

FILED

**SISSETON-WAHPETON-SIOUX
TRIBAL COURT**

SISSETON-WAHPETON OYATE
SUPREME COURT

1/13/15

Date

by:

Lois Nelson

SISSETON WAHPETON OYATE Plaintiff/Appellee, v. LOREN THOMPSON Defendant/Appellant.	NO. CR-13-762-390 of Courts MEMORANDUM OPINION AND ORDER
--	--

Per Curiam (Thor Hoyte, Chief Justice and Associate Justices Russel Zephier and Pat Donovan)

This is an appeal from Thompson’s jury trial where he was convicted of Driving Under the Influence of Alcohol. After the Tribe rested its case, Thompson made a Motion for Directed Verdict.¹ Thompson argued that the evidence adduced at trial was insufficient to sustain a conviction for the offense of Driving Under the Influence of Alcohol.

Thompson filed a notice of appeal alleging the tribal court abused its discretion by denying his Motion for Directed Verdict (Motion of Judgment of Acquittal) after close of the Tribe’s case at the jury trial. Thompson failed to request or order a transcript of the trial testimony and evidence.

STANDARD OF REVIEW

Federal courts in the Eighth Circuit review the sufficiency of evidence de novo, viewing evidence in light most favorable to the government, resolving conflicts in the governments favor and accepting all reasonable inferences that support the verdict.² Federal courts reverse only if no reasonable jury could have found guilt beyond a reasonable doubt.

At least one tribal court found a similar standard in determining the sufficiency of the evidence. In determining the sufficiency of evidence in a criminal appeal, the question is whether there is evidence in the record which, if believed by a jury (or judge in a bench trial), is

¹ Also known as Motion for Judgment of Acquittal

² *U.S. v. Gray*, 700 F.3d 677, 678 (8th Circ. 2012)

sufficient to sustain a finding of guilt beyond a reasonable doubt. In making such a determination, a court must accept that evidence and such reasonable inferences that can be fairly drawn therefrom, which will support the verdict. A fact finder's verdict will be upheld if the evidence and reasonable inferences therefrom sustain a rational theory of guilt.³

DISCUSSION

By appealing the trial courts denial of a Motion for Directed Verdict, Thompson asks us to review the verdict for sufficiency of evidence. The only way for this Court to review a guilty verdict for sufficiency of evidence is by reviewing the transcript of the trial. Thompson failed to order a transcript.

Without a transcript a determination on the sufficiency of evidence at a criminal trial is virtually impossible. Without some record on review there is nothing for the appellate court to consider and therefore the court cannot carry out its review function.

Rule 7(a)(2) of the Sisseton-Wahpeton Oyate Rules of Appellate Procedure requires an appellant to request a transcript of a proceeding being appealed within 10 days of filing notice of appeal. At oral arguments Thompson's legal representative advised the original attorney on the case was no longer at the public defender's office and asked us to review the record and any transcripts.

A transcript would be required for us to review whether a reasonable jury could have found guilt beyond a reasonable doubt. There being no transcript we must accept all reasonable inferences that support the verdict and affirm the lower court's order denying Thompson's Motion for Directed Verdict.

CONCLUSION

For the above stated reasons this Court therefore affirms the trial courts denial of Thompson's

³ *Rosebud Sioux Tribe v. Crow Good Voice*, CA 89-05, p. 3 (1992).

Motion for a Directed Verdict in all respects.

IT IS SO ORDERED.

Dated this 4th of January, 2015.

F

A handwritten signature in black ink, appearing to read 'Pat Donovan', with a horizontal line extending to the right from the end of the signature.

Pat Donovan Associate Justice