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SISSETON-WAHPETON-SIOUX
TRIBAL COURT

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Clerk of Courts

SISSETON-WAHPETON OYATE
SUPREME COURT

SISSETON WAHPETON OYATE Plaintiff/Appellee, v. RICK RENVILLE Defendant/Appellant.	NO. CR-12-939-660 MEMORANDUM OPINION AND ORDER
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Per Curiam (Thor Hoyte, Chief Justice and Associate Justices Russel Zephier and Pat Donovan)

I. FACTS AND PROCEDURAL HISTORY

Renville was accused of breaking and entering to commit an assault on another. Before police could arrive, Renville had left the scene. A complaint and warrant of arrest was issued on August 14, 2012 by the tribal court for the arrest of Renville. Renville was not apprehended on the arrest warrant until November 5, 2012 and made his initial appearance that same day.

The original trial was scheduled for January 29, 2013 but an inadequate number of the jury panel appeared. A jury trial was again scheduled for June 5, 2013 but the Oyate was granted a continuance. Another trial was scheduled for July 23, 2013 but Renville moved and was granted a continuance.

Renville filed a motion to dismiss the case for violation of the speedy trial provision in the Sisseton-Wahpeton Oyate Code. The trial court denied the motion.

The trial was finally held on October 7, 2013. An inadequate number of the jury failed to appear and the court ordered the tribal police to summons three persons with the qualifications of jurors to appear for the jury panel. A jury was chosen and a trial ensued where the jury returned a verdict of guilty against Renville for Breaking and Entering and Aggravated Assault and not guilty of Domestic Abuse.

II. ISSUES ON APPEAL

Renville appeals two issues, namely:

1. Whether Renville's right to a speedy trial was violated?
2. Whether the last minute replacement of jurors violated Renville's rights?

Each issue will be discussed in turn.

III. DISCUSSION

A. Whether Renville's right to a speedy trial were violated?

Renville argues his right to a speedy trial was violated under federal and tribal law. Renville alleges that 419 days elapsed between the filing of the complaint on August 14, 2012 and the trial held on October 7, 2013 violated of Sisseton-Wahpeton Code Chapter 23-01-05.¹ It should be noted that Renville did not file a brief or order a transcript of the hearing on the Motion for Dismissal for Violating Speedy Trial. The record however does consist of the motion and the court's order denying the motion.

The trial court found that Renville left the scene of the crime before the police arrived causing the tribe to issue a warrant of arrest. The court further found when Renville left the scene of the crime and lived outside the jurisdiction of the tribal police to arrest him constituted good cause to extend the speedy trial period and was tried within the time period prescribed by tribal code.²

When we review the trial court's denial of motion to dismiss, we review the court's findings of fact for clear error and its conclusions of law de novo.

The trial court did not err in denying Renville's motion to dismiss. Nothing in the record points to any inconsistencies in the trial court's order denying the motion. There is no transcript

¹ Chapter 23-01-05 provides that in a criminal case a defendant must be tried within 365 days from the date the complaint is filed except when the Tribe can show good cause for the delay and the Court finds in its discretion that the defendant has not be unfairly prejudiced by the delay.

² Chapter 23-01-4 also provides for a statute of limitations to file a complaint within year of the commission of the offense and that any period the defendant is absent from the Reservation tolls the time and does not count in computing the one year.

or testimony to point out that Renville was present on the Reservation from August 14, 2012 when the crime occurred and November 5, 2012 when he was apprehended on the arrest warrant. Therefore, the time period between August 14, 2012 and November 5, 2012 would be excluded and toll the time period for bringing Renville to trial. The Oyate had until November 5, 2013 to try Renville on the charges committed on August 14, 2012. Renville's trial was held on October 7, 2013 well within the statute of limitations. Renville has not shown or argued that he was prejudiced by this delay. Any delay was caused by his own action of leaving the scene and not being present on the Reservation to be served with the arrest warrant and is good cause to toll the statute of limitations.

The Oyate argues that the time period where Renville asked for a continuance should be good cause to extend or toll the statute of limitations to bring a defendant to trial. In this case, Renville's legal counsel requested a continuance of the July 23, 2013 trial and it was granted and trial was rescheduled for October 7, 2013. The Oyate argues the time between July 23, 2013 to October 7, 2013 should be considered good cause to exclude or toll the speedy trial time because Renville asked and was granted a continuance. This constitutes 76 days between July 23 and October 7, 2013. A delay in the proceedings caused by the actions of a defendant can be good cause to toll a statute of limitations. The Oyate had had 76 days beyond the actual trial date of October 7, 2013 to try Renville on the charges.

Renville's trial date did not violate the Oyate's speedy trial provision. There was good cause to toll the statute of limitations and Renville was not prejudiced by any delay or tolling of the statute of limitations.

Renville also argues that the time period involved a violation of speedy trial under federal law. The Indian Civil Rights Act guarantees that no Indian tribe in the exercise of self-

government shall deny any person in a criminal proceeding the right to a speedy trial.³ The speedy trial right under the United States Constitution does not apply to Indian Tribes.⁴ However, the right to a speedy trial provision is similar in the United States Constitution and the Indian Civil Rights Act. The United States Supreme Court analyzed a constitutional challenge to the speedy trial right under the United States Constitution.⁵ The Court looked at four factors in evaluating the speedy right claim under the Constitution: (1) length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant.

The length of delay, 419 days, is not that unusual for a criminal case. There were many reasons for delay: the inability to serve the arrest warrant on Renville, an insufficient number of jurors for one trial, a continuance was granted to the prosecutor and a continuance was granted to Renville. Renville never asserted his right to a speedy trial until shortly before trial October 7, 2013. There was no assertion of the right before then. Renville has not shown or proven that he was prejudiced by the delay in trial. At oral arguments Renville's legal counsel advised the original attorney on the case was no longer at the public defender's office and asked us to review any transcripts. There are no transcripts to review and no brief to point to any prejudice Renville may have suffered due to the delay.

B. Whether the last minute replacement of jurors violated Renville's rights?

Renville next argues that the trial court erred by having law enforcement round up three members of the Oyate to for the jury panel. After either an insufficient number of potential jurors appeared or a number of them were excused for cause during jury selection, the trial court ordered local law enforcement to subpoena three qualified jurors. After jury selection was completed a jury was impaneled for the trial.

³ 25 U.S.C. §1302.

⁴ Talton v. Mayes, 163 U.S. 376 (1896)

⁵ Barker v. Wingo, 407 U.S. 514 (1972).

The Sisseton-Wahpeton Oyate Code sets out the qualifications of jurors.⁶ It provides that a jury list of at least twenty one (21) resident enrollees of the Tribe who eligible for jury duty be prepared by the clerk.⁷ Under the supervision of the presiding Judge, a panel of jurors are drawn from the jury list, a jury consists of six qualified jurors selected from a panel of no less than twelve eligible persons from the jury list.⁸ The Judges of the Court have the power to issue subpoenas to compel the attendance of members of the jury panel and of trial jurors.⁹

The record is devoid of any transcripts and the only record is an order from the trial court that ordered law enforcement to summons three qualified jurors. Without a record we cannot say the trial court abused its discretion by ordering law enforcement to look for three qualified jurors. Without a record we cannot tell if Renville objected to the court order.

Where error has not been preserved by objection or otherwise, our inquiry is limited to whether the court committed plain error.¹⁰ Plain error requires (1) error, (2) that is plain, (3) affecting a substantial right, and (4) it seriously affects the fairness, integrity, or public reputation of judicial proceedings.¹¹ With plain error analysis the defendant bears the burden of showing the error was prejudicial.¹²

Without a record we cannot determine if any was error prejudicial to Renville. Renville points no prejudice in the record.

IV. CONCLUSION

For the above stated reasons the trial court is affirmed and we uphold Renville's convictions.

⁶ 23-14-02

⁷ 23-14-03

⁸ 23-14-04

⁹ 23-14-05


¹⁰ State v. Satter, 196 SD 9, 11

¹¹ Johnson v. U.S., 520 U.S. 461 (1997)

¹² U.S. v. Olano, 507 U.S. 725, 737-41 (1993)

IT IS SO ORDERED.

Dated this 6th day January, 2015.

A handwritten signature in black ink, appearing to be 'PD' followed by a long horizontal stroke.

Pat Donovan Associate Justice