

IN THE HUALAPAI TRIBAL COURT OF APPEALS
HUALAPAI RESERVATION, ARIZONA

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| HUALAPAI TRIBE, | } | App. Div. Case No.: 2011-AP-015 |
| Plaintiff/Appellee, | } | Tribal Court Case No.: 2011-CR-158 |
| v. | } | |
| THOMAS GROVER, | } | OPINION AND ORDER |
| Defendant/Appellant | } | |
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Before Chief Justice Wes Williams Jr. (Presiding), Justice Robert N. Clinton and Justice Carole Goldberg.

Appellant Thomas Grover (“Grover”) filed this appeal seeking to vacate the judgment of guilt entered against him and to dismiss the underlying criminal case with prejudice. Grover argues that the Tribal Court deprived him of his constitutional right to due process and equal protection under Article IX of the Hualapai Constitution by denying him discovery from the Tribe’s Prosecutor. We affirm the Tribal Court decision.

FACTS AND PROCEDURAL HISTORY

The Hualapai Tribe (“Tribe”) filed a Criminal Complaint against Grover on May 3, 2011 alleging Grover committed battery and child abuse in violation of the Tribe’s Law and Order Code. Following arraignment on May 3, 2011, Grover was remanded into custody of the Hualapai Detention Center until he was able to post a bond with the Court. Grover was unable to post a bond and remained in custody until June 22, 2011.

Grover was represented by the Public Defender at the arraignment and the pre-trial hearing held on May 17, 2011. During oral arguments, the Tribal Prosecutor stated that she provided to Public Defender copies of the police report on the incident, as well as a number of other related documents. Grover stated that he never received these documents. The Tribal Court ordered at the pre-trial hearing that “all witness/subpoena lists [were] to be submitted no later than June 8/May 17, 2011.” A jury trial was scheduled for June 22, 2011. On June 14, 2011, Grover filed a motion to dismiss because the Tribe had not filed its witness or subpoena lists within the time frame required by the pre-trial order. Grover also asserted that he had not received discovery from the Tribe. The Tribe filed a motion to issue subpoenas with a witness list on June 15, 2011.

Grover's motion to dismiss argued that he did not receive discovery, including the subpoena/witness lists, which infringed on his Constitutional rights of due process and equal protection. Grover argued that the Tribe's failure to provide him the discovery in a timely fashion rendered Grover unable to mount an adequate defense. The Tribal Court denied Grover's motion on the grounds that "[d]iscovery should be handled properly between the parties," and if discovery is not disclosed between the parties, "a party can file . . . a Motion to Compel Discovery." Minute Order (June 20, 2011). Grover never filed a Motion to Compel Discovery. Therefore the Tribal Court held that Tribe's failure to meet the deadline for filing the subpoena and witness lists had not violated Grover's due process or equal protection rights. *Id.*

On June 21, 2011, Grover moved to release the Public Defender as co-counsel and to appear pro-se. Grover stated that the Public Defender had approached Grover requesting that the trial be continued as the Public Defender had a scheduling conflict on the day of trial. Grover asserted that a motion to continue was filed by the Public Defender, but Grover withdrew it and insisted that the trial proceed as scheduled.

On June 22, 2011, a jury found Grover guilty on the count of battery, and not guilty on the count of child abuse. The Tribal Court entered a Judgment of Guilt and Sentencing Order imposing a sentence of "6 months jail time, credited 51 days, [with the] remaining time suspended" to 129 days of probation. Grover filed a timely notice of appeal on July 22, 2011.

DISCUSSION

ACCESS TO DISCOVERY MATERIALS UNDER HUALAPAI LAW

Grover asserts that he was denied due process because he did not receive discovery from the Tribal Prosecutor, and he did not receive a copy of the Tribe's witness list by the required deadline. The Public Defender did receive discovery and the witness list while representing Grover, but apparently did not provide copies to Grover. In any event, neither the public defender nor Grover filed a motion to compel discovery. Also, Grover had the opportunity to request a continuance of the trial, but specifically insisted on the trial going forward on June 22, 2011. Grover now argues that the Tribe's actions prevented Grover from being properly prepared for the trial, and thereby violated his rights to due process and equal protection.

Article IX of the Hualapai Constitution states that "[t]he Hualapai Tribe, in exercising its powers of self-government shall not . . . deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." Hualapai Constitution, Art. IX. While there is no definitive interpretation of due process, "[t]he protections of due process under the Hualapai Constitution must mean, at a minimum, that criminal defendants have an opportunity to present a defense to serious charges with potential for multi-year jail sentences." *Walker v. Hualapai Tribe*, 2005-AP-009 (Jan. 16, 2008). See generally, Robert N. Clinton, *The Right to Present a Defense: An Emergent Constitutional Guarantee in Criminal Trials*, 9 Indiana Law Review 711-858 (1976); Peter K. Westen, *The Compulsory Process Clause*, 73 Mich. L. Rev. 71 (1974).

Neither the Hualapai Constitution nor the Hualapai Law and Order Code create a criminal defendant's right to general pretrial discovery or a procedure for the disclosure of discovery.¹ Many other court systems do not provide a requirement that a prosecutor must automatically provide discovery to a criminal defendant. For instance, the Federal Rules of Criminal Procedure are illustrative on this point. Rule 16 implies that disclosure of discovery materials from the prosecution is only mandatory if first requested by the defendant. Similarly a criminal defendant in the Hualapai court system may submit an official request for discovery to the Tribe. Grover never submitted any such request. Therefore the Tribe had no affirmative obligation to furnish any materials to Grover.² If the Tribe had not voluntarily furnished discoverable materials to Grover, he could have compelled the Tribe to provide those materials through a Motion to Compel Discovery. Grover could have availed himself of this form of relief, but chose to forgo the opportunity.

Grover also asserts that the Tribe failed to meet the court's deadline for submitting a witness list, which prevented Grover from properly preparing for trial. If Grover felt unfair surprise from the Tribe's failure to timely file the witness list, Grover had the opportunity to move for a continuance to prevent any prejudice from the Tribe's action. Instead Grover filed a pleading specifically stating that he did not want a continuance, all the while knowing that the witness list was not filed in accordance with the court's order.

While this Court is sympathetic to Grover's right to a speedy trial, especially as Grover was incarcerated at the time, Grover had the opportunity to request a continuance, but did not. Had Grover obtained a continuance, any prejudice arising from Tribe's failure to timely submit a subpoena list would have been avoided.

CONCLUSION

Based on the foregoing, the Tribal Court's final judgment of conviction and sentence in this matter is affirmed.

IT IS SO ORDERED.

¹ The Court notes that Grover is not claiming that any material the Tribe failed to disclose in a timely fashion constituted exculpatory or potentially exculpatory material. Thus, this Court has no occasion in this case to decide whether the Tribal Constitution or the federal Indian Civil Rights Act of 1968, 25 U.S.C. § 1302, require the Tribe to disclose potentially exculpatory material, irrespective of the structure of the Hualapai Constitution or the Hualapai Law and Order Code. *Compare, Brady v. Maryland*, 373 U.S. 83 (1963) (due process requires a state prosecutor to disclose exculpatory or impeaching information and evidence that is material to the guilt or innocence or to the punishment of a defendant). Grover only complains that the timing of the disclosure of the Prosecutor's witness list violated the schedule established by the Tribal Court by a week.

² The Prosecutor did state that she provided certain documents to the public defender at Grover's arraignment. Because Grover had enlisted the Public Defender as co-counsel, any materials the Tribe furnished to the Public Defender were properly served on Grover.

Entered on behalf of the entire panel.

A handwritten signature in blue ink, appearing to read 'Wes Williams Jr.', is written over a horizontal line.

WES WILLIAMS JR.
CHIEF JUSTICE OF THE
HUALAPAI COURT OF APPEALS

Dated: February 8, 2012.