

paraphernalia hidden in the cushion of her chair. She did not volunteer any verbal communication that the paraphernalia was present. We hold that the actions of the defendant leading to the evidence found during this search was not protected under the prohibition of self-incrimination and therefore did not require *Miranda* warnings.

Based on the foregoing, we AFFIRM the Trial Court's Order and Remand this case to the Trial Court for action consistent with this Order.

Trudi TONASKET, Appellant/Appellee

vs.

CCT ENROLLMENT DEPARTMENT, Appellee/Appellant.

Case Nos. AP05-011/012, 4 CTCR 36

8 CCAR 109

[R. John Sloan Jr. for Appellant.

Juliana Repp for Appellee.

Trial Court Case No. CV-CT-2001-21174]

Oral Argument held October 20, 2006. Decided December 18, 2006.

En Banc Before: Presiding Justice David Bonga, Justice Dennis Nelson, Justice Howard Stewart, Justice Earl McGeoghegan, Justice Edythe Chenois, Justice Conrad Pascal, and Justice Gary Bass.

Bonga, J. for the Panel

PROCEDURAL HISTORY

Appellant filed a Petition for Blood Correction Under the Enrollment Ordinance on May 11, 2001. In support of the Petition Appellant filed a number of documents that included three Resolutions of the Confederated Tribes governing body. A trial date was set and the parties submitted volumes of evidence. A hearing was held on the petition and supporting evidence by the Trial Court that lasted over several days during 2002. The Trial Court found that the Petitioner had not proven by clear and convincing evidence that a blood correction should be granted. The Trial

Court also reserved ruling on legal issues that had been identified. The Trial Court issued its ruling on what it believed was the “controlling” legal issue in 2005. The Trial Court’s decision on the legal issue was signed on August 29, 2005. This appeal was timely filed on September 8, 2005.

STANDARD OF REVIEW

The issue before us is a question of law; we review the matter *de novo*. *Colville Confederated Tribes vs. Naff*, 2 CTCR 08, 22 ILR 6032 2 CCAR (1995); *Wiley, et al v. Colville Confederated Tribes*, 2 CTCR 09, 22 ILR 6059, 2 CCAR 60 (1995); *Palmer v. Millard, et al*, 3 CCAR 27, 2 CTCR 14, 23 ILR 6094 (1996) (Because the Tribal Court dismissed the case below as a matter of law, we review the matter *de novo*.); *Pouley v. CCT*, 2 CTCR 39, 25 ILR 6024, 4 CCAR 38 (1997) (The Appellate Court engages in *de novo* review of assignments or errors which involve issues of law); *In Re The Welfare of R.S.P.V.*, 3 CTCR 07, 26 ILR 6039, 4 CCAR 68, (1998).

STATEMENT OF RELEVANT FACTS

Petitioner’s father, Henry S. Jerred, and mother, Lila Toulou Jerred (descendent of Louis Provo) are members of the Confederated Tribes of the Colville Reservation listed on the 1937 base roll.

Julia Kin-A-Waitsa, wife of Louis Provo, was a full-blood Colville.

The Confederated Tribes of the Colville Reservation is a non-treaty, federally recognized Indian Tribe that possesses the inherent attributes of a sovereign government that is able to make laws and control its internal affairs.

As a unique political community, the Confederated Tribes of the Colville Reservation has the power to determine its own tribal membership.

Tribal Resolutions 1981-85 and 1983-489 held that Louis Provo was full-blooded Indian.

JURISDICTION

This Court has personal and subject matter jurisdiction of this case pursuant to the

Constitution of the Colville Confederated Tribes⁶¹ and the Colville Tribal Code.⁶² *Also see The Estate of Daniel Hoover-Jerry Thon, Personal Representative vs. Colville Confederated Tribe*, 6 CCAR 16 (2002) and *National Farmers Union Ins. Co. vs. Crow Tribe*, 471 U.S. 845, 12 ILR 1035 (1985).

DISCUSSION

The Supreme Court has ruled that Indian tribes are distinct, independent political communities, retaining their original natural rights in matters of local self-government, and, although no longer possessed of full attributes of sovereignty, remain a separate people with power of regulating their internal and social relations. *Santa Clara Pueblo v. Martinez*, 98 S.Ct. 1670, 436 U.S. 49 (1978). An integral component of that status is that an Indian tribe retains attributes of sovereignty over both their members and their territory to the extent that their sovereignty has not been withdrawn by federal statute or treaty. *Iowa Mutual Insurance Co. v LaPlante*, 480 U.S. 9, 107 S.Ct. 971.

“Indian tribes consistently have been recognized, first by the European nations, later by the United States as “distinct, independent political communities” qualified to exercise powers of self-government, ***not by virtue of any delegation of powers, but rather by reason of their original tribal sovereignty*** (emphasis added). This recognition was an integral part of accepted political theory and international laws concerning dominance of weaker by stronger nations; that is, a subject nation must yield to the overriding legislative authority of the dominant nation, and may depend upon the stronger nation for protection, but it is otherwise independent. Internal self-government

⁶¹ AMENDMENT X – JUDICIARY – Article VIII Judiciary – Section 1. There shall be established by the Business Council of the Confederated Tribes of the Colville Reservation a separate branch of government consisting of the Colville Tribal Court of Appeals, the Colville Tribal Court, and such additional Courts as the Business Council may determine appropriate. It shall be the duty of all Courts established under this section to interpret and enforce the laws of the Confederated Tribes of the Colville Reservation as adopted by the governing body of the Tribes. The Business Council shall determine the scope of the jurisdiction of these courts and the qualifications of the judges of these courts by statute.

⁶² Colville Tribal Code 1-1-70 Jurisdiction defined. The jurisdiction of the Tribal Court and the effective area of this Code shall include all territory within the Reservation boundaries, and the lands outside the boundaries of the Reservation held in trust by the United States for Tribal members of the Tribes, and it shall be over all persons therein: Provided, however, that criminal jurisdiction of the Court shall not extend to trial of non-Indians.

was preserved, in consequence, although dealings with other nations and matters concerning trade and extinguishment of title to lands occupied by tribes became subject to the exclusive authority of the European nation claiming the territory. The United States followed the same principle, usually as successor to the European nations from which it obtained title to land.” F.Cohen, *Handbook of Federal Indian Law*, 1982 ed, p.232

“Prior to the presence of the white man, the ancestors of the tribes and bands of the Colville Confederated Tribe occupied an area comprised of what is now Eastern Washington, Southern Central British Columbia, and portions of Idaho and Oregon.

In 1872, President Grant created the Colville Confederated Indian Reservation by Executive Order - without a treaty and without the consent of the tribes and bands of Indians (hereinafter Tribes) residing in the area. The original reservation was over three million acres in size, but was reduced to its present size of approximately one million four hundred thousand acres under an agreement dated May 9, 1891, when gold was discovered in the northern half of the Reservation.

The Reservation is located within portions of Okanogan and Ferry Counties in north central Washington State. Originally, all the land within the Reservation was held in trust for the Tribes. Lands were later allotted and homesteaded within the Reservation as a result of the allotment policies of the early twentieth century. Approximately seventy-nine percent (79%) of the reservation lands are now held in trust for the Tribes and its members. The remainder is held by federal agencies or is owned in fee by Indians and non-Indians.” *Hoover*, p.3-4

The Confederated Tribes of the Colville Reservation have had an official, continuous long-term relationship with the federal government. The relationship was officially acknowledged by the federal government, not by treaty, but when the reservation was established in 1872 by Executive Order in the territory of Washington.

The general legal rule is that Executive Order Indian Reservations possess the same attributes and application of rules as an Indian Reservation established by treaty. F.Cohen, *Handbook of Federal Indian Law* p.495-499 (1982 ed.). The United States Supreme Court while discussing Executive Order reservations has stated:

...Congress and the Executive have ever since recognized these as Indian Reservations...They have been uniformly and universally treated as reservations

by map makers, surveyors, and the public. We can give but short shrift...to the argument that the reservations either of land or water are invalid because they

were originally set apart by the Executive... *Arizona v California*, 373 U.S. 546 at

598, 10 L. Ed. 542 (1963).

Therefore the Confederated Tribes of the Colville Reservation are subject to and benefit from the same general laws that are applicable to treaty tribes.

In response to the Congressionally mandated Meriam report of 1928 Congress in 1934 passed the *Indian Reorganization Act* (IRA). 25 USC 461 et seq. The Act defined a policy of encouraging the development, or protecting the integrity, of tribal autonomy. A key aspect of the IRA was the development of Tribal self-government functions that included Constitutions. The opportunities made available to tribes under this act were immense. While the act did not provide them with powers they had not previously possessed, it did recognize these powers as inherent in their status and resurrected them in a form in which they could be used at the discretion of the tribe. Deloria & Lytle, *American Indians, American Justice*, p.14.

One standard provision in IRA constitutions that has been a particular target for amendment is the language requiring secretarial approval of tribal ordinances. The Supreme Court has acknowledged that this approval review is not required by the IRA itself, stating that “the Bureau of Indian Affairs...had a policy of including provisions for [S]ecretarial approval; but that policy was not mandated by Congress.” *Kerr-McGee Corp. v. Navajo Tribe*, 471 U.S. 195, 198 (1985).

Even though the Confederated Tribes of the Colville Reservation (Tribes) failed to accept the IRA the Tribes did develop a Tribal Constitution with By-Laws that was approved, as required, by the Secretary of the Interior on April 19, 1938. The Constitution, united with the resolutions, establishes the authority of the Business Council. The Colville Tribal Business Council has consistently asserted its authority on each and every resolution under Article II Section 1 and Article V section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation. Throughout the history of the Constitution the Colville Tribal Business Council has legislated the law by resolutions.

The Tribal Constitution authority that “empowers the Colville Business Council to regulate membership.” is codified in the Colville Tribal Code at CTC 8-1-1. In addition, CTC 8-1-2 provides that membership matters required to be proven must be proved to the satisfaction of the Tribal Court, Enrollment Committee or the Council by the appropriate standard of proof. Amendment IX of the Tribal Constitution first set forth clear and convincing evidence as the appropriate standard of proof when the amendment was approved in May, 1988. The standard of evidence prior to Amendment IX was by preponderance of the evidence.

In Resolutions 1981-85 and again with Resolution 1983-489, the Colville Business Council

overwhelming decided to regulate Tribal membership and ruled that Louis Provo was 4/4 Colville. The Council made the determination based on findings of fact described in the resolutions and pursuant to their authority contained in Article V of the Constitution and By-Laws of the Confederated Tribes of the Colville Reservation. [D 36(e); 36(h)].

It is the understanding of this Court that Article VII Sec 2 states the Business Council “shall have power to prescribe rules and regulations governing future membership... (a) **that such rules and regulations shall be subject to the approval of the Sec of Interior**” does not mean that each individual had to be approved by the Secretary of Interior, but rather the ‘process’ to get to the decision is reviewed. The Court finds further support with this interpretation by the 1981 action of the Department of Interior that published new rules delineating the powers of the Interior Board of Indian Appeals (IBIA) which stated that “except as otherwise permitted by the Secretary or Assistant Secretary of Indian Affairs by special delegation or request, the Board shall not adjudicate: (1) Tribal Enrollment disputes... 43 C.F.R. 4.330(b)(1).” This interpretation further supports the Court’s belief that at the time of the passage of Resolution 1981-85 support for Tribal self-government was widely accepted.

“In matters of internal self-government within tribal territory, tribal powers are exclusive, and federal and state powers are inapplicable, unless such tribal powers have been limited by federal treaties, agreements, or statutes. Absent a limiting treaty or federal law, tribal powers may be exercised unfettered by assertions of federal or state authority.” *Cohen*, Ibid. It is the ruling of this Court that Resolution 1981-85 was valid and enforceable as an expression of the Confederated Tribes of the Colville Reservation sovereignty and powers of self-government. The Trial Court was in error when it ruled Resolutions 1981-85 and 1983-489 were invalid. This Court finds that the Resolutions, 1981-85 and 1983-489 were valid and enforceable governmental actions of the Confederated Tribes of the Colville Reservation and the trial court should have ordered the Enrollment Office to act accordingly.

In conclusion, the courts have consistently recognized that in the absence of express legislation by Congress to the contrary, an Indian tribe has complete authority to determine all questions of its own membership. It may thus by usage or written law, or by treaty with United State or intertribal agreement, determine under what conditions persons shall be considered members of the tribe. Felix S. Cohen, *Handbook of Federal Indian Law*, 1942 edition. P.133 In this case the Colville Confederated Tribes of the Colville Reservation under authority contained in Article V, Section 1(a) of the Constitution and By-Laws of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938 and approved by the Commissioner of Indian Affairs on April 19, 1938; and under further authority contained in Article

VII, Section 2 of the Constitution and By-Laws, adopted by the Confederated Tribes on May 20, 1949 and approved by the Commission of Indian Affairs on April 14, 1950 has determined that Louis Provo was 4/4 Colville Indian.

ORDER

IT IS HEREBY ORDERED THAT this matter is remanded back to the Trial Court with instructions to issue a new order granting Appellant's Petition for Blood Correction Under the Enrollment Statute in conformity with the Confederated Tribes of the Colville Reservation Resolutions 1981-85 and 183-489.

Clinton NICHOLSON, Appellant,

vs.

Bill BEDARD, Appellee.

Case No. Ap06-001, 4 CTCR 38

8 CCAR 115

[Appellant appeared in person and without counsel.

Appellee appeared in person and without counsel.

Trial Court Case No. CV-CR-2004-24224]

Argued June 16, 2006. Decided December 18, 2006

Before Chief Justice Anita Dupris, Justice Dennis L. Nelson and Justice Theresa M. Pouley

Pouley, J., for the Panel.

SUMMARY

Clinton Nicholson, the Appellant, is the owner of a company called "Rez-A-Rex." Rez-A-Rex was one of the only two established and approved wrecking and automobile dismantling yards on the Colville Indian Reservation in 2004. Appellant was granted a Special Use permit by the Colville Tribes for the business. The Colville Tribes Business Council by Resolution 2003-339 approved the permit for Clinton Nicholson's wrecking yard and Mr. Nicholson was issued an Indian Trader License on February 12, 2002, modified on June 24, 2004. Sometime in late 2003 and early