tribal statute is silent on the issue of burden of proof in self-defense cases. Therefore, the courts relied on other jurisdictions to establish the law in this case.

❖ **Suquamish Tribal Court of Appeals**

Suquamish Indian Tribe v. David Mills, Sr., NW Reg. App. Cts. (1991).

Facts: Defendant was convicted of assault and battery against his live-in girlfriend. At trial, defendant claimed that his girlfriend was attempting to sexually assault him, and that he acted in self-defense when he battered her. The trial court held that even if the defendant was acting in self defense, he used excessive force in resisting.

Holding: The appellate court upheld the trial court's finding that Mills used excessive force in defending himself from the alleged sexual assault and the conviction for assault and battery is affirmed.

Practical Application: Even in cases of mutual combat, the claim of self-defense requires that only such force as is necessary to end the assault is allowed.



E. SENTENCING

❖ Tribal Court Appellate Division Passamaquoddy Tribe Pleasant Point

Passamaquoddy Tribe v. Francis, 2000.NAPA.0000001

<http://www.versuslaw.com>

Facts: On December 29, 1998, during the course of a custody battle for his minor children, Francis entered the office of the Director of Social Services. He made threats to the director. Later that day, he entered the office of the Governor of the Passamaquoddy Tribe at Sipayik and threatened the Governor. On April 4, 1999 Francis hit his wife on the arm. Under a plea agreement with the tribal prosecutor, Francis pled guilty to two counts of assault and one count of criminal threatening. He was placed on probation and ordered to not have any contact with the Pleasant Point reservation. In order to enter the reservation, Francis would need the permission of his probation officer. At sentencing, Francis did not object to the sentencing and agreed that he understood the plea agreement. Francis now appeals his sentence, arguing that the probation requirements violate the Sipayik Tribal Constitution's prohibition against the banishment of tribal members by the Pleasant Point government.

Holding: The plea agreement is upheld. The plea agreement requires that Francis stay a certain distance away from the plaintiff, including plaintiff's home, workplace, and school. Because the land mass of the Pleasant Point reservation is so limited, Francis is in effect prohibited from most if not all tribal lands. Francis may enter the reservation with permission from his probation officer. Furthermore, banishment requires the termination of all rights allocated through membership in the tribe. All of Francis' rights were not terminated. Francis' right to enter the reservation was conditional and not permanently terminated, nor were any of his other rights affected. Francis was excluded from the Pleasant Point reservation. He was not banished from the tribe.

Practical Application: Sentencing a perpetrator of domestic violence may include requiring the defendant to stay away from the victim and/or her family members. Such a sentence does not necessarily constitute banishment, even if the land base of the tribal nation is small.

F. VERDICT

❖ Puyallup Court of Appeals

Puyallup Tribe v. Daniel Satiacum, 2001.NAPU.0000003 March 30, 2001

Facts: Satiacum (Defendant) was charged with domestic violence and disturbing the peace. At trial, the jury returned a verdict of not guilty. The Tribe is seeking a set-aside of the jury verdict because the defendant allegedly admitted his guilt in closing arguments. The prosecutor argues that public policy supports a judgment notwithstanding verdict in this instance.

Holding: The appellate court found that directed verdicts are not allowed in criminal domestic violence cases because of the constitutionally protected right to a jury trial. The appellate court further found that domestic violence is not to be treated differently from other crimes; particularly that it cannot be raised to a greater level of other crimes within the Puyallup Law and Order Code.

Practical Application: The defendant's right to a jury trial prevails over a trial court's directed verdict. Courts should not treat domestic violence cases differently when it comes to the right to a jury trial.

