

**In RE: Subpoena 1/6/15 --- #15010GC**

**Summary:** The Court received a Motion requesting the Tribal Court quash a subpoena issued by the State of Michigan compelling a witness to come to district court.

Later: Petition asked the court to vacate its prior recognition of a State Court Subpoena.

**Decision and Order:** This case was dismissed for lack of jurisdiction as the subpoena was not issued by tribal court. The Court for the district where compliance is required must be the one to quash or modify a subpoena.

Later: The Court stands by its Order of February 16, 2015. The motion is denied and this case is closed.

**Skocelas v LRRCR --- #15024GR**

**Summary:** The Petitioner was terminated from the resort for inadvertently leaving the water running in a hot tub that over-flowed and caused damage to five rooms.

**Decision and Order:** Plaintiff was duly warned that after the last incident in August of 2014 that any other incidents may result in termination. Less than 6 months later, it happened again. The court found that the termination of the Plaintiff was warranted and upheld.

**Rivers v Cudzilo --- #15158AP**

**Summary:** There have been multiple proceedings in this case. In the Order after Motion Hearing, the Trial Court found that there was a change of circumstances with a child starting school and that the children would remain with the Appellee for school. The Appellant attempted to object to the holding of the Trial Court by filing a Motion for Reconsideration.

**Decision and Order:** The Motion for Reconsideration was a delayed Appeal that was filed under the Children's Protection Code. The Court of Appeals denied the Motion as the Appellant did not file his Motion within 14 days as required by LRBOI Court Rules.

**LRBOI v Campbell & Lewis --- #15262TM & 15263TM**

**Summary:** Both defendants were charged with Retail fraud Second degree and Conspiracy. Both defendants plead Not Guilty at arraignment.

**Decision and Order:** The Court found both of the Co-Defendants NOT Guilty of the charges of retail Fraud 2<sup>nd</sup> and NOT GUILTY of Conspiracy.

Little River Band of Ottawa Indians  
TRIBAL COURT  
3031 Domres Road  
Manistee Michigan 49660  
(231) 398-3406  
Fax: (231) 398-3404

---

IN RE: SUBPOENA 01/06/2015  
SERVED ON THE DIRECTOR OF  
NATURAL RESOURCES

CASE NO.: 150106C  
HON. DANIEL BAILEY

---

Attorney for the Petitioners:  
Martha L. King  
For the Little River Band of Ottawa  
Indians Executive Branch and  
its Natural Resources Director  
Jimmie Mitchell

At a session of said Court on February 16, 2015  
In the Reservation Boundaries of the  
Little River Band of Ottawa Indians,  
State of Michigan  
PRESENT: HON. DANIEL BAILEY

The Court received a Notice of Presentment of Form of Order of Unopposed Motion on February 12, 2015. This motion did make the Court aware that the *Authorization of Service* paperwork had listed Chapter one (1.100) of our (prior) Tribal Court Rules on Full Faith and Credit instead of Chapter Three (3.001) Those Authorization documents have been corrected.

A proposed order was enclosed with the Motion. The proposal has the Tribal Court quashing a subpoena issued by the State of Michigan compelling a witness to come to District Court. That motion is denied. The subpoena was not issued by the Tribal Court. The Court for the district where compliance is required must be the one to quash or modify a subpoena.

The Michigan Rules of Civil Procedure Rule 2.506 *Subpoena; Order to Attend (A) Attendance of Party or Witness*. "(1) **The court in which a matter is pending** [emphasis added] may by order or subpoena command a party or witness to appear for the purpose of testifying in open court on a date and time certain..."

MCR 2.615 *Enforcement of Tribal Judgments (B)(1)* enacts an ordinance, court rule, or other binding measure that obligates the tribal court to enforce the judgments, decrees, orders, warrant, subpoenas, record, and judicial acts of the courts of this state;..." The Tribal Court recognizes and enforces all State Court edicts, and valid orders.

The Petitioners allege that our Civil Court Rules were not followed. Under Section 3.000, (D) Foreign Judgment ...Which is **final** [emphasis added] in the rendering jurisdiction, regardless of whether such judgment is for money, injunctive, declaratory, or

other relief." "Black's Law defines every kind of "judgment" that a court might issue. The common theme of all these judgments is the "final determination by a court of the rights of the parties upon matters submitted to it in an action or proceeding."

Petitioners allege there was no:

1. Application (3.201)

*The subpoena in question was not a judgment; one that is "final and conclusive."*

2. Copy of a foreign judgment (3.202(A))

*The subpoena in question was not a final judgment granted in a foreign court.*

3. Authentication by clerk or registrar of the foreign court.

*The subpoena in question was not a final judgment of a foreign court.*

4. Attestation (3.202(A)(1) & (2))

*The clerk of the foreign court would have been unable to attest to the authenticity of the subpoena, because it was not a judgment and it was issued by the County Prosecutor's office and not by the Court.*

5. Affidavit by the judgment holder (3.202(B))

*There is no judgment holder for a subpoena*

6. Proof there is reciprocal full faith and credit (3.201)(B)(6)

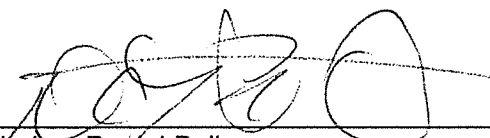
*Please see Michigan Court Rules 2.615. ENFORCEMENT OF TRIBAL JUDGMENTS*

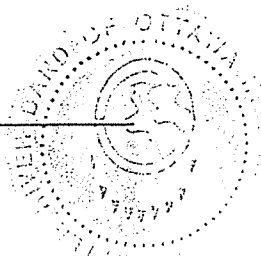
7. Filing fee (3.202)(C)

*No filing fee is required for an Authorization of Service. The Court merely gives a person permission to be accompanied by Tribal Police to serve papers on an individual working or living on Tribal Lands.*

The Court believes that answering the rest of the enumerated points is not necessary. The fact that a subpoena is not a final judgment in any court makes the rest of the arguments moot. The subpoena was also not a suit "against Indian Tribes and their officials... barred by sovereign immunity." Neither the Tribe nor Mr. Mitchell was a party in the case before District Court Judge Thomas N. Brunner.

SO ORDERED:

  
\_\_\_\_\_  
Judge Daniel Bailey



2/13/15  
Date

Little River Band of Ottawa Indians  
TRIBAL COURT  
3031 Domres Road  
Manistee Michigan 49660  
(231) 398-3406  
Fax: (231) 398-3404

---

IN RE: SUBPOENA 01/06/2015  
SERVED ON THE DIRECTOR OF  
NATURAL RESOURCES

CASE NO.: 15010GC  
HON. DANIEL BAILEY

---

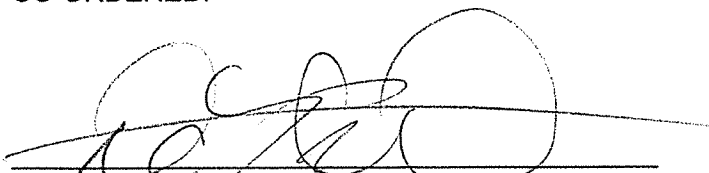
Attorney for the Petitioners:  
Martha L. King  
For the Little River Band of Ottawa  
Indians Executive Branch and  
its Natural Resources Director  
Jimmie Mitchell

At a session of said Court on February 26, 2015  
In the Reservation Boundaries of the  
Little River Band of Ottawa Indians,  
State of Michigan  
PRESENT: HON. DANIEL BAILEY

The Court received a *Motion to Vacate Order and Dismiss* and a *Proposed Order Granting Motion to Vacate Order and Dismiss* from Petitioner Jimmie Mitchell, Director of Natural Resources. Petitioner is asking the Court to vacate its prior recognition of a State Court subpoena and after it is vacated, dismiss the case as moot.

The Court stands by its Order of February 16, 2015 (signed on 2/18/15.) The motion is denied and this case is closed.

SO ORDERED:

  
\_\_\_\_\_  
Judge Daniel Bailey

2/26/15  
Date



Little River Band of Ottawa Indians  
TRIBAL COURT  
3031 Domres Road  
Manistee Michigan 49660  
(231) 398-3406  
Fax: (231) 398-3404

---

DEBORAH SKOCELAS  
PETITIONER/PLAINTIFF

CASE NO.: 15024GR  
HON. DANIEL BAILEY

V.

LITTLE RIVER CASINO RESORT,  
RESPONDENT/DEFENDANT

---

Deborah Skocelas  
811 Kosciusko Street  
Manistee MI 49660

Attorney for Casino Resort  
Michelle A. Bostic  
2608 Government Center Drive  
Manistee MI 49660

At a session of said Court on March 30, 2015  
In the Reservation Boundaries of the  
Little River Band of Ottawa Indians,  
State of Michigan  
PRESENT: HON. DANIEL BAILEY

The Petitioner's position at the Casino Resort was terminated on January 5, 2015. Ms. Skocelas followed established protocol and asked for reconsideration with the Board of Review. On Monday March 2, 2015, the review hearing was held and the Board upheld the Petitioner's termination from employment and mailed their determination to Ms. Skocelas that same day by certified/registered mail.

On March 13, 2015, the Petitioner filed a Grievance with the Tribal Court. This filing was timely based on her receipt of the Board's determination to uphold her termination and Ordinance #05-300-04, *Employment Division of the Tribal Court Code*.

A hearing was held on Monday, March 30, 2015, where testimony by both parties was heard.

The Petitioner described the incident in question where she inadvertently left water running in a hot tub while she went to get a product for the room and then absentmindedly started cleaning two other rooms. When she finally returned to the original room she realized she had never turned off the water.

Ms. Skocelas assumed she was fired because of the incident, but felt that her union activities played a major part in their decision. She also indicated that the supervisory chain-of-command seemed to have a problem with her and were all related to one

another. She testified that she had been a member of the Steelworkers Union for approximately six (6) years.

Petitioner testified that another employee had left water running in hot tubs twice and was not fired from the position.

Ms. Skocelas also said she was denied unemployment twice and said it was because the Casino indicated her over-flow of the water was intentional.

The Petitioner said she was advised by a representative of the National Labor Relations Board to bring her complaint to Tribal Court for a determination prior to them looking into her allegations against the Resort.

The Director of Human Resources took the stand and explained that this incident was not the first time that the Petitioner had overflowed a hot tub in a guest room. Ms. Saunders indicated that in August 2014, Ms. Skocelas was given a written disciplinary notice because she had left water running in a hot tub and left for a break. There was damage to three rooms at that time.

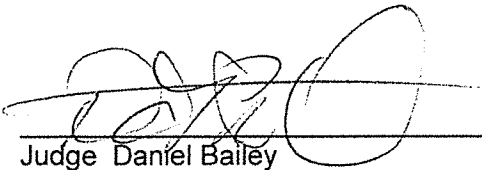
Ms. Saunders then described the incident from this January. She said that it flooded so badly that it leaked into at least five (5) other rooms. Lynn Saunders said that the Resort was fully booked and they couldn't give the guests any other rooms at the hotel. She described damage to electrical work, drywall, and tile. One of the rooms was out of service for 8 days and one other for 9 days.

#### CONCLUSION

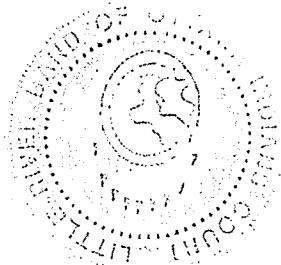
Ms. Skocelas was duly warned after the incident in August 2014 that any other like incident may result in her termination. Less than six (6) months later, it happened again. The loss of revenue from the Casino's guests and the money to repair the damages was more than enough, under the Court's discretion, to warrant her termination.

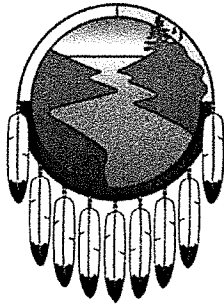
Having heard oral testimony as the parties chose to introduce; examination of the complaint by the Petitioner and the personnel file of the Respondent; the Court finds (based on the preponderance of credible evidence) that the termination of the Petitioner was warranted and is upheld.

SO ORDERED:

  
\_\_\_\_\_  
Judge Daniel Bailey

  
\_\_\_\_\_  
Date





**Little River Band of Ottawa Indians  
Tribal Court of Appeals**

3031 Domres Road  
Manistee Michigan 49660  
231-398-3406 Fax: 231-398-3404

**DAVID RIVERS,**  
Appellant/Plaintiff

Case Number: 15-158-AP

v.

Hon. Melissa L. Pope, Chief Justice  
Hon. Berni Carlson, Associate Justice  
Hon. Joseph LaPorte, Associate Justice

**EDYTA CUDZILO,**  
Appellee/Defendant.

---

**CRAIG W. ELHART**  
Attorney for Appellant  
329 South Union  
Traverse City, MI 49684  
(231) 946-2420

**JENNIFER R. BERRY**  
Attorney for Appellee  
2221 Garland Street, Ste. H  
Traverse City, MI 49684  
(231) 941-0771

---

**ORDER AND OPINION**

At a session of said Court held in the Courthouse of the Little River Band of Ottawa Indians on the Little River Band of Ottawa Indians Reservation on the 29<sup>th</sup> day of January 2016

**JURISDICTION**

The Little River Band of Ottawa Indians Constitution addresses the jurisdiction of the Little River Band of Ottawa Indians Tribal Court, stating in pertinent part:



Article VI, Section 8 – *Powers of the Tribal Court*

(a) The judicial powers of the Little River Band shall extend to all cases and matters in law and equity arising under this Constitution, the laws and ordinances of or applicable to the Little River Band including but not limited to:

1. To adjudicate all civil and criminal matters arising within the jurisdiction of the Tribe or to which the Tribe or an enrolled member of the Tribe is a party.

Appellant-Plaintiff Rivers is an enrolled Tribal Citizen of the Little River Band of Ottawa Indians. Further, the parties have recognized jurisdiction throughout this case with jurisdiction continuing due to the nature of this being a case involving the parties' Minor Children. The Little River Band of Ottawa Indians Tribal Court, therefore, has jurisdiction over this matter pursuant to consent and the Constitution of the Little River Band of Ottawa Indians.

**STATEMENT OF FACTS**

There have been multiple proceedings in the present case, including previous appeals to this Court of Appeals. This Statement of Facts shall only include facts relating to this appeal, Tribal Court Case Number 15-158-AP.

On August 3, 2015, the Trial Court issued the *Order After Motion Hearing*.

On August 31, 2015, the Appellant-Plaintiff Rivers filed a Motion for Reconsideration.

On August 31, 2015, the Trial Court entered the *Order Regarding Plaintiff's Motion for Reconsideration*, denying the Plaintiff's Motion.

On September 28, 2015, Appellant-Plaintiff Rivers filed this appeal.

On October 7, 2015, the Chief Justice issued the *Notice and Order for Appellate Scheduling Conference*.

On October 23, 2015, the Appellate Scheduling Conference was held and the briefing schedule was established. This briefing schedule was memorialized in the *Appellate Scheduling Order* issued by the Chief Justice on October 27, 2015.

On November 16, 2015, the Chief Justice issued the *Notice and Order for Appellate Oral Arguments*.

The parties were timely in the submission of their Briefs pursuant to the October 27, 2015 *Appellate Scheduling Order*.

On January 29, 2016, Oral Arguments were held pursuant to the *Notice and Order for Appellate Oral Arguments*. Both parties, by and through their attorneys, appeared and made arguments before this Court.

#### **ANALYSIS**

This case has involved numerous Trial Court proceedings and more than one appeal. The complete history of this case is not being considered by this Court of Appeals, an important fact to state with Appellant-Plaintiff Rivers' efforts to include facts and rulings that pre-date this appeal.

In the *Order After Motion Hearing*, the Trial Court found that there was a change in circumstances with a child starting school pursuant to the previous Order which stated that, "[i]f the parties cannot agree on a parenting time schedule that allows for equal parenting time once a child starts school, they shall come back to the court". The Trial Court went on to discuss each of the

"Best Interest Factors" in its *Order*, ultimately holding that the Minor Children would remain with Appellee-Defendant Cudzilo for school and entering a schedule for parenting time.

The Appellant-Plaintiff attempted to object to the holding of the Trial Court by filing a Motion for Reconsideration, but the Motion was denied by the Trial Court as untimely in the *Order Regarding Plaintiff's Motion for Reconsideration*.

In his Notice of Delayed Appeal, Appellant-Plaintiff Rivers states that, "[p]ursuant to Little River Band Court Rule 5.301(E), Plaintiff/Appellant has attached an affidavit showing that the late appeal is not due to attorney or Plaintiff negligence". (Appellant Brief at 2).

Appellate proceedings are governed by Chapter 5, Appellate Procedure, in the Court Rules of the Little River Band of Ottawa Indians ("LRBOI") Tribal Court. Section 5.301(E) addresses untimely appeals:

Grounds for Granting Late Appeal. The Tribal Court of Appeal may, in its discretion, grant leave for a late filing of appeal from any judgment, order or decree upon a showing by the Appellant, supported by affidavit, that there is merit in the reasons for appeal and that the late filing was not due to the Appellant's or the Appellant's attorney/advocate's negligence.

As stated in the Appellee-Defendant's Brief, "simply saying that the delay is not due to attorney or Plaintiff negligence does not make it so". (Appellee Brief at 7). This Court of Appeals found no merit in the Appellant-Plaintiff's claims with regard to permitting a delayed appeal of the Trial Court's *Order After Motion Hearing*, but did determine it was appropriate to hear arguments on whether the Trial Court applied the proper standard to denying the Appellant-Plaintiff's Motion

for Reconsideration. This was clearly communicated to the parties at the Appellate Scheduling Hearing.

This Court of Appeals makes note of this history, not only to clearly articulate what is being discussed in this *Order and Opinion*, but to also articulate that it did not consider arguments regarding the substantive findings or holdings in the August 3, 2015 *Order After Motion Hearing*. This directly relates to actions of Appellant-Plaintiff Rivers in requesting transmittal of three (3) transcripts for the present Appeal with two (2) of those transcripts being from proceedings held in the year 2013. This Court did not consider transcripts from proceedings held in 2013 as they do not relate to the subject of this appeal.

This Court of Appeals has one question and one question only to answer: Did the Trial Court err in denying Appellant-Plaintiff Rivers' Motion for Reconsideration. We hold that it did not.

The Appellant-Plaintiff states in his Brief that "he believes that the Children's Protection Code, which allows motion's for reconsideration or rehearing to be filed within twenty-eight (28) days of an order, is controlling based on the plain reading of the relevant ordinances and code". (Appellant Brief at 2).

Section 4.119(A)(1)(b) of the LRBOI Court Rules requires that any motions filed "state with particularity the grounds and authority on which it is based". Appellant-Plaintiff Rivers fulfilled this requirement, stating that he was filing his Motion under Michigan Court Rule 2.119(F). As properly noted in the Trial Court *Order Regarding Plaintiff's Motion for Reconsideration*, in the present case, MCR 2.119(F) is not the appropriate Court Rule under which to file a Motion for Reconsideration in the Little River Band of Ottawa Indians Tribal

Court. As also noted by the Trial Court in this *Order*, the proper court rule is LRBOI Court Rule 4.119(F)(1) which provides in pertinent part:

Motions for Rehearing or Reconsideration.  
(1) Unless another rule provides a different procedure for reconsideration of a decision a motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 14 days after entry of an order disposing of the motion.

On appeal, Appellant-Plaintiff Rivers argues that Section 3.02 of the Little River Band of Ottawa Indians' Children Protections Code "denotes the Subject Matter Jurisdiction of the Code and specifically includes under subsection (d) proceedings to determine custody of, ..., a child". (Appellant Brief at 4).

The Appellant-Plaintiff goes on to state that, "under Section 3.01, General Powers and Procedures in the Court, subsection (b) states: Rules of Procedure. Matters arising under the Children's Protection Code shall be governed by the rule of procedure of the Tribal Court that are not in conflict with this code". (Appellant Brief at 4) (Emphasis added by Appellant in Brief, returned to regular text in this *Opinion*).

The Appellant-Plaintiff's argument, therefore, is that the language in the LRBOI Children's Protection Code requires that provisions in the Children's Protection Code trump LRBOI Court Rule 4.119(F)(1). In the context of this case, applying this reasoning would require the Trial Court to consider the Appellant-Plaintiff's Motion for Reconsideration.

The critical connection required for the LRBOI Children's Protection Code to apply is that the case must arise under the Children's Protection Code. The present case did not arise under the Children's Protection Code. With this case not arising under the Children's Protection Code, the time-frames in the

Children's Protection Code do not apply. The appropriate deadline for filing a motion for reconsideration, therefore, can be found in the LRBOI Court Rules, specifically, LRBOI Court Rule 4.119(F)(1) which states that a motion for reconsideration "must be served and filed not later than 14 days after entry of an order disposing of the motion". With Appellant-Plaintiff Rivers filing his Motion for Reconsideration twenty-eight (28) days after the Trial Court issued its *Order After Motion Hearing*, the Trial Court reached the proper conclusion when it denied the Appellant-Plaintiff's Motion for Reconsideration.

This Court notes that it found no support for the Appellant-Plaintiff's argument, in either his pleadings or Oral Arguments, that he relied upon the Children's Protection Code in filing his Motion for Reconsideration within 28 days. In addition to the fact that this case did not arise under the Children's Protection Code, Appellant-Plaintiff Rivers did not, as required by Section 4.119(A)(1)(b) of the LRBOI Court Rules, state in his Motion for Reconsideration that he was relying upon the Children's Protection Code as "grounds and authority on which it is based"; he referred only to MCR 2.119(F).

The Appellee-Defendant provides additional reasoning for Appellant-Plaintiff Rivers' conduct, in part to support her assertion that this Appeal is frivolous. She points out that the Appellant-Plaintiff not only made the mistake of stating the wrong grounds for his Motion for Reconsideration, but also made the mistake of failing to fulfill the requirements of the court rule he alleged to be filing under, specifically MCR 2.119(F).

In the *Order Regarding Plaintiff's Motion for Reconsideration*, the Trial Court stated that the Appellant-Plaintiff's Motion was filed on August 31, 2015 with a footnote that:

The Court received it (Motion for Reconsideration) via facsimile on August 24, 2015, but pursuant to LRBOI Court Rule 4.119G, a motion is not considered filed until the motion fee is paid.

LRBOI Court Rule 4.119(G) states:

(G) Motion Fees. The following provisions apply to actions in which a motion fee is required:

(1) A motion fee must be paid on the filing of any request for an order in a pending action, whether the request is entitled "motion," "petition," "application," or otherwise. It is not considered filed until the motion fee is paid.

The Trial Court is correct in its analysis of LRBOI Court Rule 4.119(G); a motion is not considered filed until the filing fee is paid. Appellant-Plaintiff Rivers, therefore, did not file his Motion for Reconsideration until August 31, 2015, well past the 14-day deadline in LRBOI Court Rule 4.119(F)(1).

As the Appellee-Defendant states in her Brief when advocating for sanctions and attorneys' fees, "instead of simply admitting the mistake, Plaintiff/Appellant perpetuated the error and filed a Notice of Delayed Appeal grasping at another section of the Tribal Code with a longer deadline to attempt to justify the late filed Motion". (Appellee Brief at 10).

While this Court tends to agree with this summary of Appellant-Plaintiff Rivers' actions, it is hesitant to sanction Appellant-Plaintiff Rivers or order him to pay attorneys' fees to the Appellee-Defendant due to the substantive matters presented in this Appeal. However, as noted by the Appellee-Defendant in her Brief, this is not the first time that Appellant-Plaintiff Rivers has failed to adhere to the requirements of the LRBOI Court Rules. This Court of Appeals held in a

previous appeal filed by Appellant-Plaintiff Rivers that his failure to follow the LRBOI Court Rules required dismissal of the appeal. (See *Order Dismissing Appeal*, Tribal Court Case No. 13-206-AP, December 3, 2013). While this Court of Appeals shall remain without bias against Appellant-Plaintiff Rivers in any future appeals, it will give greater consideration to sanctions and the awarding of attorneys' fees should similar circumstances be involved.

#### CONCLUSION

This Court of Appeals finds that Appellant-Plaintiff Rivers did not meet his burden to demonstrate in his Notice of Delayed Appeal that his late filing of the appeal of the August 3, 2015 *Order After Motion Hearing* was not due to the Appellant's or the Appellant's attorney/advocate's negligence, pursuant to LRBOI Court Rule 5.301(E).

This Court of Appeals finds no merit in Appellant-Plaintiff Rivers' argument that the Children's Protection Code applies to the present case. Section 4.119(A)(1)(b) of the LRBOI Court Rules requires that a motion "state with particularity the grounds and authority on which it is based". The Plaintiff-Appellant filed his Motion for Reconsideration under MCR 2.119(F) only without any reference to the Children's Protection Code. Of equal, if not greater importance, the present case did not arise under the Children's Protection Code as required for the provisions in this Code to apply.

This Court finds that the Trial Court properly held that the LRBOI Court Rules, and not MCR. 2.119(F) as pled in the Motion, applied to the Appellant-Plaintiff's Motion for Reconsideration. This Court further holds that the Trial



Court reached the proper conclusion in denying the Motion as Appellant-Plaintiff Rivers did not file his Motion within 14 days as required in Section 4.119(F)(1) of the LRBOI Court Rules.

This Court of Appeals declines to hold that this Appeal is frivolous, but will consider sanctions and requests for attorneys' fees in future appeals if Appellant-Plaintiff Rivers continues to disregard the LRBOI Court Rules.

**IT IS HEREBY ORDERED:**

Appellant-Plaintiff Rivers' appeal of the Trial Court's August 31, 2015 *Order Regarding Plaintiff's Motion for Reconsideration* is DENIED. The August 31, 2015 *Order Regarding Plaintiff's Motion for Reconsideration* is upheld, thereby affirming the August 3, 2015 *Order After Motion Hearing*.

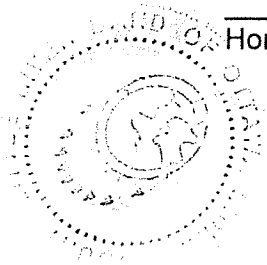
**On behalf of a unanimous Court of Appeals,**

*Melissa L. Pope*

\_\_\_\_\_  
Hon. Melissa L. Pope, Chief Justice

March 16, 2016

Date



**CERTIFICATION OF SERVICE**

I certify that I placed a copy of this *Order and Opinion* in the Tribal mail system to have adequate postage attached and taken to the Manistee Post Office on this date for mailing to the parties and/or the attorneys for the parties as listed.

*Deborah Miller*  
\_\_\_\_\_  
Deborah Miller, Court Administrator

March 17, 2016  
Date

Little River Band of Ottawa Indians  
TRIBAL COURT  
3031 Domres Road  
Manistee Michigan 49660  
(231) 398-3406  
Fax: (231) 398-3404

---

PLAINTIFF:  
LITTLE RIVER BAND OF OTTAWA INDIANS

V.

CASE NUMBERS: 15262TM  
&  
15263TM

CO-DEFENDANTS:  
CHARLOTTE CAMPBELL &  
WAKINYAN-SKA-WI KAREEN LEWIS

HON. DANIEL BAILEY

---

Prosecutor:  
William Gregory  
3031 Domres Road  
Manistee MI 49660

Attorney for Defendants:  
David A. Becker  
409 E. Eighth Street  
Traverse City, MI 49686

At a session of said Court on June 13, 2016  
In the Reservation Boundaries of the  
Little River Band of Ottawa Indians,  
State of Michigan  
PRESENT: HON. DANIEL BAILEY

ORDER AFTER HEARING

Both Charlotte Campbell and Wakinyan-Ska-Wi Lewis, Co-Defendants, were charged with Retail Fraud Second Degree (MCL 750.356d) and Conspiracy under LRB Ord. 11-400-03, Sec. 7.03. Both Defendants entered a plea of Not Guilty at arraignment on January 11, 2016. After many delays the bench trial was held on June 13, 2016.

The Prosecutor presented exhibit one (1) which was a CD produced by the Surveillance Department of the Casino from the evening of December 18, 2015. The Prosecution entered this CD as evidence alleging it showed the Defendants conspiring and shoplifting a leather jacket from the Casino Gift Shop. There was no objection by the Defense to the exhibit and it was entered into the record.

[Exhibits one (b.) and one (c.) were also entered into the record. They were still photos cropped from the video.]

The Prosecution alleged that the women colluded to steal the jacket. The CD was played for the Court. The video showed both the Defendants as they entered the Gift Shop on December 18, 2015 and continued utilizing different cameras until the Defendants left the Casino later in the evening.

Sharon McIntyre, was called as the first witness for the Prosecution. She was a full time cashier on duty in the Gift Shop at the time of the incident. McIntyre identified the Defendants as the two people that were in the Gift Shop the night in question. Sharon testified that the Defendants were trying on multiple jackets and sweaters. She testified that "we were thinking they were acting strange." Ms. McIntyre was not in the Gift Shop when the Defendant's left because she had taken her break. McIntyre testified that she knew something was wrong when she returned from her break because there was an empty hanger and that it was their policy to throw the hangers away after a jacket had been purchased.

Sarah Brown, the Gift Shop Supervisor, was called to the stand. Ms. Brown was not at work on the evening in question. Her testimony was in regard to the price of the jacket. She estimated it at \$329. She testified that they checked their computer inventory sometime after the Defendants left the Casino. The electronic inventory showed seven (7) jackets. The physical count was six (6) jackets. Ms. Brown testified that they don't do a physical inventory every day. She testified that if there "was a hanger without a jacket, the jacket was stolen."

The next witness called by the Prosecution was Sarah Sikorski, the Surveillance Supervisor for the Casino. Sikorski interprets the behavior she sees regarding the Defendants on the video tape based on her "professional observations."

The Prosecutor submitted the Surveillance Report that was prepared based on the video and entered as Exhibit four (4). The Defense objected to the report as being subjective and speculative. It suggests that the shoplifting took place. The Court sustained the objection.

Attorney Becker cross-examines the Surveillance Supervisor who looked at the whole video. Ms. Sikorski testified that she did not review whether Ms. Campbell bought anything from the Gift Shop. Sikorski testified that at 20:31 on the video she saw Ms. Lewis pass a small item to Ms. Campbell. She could not identify the object.

Sikorski was handed the exhibit 1 (c). She could not testify what item of clothing was under the jacket from the picture. Sikorski called Ms. Campbell a "look out." Sikorski then agreed that Ms. Campbell was at the cash register when Ms. Lewis was putting on the items in question. Sikorski also said that there were many people milling around both Defendants in the Gift Shop. Sikorski testified that she did not see either Defendant having a purse or handbag at any time in the video.

Prosecution calls Julie Hagadorn, former Gift Shop Retail Associate on December 18, 2016, to the stand. Ms. Hagadorn testifies that she and Sharon tried on clothes for the Defendants. Ms. Hagadorn is shown the credit card receipt and says that she was the cashier that completed the sale. She said she enjoyed the Defendants company while they were shopping. [Exhibit two (2) was a copy of the cash register receipt of a purchase made with a Visa credit card by Ms. Campbell with her Tribal I.D. number handwritten on the receipt.]

Attorney Becker cross exams Ms. Hagadorn. Hagadorn identifies the Tribal I.D. number that was written on the receipt and that it was done so that Ms. Campbell would get her discount. The witness does not remember any other instances from that transaction.

Detective Grabowski testified that Ms. Campbell and Ms. Lewis came in voluntarily after finding out there was a warrant for their arrest. The officer read the Defendants their Miranda Rights and they said they understood it. Grabowski shows exhibit three. [Exhibit three (3) is a blank card made of plastic with a black magnetic stripe at the top. This card was procured from the Enrollment Department of the Tribe.] The Prosecution considered it as evidence to show the alleged discrepancy in size of the tag on the coat and an I.D. or credit card.

Officer Patrick Gilles was called to the stand. He was dispatched at 10:18 p.m. to a larceny at the Casino. He spoke to Sarah Sikorski. It was determined that the alleged crime had happened a couple of hours earlier. Officer Gilles testifies that he watched the video. The officer did not know why it was reported so much later than the alleged incident.

Ms. Lewis was called to the stand to testify on her behalf. She said that neither she nor her mother had a purse. She had her mother's credit card, her Tribal I.D., her license and her car keys in a pocket in her sweater. She testified she was wearing a sweater with a gold chain and over that she wore a black sweatshirt with a hood. She testified that she took both the jacket and the sweater off to try on the jackets. (She had a t-shirt underneath the outer garments.)

Becker questioned her about the fact that she had left her outer jacket/hoodie open after the alleged theft. Lewis said she never closed her outer jacket so that anything under her outer garment would have been visible.

Ms. Lewis testified that she and her mother were looking at different items in different areas of the Gift Shop from each other. The Defendant Lewis said they never discussed stealing anything from the Gift Shop. Ms. Lewis testified she never took anything from the Gift Shop, nor to her knowledge, did her mother.

Ms. Campbell took the stand and testified about the events of that evening. She said they went into the Gift Shop and tried numerous things on. She testified that she bought some leg warmers. Ms. Campbell said that neither she nor her daughter took anything out of the store that they didn't pay for.

Campbell was not sure whether they gambled first or ate first after they left the Gift Shop. Prior to leaving the Casino for the evening the Defendant testified that they went back to the Gift Shop to ask for some extra bags for popcorn and they were given to them.

The presumption of innocence in a criminal case places the legal burden on the prosecution to prove all the elements of the offense. The video quality was not optimum but the Court has had the luxury of replaying the video [exhibit one] numerous times and stopping each frame when the actions of the Defendants were in question as it related to the alleged theft.

What was clearly seen by the Court at the beginning of the video, was Defendant Lewis wearing a dark colored shirt/sweater/sweatshirt under an outer garment with a hood. The outer garment was not closed. This was seen as she was walking toward the Gift Shop. (20:05) When the Defendants entered the shop and Ms. Lewis turned around and faced

the camera, both dark inner and outer garments could be seen. (20:67:02) The outer "jacket" with the hood was open. This was prior to either woman trying on clothing.

After reviewing the video over and over again it appears that the testimony of the Defendants is more reasonable and fits the actions on the video. The Court also noted that the actual tag was visible when the Defendant took off the last jacket she tried on. This was supposedly the one she took without paying.

Not one witness could say with certainty that the item handed to Ms. Campbell from Ms. Lewis was a tag. The Defendant's both testified that Ms. Lewis had the credit card and Tribal I.D. card in her pocket, which was what she handed to her mother. The tag was visible on the jacket when the Ms. Lewis hands her mother the "item" that was supposedly the tag. Ms. Campbell was seen to carry the item (tag/credit card) in plain sight as she walked through the Gift Shop prior to paying. (20:31:07) Since both credit card and Tribal I.D. were used in the purchase of the leg warmers and Ms. Campbell did not have a purse to keep those items, that testimony is also very credible.

The fact that Ms. Lewis did not close the outer jacket/hoodie to hide the leather jacket she supposedly took and then blatantly stood at the cash register with the same retail associates that were helping them, lends credence to the Defendant's testimony.

The Defendants returned to the Gift Shop almost a half an hour later (20:56) to request some additional bags. The outer coat remained open in front of the same cashiers and no red flags were raised. The Tribal Police were not called to the Casino approximately an hour after the Defendants had left the property.

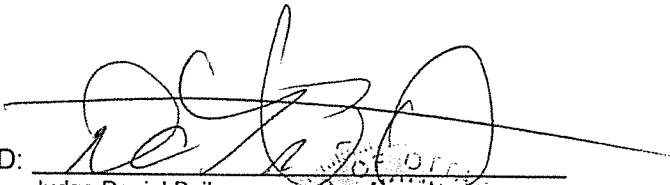
It appears to the Court that the two articles of clothing that covered the t-shirt upon entering the Gift Shop were exactly the same articles of clothing that were worn when leaving the Gift Shop and ultimately the Casino.

The Defendant's testimony corroborates the conclusions that the Court found evident on the video/CD. Their explanation of the actions on the video strongly support the inferences the Court has drawn from the trial and the evidence presented.

The Prosecution failed to prove beyond a reasonable doubt that the Defendants conspired and shoplifted a leather coat.

The Court finds both of the Co-Defendants NOT GUILTY of the charges of *Retail Fraud 2<sup>nd</sup> Degree* and NOT GUILTY of *Conspiracy*.

SO ORDERED:

  
Judge Daniel Bailey

  
Date

