

IN THE COURT OF APPEALS  
OF THE  
ROSEBUD SIOUX TRIBE

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ROSEBUD SIOUX TRIBE,	)	
	)	
Plaintiff/Appellee	)	CA89-07
	)	
v.	)	<u>DECISION</u>
	)	
ROBERT BURNETTE, JR.,	)	
	)	
Defendant/Appellant	)	

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APPEAL FROM THE  
ROSEBUD SIOUX TRIBAL COURT

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HONORABLE JANEL Y. SULLY  
PRESIDING JUDGE

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Virgil Hauff  
Rosebud Sioux  
Tribal Court  
P.O. Box 129  
Rosebud, SD 57570

BEFORE  
JUSTICES GREY EAGLE, POMMERSHEIM, AND ROUBIDEAUX

OPINION FILED 9-2-92

CASE NUMBER CA89-07

Roubideaux, Justice

**I. PROCEDURAL HISTORY**

The Tribe filed a Complaint in the Rosebud Sioux Tribal Court on September 18, 1989, charging Robert Burnette, Jr., (Burnette) with Reckless Driving and Failure to Furnish Information by a Driver Involved in a Property Damage Accident, in violation of Rosebud Sioux Tribe Law and Order Code (RSTLOC) §§ 6-2-1 and 6-5-1, respectively.

Burnette was arraigned, pleaded not guilty and had a court trial before the Honorable Janel Y. Sully, Tribal Court Judge, at the Rosebud Sioux Tribal Courthouse on November 14, 1989.

Following the Tribe's case in chief, the trial court denied Burnette's motion for judgment of acquittal on the Section 6-2-1 charge of reckless driving, but granted his identical motion regarding the Section 6-5-1 charge of failing to provide information by a driver involved in a property damage accident.

At the close of the evidence, the court found Burnette guilty of reckless driving, fined him two hundred thirty five dollars (\$235.00) and assessed him court costs of twenty five dollars (\$25.00).

A timely Notice of Appeal was filed November 21, 1989. On appeal, Burnette argues that the Tribe failed to present evidence sufficient to sustain his conviction for reckless driving in violation of RSTLOC § 6-2-1.

We agree and reverse.

## II. FACTS

The facts underlying this appeal stem from a two-car collision which occurred at approximately 9 p.m., September 16, 1989, on a gravel road within the boundaries of the Rosebud Sioux Reservation.

According to testimony elicited by the Tribe, the Cadillac driven by Burnette went around a curve and out of control. Trial Transcript (hereinafter "TT") p. 6-8; 15. Burnette's Cadillac then hit the Plymouth Duster driven by Loretta Jo Provancial (Provancial), which was travelling approximately five miles-per-hour as it pulled onto the road from an approach. TT 11, 15. The road was in good condition, albeit not well lighted. TT 12. The only estimate of Burnette's speed that Provancial could provide was that "he was going a little faster" than 25 miles per hour. TT 9. Burnette testified that he was travelling about 35 miles per hour, and he did not lose control of his vehicle at any time. Burnette testified the Plymouth Duster had pulled out in front of him, under circumstances he could not avoid the collision. TT 26.

## III. DECISION

Burnette argues that the Tribe presented evidence insufficient to establish, beyond a reasonable doubt, that he drove his vehicle recklessly in violation of RSTLOC § 6-2-1. Thus, Burnette argues, the Tribal court erred in denying his motion for a judgment of acquittal.

Appellate review of motions for judgment of acquittal are governed by a standard universally used in both federal

and state courts and recently adopted by this Court in the companion case of Rosebud Sioux Tribe v. Alvin Bettelyoun, CA 89-06 (1992). As recently pronounced in Bettelyoun:

In reviewing a motion for judgment of acquittal, the trial court must view the evidence in a light most favorable to the nonmovant. A motion for judgment of acquittal is properly denied if the State has introduced evidence which, if believed by the jury, they (sic) may reasonably find the defendant guilty of the crime charged. The state, in proving all the elements of the crime charged, may rely on circumstantial evidence.

Bettelyoun, CA 89-06 at 4, quoting, State v. Corder, 460 N.W.2d 733, 738-739 (S.D. 1990); see also Rosebud Sioux Tribe v. Roberta Schmidt, CA 88-04.

Here the Tribe was the nonmovant. As such, the evidence, circumstantial or not, must be deemed "believed by the jury" and viewed in a light most favorable to the Tribe with all reasonable inferences from that evidence likewise resolved in the Tribe's favor.

Burnette was convicted of violating RSTLOC § 6-2-1, which states:

Any person who drives a motor vehicle on a highway, carelessly and heedlessly in disregard of the rights or safety of others or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, is guilty of reckless driving.

Even construed most favorably to the Tribe, the evidence presented to the trial court in this case falls far short of the sufficiency required to sustain Burnette's conviction under RSTLOC § 6-2-1.

The fact that an accident has occurred does not ipso facto

translate to an accident recklessly caused.

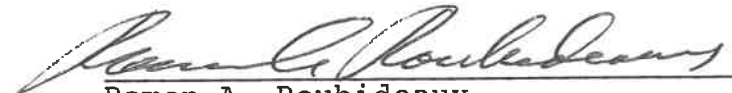
On this Reservation, a reckless driving conviction requires much more than a (sober) driver "going a little faster" than 25 miles per hour on a road in good condition on a clear night. Yet this is all that the Tribe has offered. The Tribe has thus proved nothing more than the existence of a collision which, at best, amounts to negligence and, at worst, establishes an accident -- neither one of which amounts to the crime of reckless driving.

The facts of this case, as well as the applicable law, so plainly militate against a conviction for reckless driving that the Tribe's brief, had it submitted one, would do little to affect our decision. Nonetheless, we adamantly underscore our ruling in Rosebud Sioux Tribe v. Crow Good Voice, CA 89-05 (1992), which lambasted the failure of counsel to submit briefs to this Court in a timely fashion and allowed for the imposition of sanctions for such dilatory conduct.

Burnette's conviction is hereby reversed based upon the grounds set forth above and there addressed in Appellant's well reasoned brief.

IT IS SO ORDERED.

Justices Grey Eagle and Pommershiem concur.

  
Ramon A. Roubideaux  
Associate Justice