

IN THE
INDIANA COURT OF APPEALS

No. 20A-CR-357

TYLER RIGGLE,
Appellant-Defendant,

v.

STATE OF INDIANA,
Appellee-Plaintiff.

Appeal from the
St. Joseph Superior Court,

No. 71D03-1902-F6-000113,

The Honorable Jeffrey L. Sanford,
Judge.

CORRECTED BRIEF OF APPELLEE

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STATEMENT OF THE ISSUE

Whether the State presented sufficient evidence to establish its jurisdiction to prosecute Tyler Riggle.

STATEMENT OF THE CASE

Nature of the Case

Tyler Riggle was convicted of unlawful possession of a syringe, a Level 6 felony, following a jury trial.

Course of Proceedings

On February 4, 2019, the State charged Riggle with unlawful possession of a syringe, a Level 6 felony (App. Vol. II 3). The trial court held a jury trial on October 30, 2019, at the conclusion of which jury was found guilty (App. Vol. II 5-6). The trial court sentenced Riggle on January 15, 2020, to time served (App. Vol. II 7).

Riggle filed his notice of appeal on February 13, 2020 (Docket). Riggle filed his brief and electronically served the State on March 28, 2020 (Docket). The State's brief is therefore due on April 27, 2020.

STATEMENT OF THE FACTS

On July 10, 2018, when Jessica Seals was leaving Four Winds Casino in South Bend, Indiana she saw a man, later identified as Riggle, lying face down on the ground by the sign to the casino (Tr. Vol. II 17-18). Seals drove to the police station on-site and called police (Tr. Vol. II 18). Lauren Byrnes, who was an employee at an assisted living facility and trained in basic first aid and CPR, also saw Riggle lying face-down on the ground (Tr. Vol. II 23). Byrnes was unable to get

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a response from Riggle, even after yelling in his ear; Riggle was not breathing, but Byrnes was able to detect a faint pulse (Tr. Vol. II 23). Byrnes was about to begin rescue breaths when the Pokagon Tribal Police arrived (Tr. Vol. II 23).

Officer Matthew Johnson of the Pokagon Tribal Police Department was the second officer to arrive on scene, his partner arrived first (Tr. Vol. II 31). Both officers believed that Riggle was overdosing and radioed for Narcan (Tr. Vol. II 31). Sergeant Adam Schaaf responded and administered one dose of Narcan and was preparing to administer a second dose of Narcan when the ambulance arrived (Tr. Vol. II 45-46). The responding EMTs began administering Narcan to Riggle intravenously and were able to stabilize Riggle enough to transport him to the hospital (Tr. Vol. II 53). Before Riggle was loaded onto the ambulance, Officer Johnson conducted a patdown search (Tr. Vol. II 35). Officer Johnson felt a syringe in Riggle's right front pocket, he looked into the pocket and saw one syringe that appeared to have a liquid in it, two empty syringes, and a metal spoon with a cotton swab (Tr. Vol. II 35; Ex. 4). Later forensic testing identified that the filled syringe contained heroin and that residue on the spoon also contained heroin (Tr. Vol. II 66).

Riggle was charged on February 4, 2019, with committing the offense of unlawful possession of a syringe, a Level 6 felony, in St. Joseph County, State of Indiana (App. Vol. II 9). At trial, Officer Johnson testified that the area he patrolled was part of tribal lands and that the Pokagon Tribe has its own court system and criminal code (Tr. Vol. II 40). At the conclusion of evidence, Riggle moved for a

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directed verdict arguing that the State had not sufficiently established that the offense was committed in the State of Indiana because the Pokagon Tribe is a separate, distinct nation and the offense occurred on tribal lands (Tr. Vol. II 73, 75). The State was permitted to reopen its case and present additional evidence over Riggle's objection (Tr. Vol. II 83, 88).

Sergeant Schaaf has been employed by the Pokagon Band Tribal Police Department for five years (Tr. Vol. II 90). As part of his training he participated in a class led by the United States Attorney's Office in Grand Rapids, Michigan regarding criminal jurisdiction on Native American lands (Tr. Vol. II 90). According to Sergeant Schaaf's training, in considering whether or not the Pokagon Band has jurisdiction the tribe considers whether the suspect is Native American, whether the victim is Native American, and the specific offense (Tr. Vol. II 90-91). In situations where the suspect is not Native American a tribal court has no jurisdiction: "The Pokagon Tribal Court and any tribal court for that matter has no criminal jurisdiction over a non-native person" (Tr. Vol. II 91).

Officers determined that Riggle was likely not Native American (Tr. Vol. II 96). In general, Native Americans carry an identification card from their tribe so that they can receive benefits (Tr. Vol. II 96). Because officers did not find such a card and because the crime was victimless¹ the Pokagon Tribal Band Police Department concluded that Indiana had jurisdiction (Tr. Vol. II 96). Riggle renewed

¹ The federal government has jurisdiction over certain offenses, including when a non-Native American victimizes a Native American on reservation law (Tr. Vol. II 91-92).

his motion for a directed verdict, which was denied (Tr. Vol. II 98). Riggle was found guilty by the jury (Tr. Vol. II 122).

SUMMARY OF THE ARGUMENT

The State presented sufficient evidence to establish that Riggle committed the offense of unlawful possession of a syringe while subject to the territorial jurisdiction of the State of Indiana. Tribal lands are considered to be part of the territory of the State in which they sit. Additionally, the United States Supreme Court has long recognized that a state may exercise criminal jurisdiction over a crime committed on Native American land by a non-Native American. The State's evidence sufficiently established that Riggle's offense was committed on land contained in St. Joseph County. The jury also reasonably concluded that the State's evidence established that Riggle was not a Native American. Riggle's conviction should be affirmed.

ARGUMENT

The State sufficiently established its jurisdiction.

When reviewing the sufficiency of the evidence, appellate courts consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). As a result, any conflict in the evidence is viewed in a light most favorable to the verdict. *Bailey v. State*, 979 N.E.2d 133, 135 (Ind. 2012). It is the fact-finder's role to assess witness credibility and weigh the evidence. *Drane*, 867 N.E.2d at 146. "[I]f the testimony believed by the trier of fact is enough to support the verdict, then the reviewing court will not disturb it." *Bell v.*

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State, 31 N.E.3d 495, 500 (Ind. 2015). “It is therefore not necessary that the evidence ‘overcome every reasonable hypothesis of innocence.’” *Drane*, 867 N.E.2d at 147 (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.*

Indiana code provides that a person may be convicted of an offense of Indiana law if “either the conduct that is an element of the offense, the result that is an element, or both, occur in Indiana.” Ind. Code § 35-41-1-1(b)(1). While statutes do not list jurisdiction as an element of the offense, the Indiana Supreme Court has held that the plain language of the statute clearly establishes that the “in Indiana” is a prerequisite for Indiana criminal prosecutions. *Yao v. State*, 975 N.E.2d 1273, 1275 (Ind. 2012). Territorial jurisdiction is treated as though it were an element that the State must prove beyond a reasonable doubt. *Id.* Because territorial jurisdiction is considered in a similar manner to other elements of a criminal offense, when the defendant challenges whether or not the State sufficiently established that the offense was committed in Indiana, it is reviewed as other sufficiency matters. *See, e.g., Peacock v. State*, 126 N.E.3d 892, 896 (Ind. Ct. App. 2019).

Indiana has criminal jurisdiction over non-Native Americans on Pokagon tribal lands in Indiana, so long as the offense does not victimize a Native American. “‘Ordinarily,’ it is now clear, ‘an Indian reservation is considered part of the territory of the State.’” *Nevada v. Hicks*, 533 U.S. 353, 361-62 (2001) (quoting U.S. Dept. of Interior, Federal Indian Law 510, and n.1 (1958)). Furthermore, the United

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States Supreme Court has long recognized that states may exercise jurisdiction over a crime committed within Native American tribal lands by a non-Native American against non-Native Americans. *United States v. McBratney*, 104 U.S. 621, 624 (1881); *Draper v. United States*, 164 U.S. 240, 242-45 (1896) (providing that states have jurisdiction over offenses committed within its geographical boundaries by non-Native Americans so long as the state's enabling act does not exclude tribal lands from its jurisdiction). About a century later, the Court affirmed that ruling and found that Native Americans do not have criminal jurisdiction over non-Native Americans absent an affirmative delegation of such power by Congress. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 208 (1978). The Court determined that this formulation recognizes that tribal lands remain part of the territory of the United States and that tribes are "quasi-sovereign" such that their exercise of power is constrained to not conflict with authority of the overriding sovereign. *Id.* at 208-09.

Riggle's first contention is that the State's evidence did not sufficiently establish that the State had authority to prosecute Riggle because Sergeant Schaaf was not qualified as an expert (Appellant's Br. 7). The State did not need to establish that it had jurisdiction over a non-Native American on tribal lands because as discussed that is a settled matter of federal law. Even if it needed to do so, the jury could reasonably rely on Sergeant Schaaf's testimony. It is of no moment that Sergeant Schaaf was not qualified as an expert witness. Sergeant Schaaf's experience and training as a law enforcement officer for the Pokagon Band clearly established him as a skilled witness. Skilled witnesses "possess knowing

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beyond that of the average juror” that “allows a skilled witness to perceive more information from the same set of facts and circumstances than an unskilled witness would.” *Satterfield v. State*, 33 N.E.3d 344, 353 (Ind. 2015). Here, Sergeant Schaaf’s five years of experience with the Pokagon Band Tribal Police Department, in addition to the training he received from the United States Attorney’s Office allowed him to glean more information from the facts he observed than an unskilled witness could (Tr. Vol. II 90). Particularly, Sergeant Schaaf’s observations of a victimless crime being committed by a non-Native American on tribal land and his knowledge of criminal jurisdiction on Native American lands allowed him to come to the conclusion that the State of Indiana had jurisdiction (Tr. Vol. II 92). The jury could evaluate Sergeant Schaaf’s credibility and decide how much weight to afford his testimony in coming to the conclusion that the Pokagon Band did not have jurisdiction. It is not within this Court’s province to reassess the credibility of the witness or re-evaluate the weight given to his testimony. *Drane*, 867 N.E.2d at 146.

The State’s evidence sufficiently established that Riggle was not a Native American. In Sergeant Schaaf’s experience Native American’s will generally carry an identification card from their particular tribe in order to obtain any benefit from membership (Tr. Vol. II 96). Law enforcement did not find an identification card indicating that Riggle was a member of a tribe (Tr. Vol. II 96). From that evidence, the jury could reasonably infer that Riggle was not a member of a tribe because law enforcement did not find a tribal identification card on him. “[T]he question on appeal is whether the inferences supporting the verdict were reasonable, not

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whether other ‘more reasonable’ inferences could have been drawn.” *Jones v. State*, 22 N.E.3d 877, 879 (Ind. Ct. App. 2014) (quoting *Thompson v. State*, 804 N.E.2d 1146, 1150 (Ind. 2004)). On cross-examination, Sergeant Schaaf testified that as far as he was aware there was not a check conducted of the rolls of the Pokagon Band or any of the other federally recognized tribes (Tr. Vol. II 96-97). At most the evidence creates a conflict in evidence, which must be viewed in a light most favorable to the verdict. *Bailey*, 979 N.E.2d at 135. Because the State’s evidence sufficiently established that Riggle was not a Native American, the evidence was sufficient to establish that State had jurisdiction over Riggle.

CONCLUSION

This Court should affirm the trial court's judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 27, 2020, the foregoing document was electronically filed using the Indiana E-filing System ("IEFS"). I certify that on April 27, 2020, the foregoing was served upon opposing counsel, via IEFS, addressed as follows:

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