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2 IN THE APPELLATE COURT OF THE CONFEDERATED
3 SALISH AND KOOTENAI TRIBES
4 OF THE FLATHEAD RESERVATION

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6 IN THE MATTER OF:) CAUSE NO. AP-05-90
7)
8 CONFEDERATED SALISH AND)
9 KOOTENAI TRIBES,)
10)
11) PLAINTIFF)
12 VS.) APPELLEE,) OPINION
13)
14)
15 DARYLE R. GEBEAU,)
16)
17) DEFENDANT)
18)
19) APPELLANT.)
20)

21 Before Neuman, Lozar, and Acevedo, Associate Judges
22 sitting as the Appellate Court.

23 Appellant Daryle R. Gebeau was arrested July 30, 1989 and
24 charged with four separate counts of violating the
25 Confederated Salish and Kootenai Tribal Law and Order Code,
26 Ordinance 36B: (1) Domestic Abuse; (2) Possession of Drug
Paraphernalia; (3) Carrying a Concealed Weapon; and (4)
Disorderly Conduct. At trial before Associate Judge Louise
Burke, September 13, 1989, the Appellant was found Guilty of
all four charges. We affirm.

I. Facts and Proceedings

The Appellant is an enrolled member of the Confederated
Salish and Kootenai Tribes, residing in Arlee, Montana. On
July 30, 1989, Tribal Police Officer Pluff was dispatched to
the Fisher residence in Hot Springs, Montana on a

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2 disturbance call. It was reported by the complainant that
3 the Appellant might have a knife. Officer Pluff then
4 radioed Sanders County for assistance. Officer McGuigan
5 responded to the assistance call and met Officer Pluff at
6 the Fisher residence. They obtained statements from the
7 complainants concerning incidents which if proved would
8 amount to disorderly conduct as well as physical abuse which
9 was reported to have occurred July 26, 1989. The officers
10 then proceeded to the Montana Bar in Hot Springs where they
11 located the Appellant and placed him under arrest. He was
12 advised of his rights and the officers began to search him
13 on a "Pat Down" as a routine procedure prior to placing him
14 into the patrol car. During the pat down, Officer Pluff
15 found a pipe in the pants pocket of the Appellant, and
16 Officer McGuigan found a knife concealed from view in a
17 brace the Appellant was wearing on his right arm. He was
18 then transported to the Tribal Jail in Pablo, Montana and
19 cited for disorderly conduct, domestic abuse, possession of
20 drug paraphernalia and carrying a concealed weapon.

21 Appellant was arraigned on July 31, 1989, in the Tribal
22 Court where he entered a plea of Not Guilty to all four of
23 the charges. Due to the serious nature of the charges, bond
24 was set at \$1,400.00. A trial was scheduled for September
25 13, 1989.

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2 At trial the Appellant was found Guilty on all charges
3 and sentenced to 90 days in jail on each charge to run
4 consecutively; \$200.00 fine; he also was require to obtain
5 chemical dependency and mental health assessments and abide
6 by all recomendations.

7 A Notice of Appeal was filed September 22, 1989. An
8 Order was issued November 10. 1989 amending the sentence of
9 Possession of Drug Paraphernalia from ninety days imposed at
10 trial to thirty days, the maximum allowed by the Tribal Law
11 and Order Code.

12 II. ISSUES

13 The Appellant appeals the trial court's decision on three
14 issues: A. Was the Court fully informed of the charges
15 against the Appellant at trial? B. Were the Elements of the
16 Charges proven? - Burden on the Prosecution. C. Does a
17 Paring Knife with a 3 Inch Blade Amount to a Concealed
18 Weapon?

19 A. Was the Court fully informed of the charges against
20 the Appellant at trial?

21 The Appellant correctly argues that the Tribal Law &
22 Order Code, Chapter III - Criminal Procedure, § 23, Order of
23 Procedure reads:

24 1. After the jury has been made up and sworn by the
25 Judge, or immediately if no jury trial is demanded.

26 a. The Clerk of Court shall read the complaint and
state the defendant's plea.

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3 While this procedure is outlined in the Chapter III, § 23
4 (supra) the usual practice in the Tribal Court has been for
5 the prosecutor to read the charges as a matter of course
6 during the prosecutor's opening arguments. The trial judge
7 also brings the record up to date by reading into it the
8 previous proceedings in the case prior to opening the trial
9 to the prosecution.

10 In reviewing the record we find that even this usual
11 practice of the court was not done at the opening of the
12 trial. However, by the time the prosecution had rested its
13 case-in-chief the specifics of each charge had been placed
14 before the court in detail. While the absence of
15 appropriate procedure is clearly an error, it is held to be
16 harmless in that the omission did not in any way effect the
17 ultimate outcome of this trial. The Court was fully
18 informed of the charges against the Appellant at the trial.

19 B. Were the Elements of the Charges proven? - Burden on
20 the Prosecution.

21 This is really a non-issue. Again the record shows that
22 the elements were proven by the prosecution, to the trial
23 court, beyond a reasonable doubt. This Court affirms the
24 trial courts decision that the elements of each charge were
25 proven by the prosecution.

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2 C. Does a Paring Knife with a 3 Inch Blade Amount to a
3 Concealed Weapon?

4 The Appellant hangs his hat on the fact that the citation
5 issued to him on this charge identifies the weapon a knife.

6 § H-1 (1) of the Tribal Code reads:

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8 1. A person commits the offense of carrying a concealed
9 weapon by carrying or bearing a dirk, dagger, pistol,
10 revolver, slingshot, sword cane, billy club, knuckles
11 made of any metal or other hard substance, knife having
a blade at least 4 inches long, non-safety type razor, or
any other deadly weapon which is wholly or partially
covered by the clothing or wearing apparel of the person
carrying the weapon. (emphasis added)

12 The "knife" in question is a common kitchen paring knife
13 with a blade approximately 3 inches long. As mentioned
14 supra, it was found by Officer McGuigan concealed in the
15 brace on the Appellant's right arm. While this "knife" does
16 not fit the emphasized section of the code that describes a
17 "knife having a blade at least 4 inches long", we must
18 infer from the location in which it was found that the
19 Appellant did not have it on his person for peeling
20 potatoes. Prior to being located by the officers he was
21 reported to be acting in a disorderly and threatening manner
22 and to have a knife. We must read the entire section with
23 which the Appellant was charged and find the "or any other
24 deadly weapon" section to be fully applicable to this paring
25 knife. The Court agrees with the Appellee that the entire
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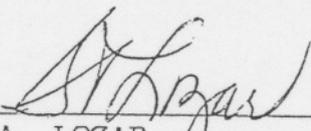
Chapter IV, § H-1 is applied when analysing the case against the Appellant.

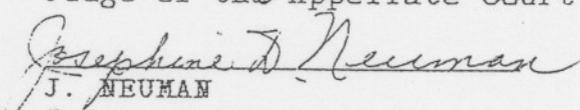
III. CONCLUSION

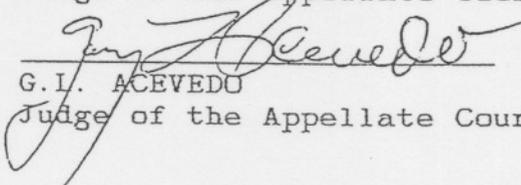
Based on the above reasoning the Appellate Court affirms the verdict of the trial court.

So Ordered this 2nd day of February 1990.

Sign this 2nd day of February 1990.


S.A. LOZAR
Judge of the Appellate Court


J. NEUMAN
Judge of the Appellate Court


G.L. ACEVEDO
Judge of the Appellate Court