IN THE COURT OF APPEALS

FOR THE

ROSEBUD SIOUX TRIBE

CA88-04

ROSEBUD SIOUX TRIBE, Plaintiff and Appellee,

v.

ROBERTA SCHMIDT, Defendant and Appellant,

O R D E R

This case having received complete appellate review, oral argument having been waived, and the Court having issued opinion and being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED, that the judgment of conviction of the Tribal Court be, and the same is hereby, affirmed.

Dated this 9 day of December, 1988.

BY THE COURT:

ASSOCIATE JUSTICE

ATTEST:

(SEAL) CLERK

IN THE COURT OF APPEALS

FOR THE

ROSEBUD SIOUX TRIBE

ROSEBUD SIOUX TRIBE, Plaintiff and Appellee,

v.

ROBERTA SCHMIDT, Defendant and Appellant,

APPEAL FROM THE ROSEBUD

SIOUX TRIBAL COURT OF THE

ROSEBUD SIOUX TRIBE

HONORABLE JANEL Y. SULLY
Presiding Judge

JOHN JACOBSEN, ESQ.
PROSECUTOR
Rosebud Sioux Tribal Court
P.O. Box 129
Rosebud, South Dakota 57570

Attorney for Plaintiff and Appellee.

ROBERT A. SAMBROAK, JR.
P.O. Box 1028
Mission, South Dakota 57570

Attorney for Defendant and Appellant

OPINION FILED 12-9-88

Case # CA 88-04

ROUBIDEAUX, Associate Justice

This case comes before the Court for decision on the record and briefs of the parties, both of whom have waived oral argument.

Defendant-Appellant was convicted by the Tribal Court, sitting without a jury, of the offense of Disorderly Conduct pursuant to the provisions of Rosebud Sioux Tribal Law and Order Code 5-17-1(1), which provides in part as follows:

> "DISORDERLY CONDUCT--Any person who intentionally causes serious public inconvenience, annoyance, or alarm to any other person, or creates a risk thereof by:
>
> (1) Engaging in fighting or in violent or threatening behavior;
>
> is guilty of disorderly conduct."

On June 30, 1988, Defendant-Appellant accompanied by Rodney Bordeaux, her husband, went to the home of Lillian Peneaux in the city of Rosebud, South Dakota, to confront her about alleged rumors claimed to have been spread by Lillian Peneaux. There is evidence that Rodney Bordeaux had been drinking, and both confronted Peneaux outside her home using abusive, indecent, profane and vulgar language. This language could have easily incited a breach of the peace.

This is evidence that the Bordeaux couple invited Peneaux outside and used violent and threatening gestures. She was also threatened with physical harm by Defendant-Appellant, who also attempted to enter the residence by force. All of these events

occurred outside the home which could be seen by other persons, if they happened to look and listen. The location of this home, very near a public post office, is also a place in which the public has an interest as affecting the safety, health, morals and welfare of the community. The home was exposed to the public, and where the public gather together or pass to and fro.

In determining the sufficiency of the evidence on appeal, the question is whether there is evidence in the record which, if believed by a jury (or the Court as fact finder, which is the case here), is sufficient to sustain a finding of guilt beyond a reasonable doubt. In making such a determination, this court will accept that evidence and the most reasonable inferences that can be fairly drawn therefrom which will support the verdict. We will uphold the fact finder's verdict if the evidence and the reasonable inferences drawn therefrom sustain a rational theory of guilt. State v. LaCroix, 423 N.W.2d 169 (S.D. 1988); State v. Bartlett, 411 N.W.2d 411 (S.D. 1987); State v. Davis, 401 N.W.2d 721 (S.D. 1987). Where the court is the fact finder (as here), the issue for all practical purposes may simply be whether there is sufficient evidence to support the conviction beyond a reasonable doubt. State v. Halverson, 394 N.W.2d (S.D. 1986).

Appellant raises two issues, namely, (1) whether there was sufficient evidence to convict under Code Title 5-17-1(1), supra, and (2) whether or not the area where the alleged offense took place was a public place under Code 5-17-1, supra.

As to Issue 1, the Court notes that two witnesses testified

as to the Tribe's version and two witnesses presented testimony for the Defense. The two versions of evidence are conflicting. However, we are bound to accept the view most favorable to the Tribe, if there is substantial evidence tending to support the verdict. U.S. v. Elk, 658 Fed.2d 644, U.S. v. Morris, 741 Fed.2d 188 and U.S. v. Center, 750 Fed.2d 724.

We believe that upon review of the transcript of evidence that there is substantial evidence to suport the lower court's finding that Defendant engaged in fighting or violent and threatening behavior on the date in question.

As to Issue 2, whether or not the area around the home in question is a public place within the meaning of Code Title 5-17-1, we note that in Black's Law Dictionary, Third Edition, on p. 1461, a public place is defined, among others, as any place so situated that what passes there can be seen by any considerable number of persons, if they happen to look, and as a place in which the public has an interest as affecting the safety, health, morals, and welfare of the community. Babb v. Elsinger, (sup.) 147 N.Y.S. 98, 100. Also, it is defined as a place exposed to the public, and where the public gather together or pass to and fro. Lewis v. Commonwealth, 197 Ky. 449, 247 S.W. 749, 750.

In Ellis v. Archer, 161 NW 192, 193 (S.D. 1917), quoted by Appellant, the area in question was the doorway of a barn and the Court held this to be a public place. The Defendant there was leaning in the open doorway of the barn which opened to a public

street.

There is evidence in our case establishing that the private dwelling involved was located on a public street in Rosebud, South Dakota, almost adjacent to a public post office where people are accustomed to congregate and pass by.

There is substantial evidence to support the findings of the tribal court that the Defendant intentionally caused public inconvenience by engaging in fighting or threatening behavior. The tribal court was in the best position to view the demeanor of the witnesses, to resolve the comflicts in the evidence and to pass on the credibility of the witnesses. State v. Faehnrich, 359 N.W.2d 895 (S.D. 1984). There is sufficient evidence to support the conviction beyond a reasonable doubt, Halverson, supra.

The judgment of conviction is affirmed.

RAMON A. ROUBIDEAUX
Associate Justice