

IN THE HUALAPAI NATION COURT OF APPEALS
HUALAPAI RESERVATION, ARIZONA

IN THE MATTER OF:

DURIEL WATAHOMOGIE, a Juvenile)	App. Court Case No.: 2010-AP-013
DOB 10/08/1992)	Tribal Court Case No.: 2010-JV-65A-D
)	
)	<u>OPINION AND ORDER</u>
)	
)	

Before Justice Carole GOLDBERG

Marie James, Chief Prosecutor, and James Sun Park, Special Prosecutor for the Tribe

Muriel Uqualla, Mother of the Juvenile, for the Juvenile

This appeal presents several issues of first impression affecting the Hualapai juvenile justice system. Specifically, this opinion addresses the appealability of orders made in the course of juvenile proceedings, the procedure for transferring cases from juvenile to adult court when a minor reaches the age of maturity during the course of the proceedings, and the procedures that police must follow in taking juveniles into custody.

STATEMENT OF RELEVANT FACTS & PROCEDURAL HISTORY

On July 23, 2010, the Tribe filed a juvenile delinquency petition against Durriel Watahomogie (the Juvenile) charging him with four offenses: Aggravated Battery in violation of Law and Order Code § 6.88(A) (Count A); Possession of a Controlled Substance in violation of Law and Order Code §6-273(A) (Count B); Possession of Drug Paraphernalia in violation of Law and Order Code §6-24(A) (Count C); and Possession of Alcohol by a Person Under 21 years of Age in violation of Law and Order Code §6-277 (Count D). The Juvenile appeared with his parent, Muriel Uqualla, for initial appearance and entered a plea of denial. The Juvenile was released pending the disposition of the case.

On August 3, 2010, the parent, on behalf of the Juvenile, filed a motion to dismiss the charges alleging violation of Law and Order Code §13.18. The motion alleged that the Juvenile was questioned by police officers without the consent or presence of his parent, Muriel Uqualla, contrary to Law and Order Code §13.18(C), which states, “When an officer takes a child into custody, the officer shall immediately notify the parent, guardian, or custodian.”

On August 10, 2010, the Tribe filed a motion to transfer the Juvenile to adult status. The motion alleged that the Juvenile's actions were aggravating enough to warrant the court to maintain and transfer jurisdiction to adult court upon the Juvenile's attainment of the age of maturity pursuant to Law and Order Code §13.4(B)(1-2). The Juvenile reached the age of maturity (18) on October 8, 2010.

On August 16, 2010 Judge *pro tem* Telayumptewa issued a scheduling order on the two motions. The evidentiary hearing on the Juvenile's motion to dismiss was set for August 26, 2010. In the same scheduling order, Judge Telayumptewa stated:

If the mother's motion to dismiss is not granted, then an Evidentiary Hearing shall be scheduled on Tribe's request to maintain jurisdiction after minor reaches his age of maturity. At that time, the Tribal Prosecutor shall provide authority for extending jurisdiction over a juvenile matter and transferring jurisdiction to adult criminal court. August 16, 2010 Order.

On August 26, 2010, at the request of Muriel Uqualla, the motion to dismiss hearing was continued to September 17, 2010 because Juvenile's witnesses, Officer Moore and Herbert Dini, were unable to be present. August 26, 2010 Order.

On September 17, 2010, the Juvenile Court heard testimony from Officer Chris Moore, Officer Michael Williams, Muriel Uqualla, and the Juvenile's cousin, Herbert Dini III. Officer Moore testified that on July 22, 2010, he responded to a call regarding a fight on Buck & Doe Road. The police report showed that officers were dispatched at 18:11. The report does not show actual arrival time. When Moore arrived on the scene at #24 Buck & Doe he made contact with several individuals. During this initial contact, the Juvenile bragged that he had beat up the victim, Josh. While the Juvenile was bragging about the incident, Officer Moore noticed that the Juvenile appeared to be under the influence of alcohol. Moore testified that he talked to the Juvenile for 5-10 minutes during which the Juvenile said he had assaulted the victim with fists and elbows.

According to Officer Moore's testimony, while he was making contact with the Juvenile, other officers had located the victim. Through radio transmission, Officer Williams advised Officer Moore to arrest the Juvenile. After receiving the radio transmission, Officer Moore informed the Juvenile that he would be detaining the Juvenile until he could obtain the necessary information from other officers. Officer Moore asked the Juvenile if he could search his pockets and the Juvenile consented. During the search, Officer Moore found a zip lock bag with suspected marijuana and a smoking pipe, which is the basis for the charges in Counts B and C. Up to this point, the Juvenile had not been detained in the police car and had not been placed in handcuffs. After Officer Moore spoke personally with other officers, he informed the Juvenile that he was under arrest.

Officer Moore further testified that at that point he put the Juvenile in handcuffs and placed him in the police car. Moore drove down the block (still within sight of #24 Buck and Doe) to where Officer Williams and Officer Bedilla were standing with the

victim. Moore read the Juvenile his Miranda rights at 18:40. After that point, the only question he asked the Juvenile was the identity of his guardian. The Juvenile told him that his guardian was Erika Randall. Moore drove back to the scene at #24 Buck and Doe at approximately 18:45-18:50. Moore tried to talk to Randall but she was unable to talk about the incident because of her high level of intoxication.

Moore never personally made contact with the Juvenile's mother, Muriel Uqualla. He testified that he did not personally inform Ms. Uqualla that he was arresting the Juvenile, and that Officer Williams was the officer who made contact with her. Officer Moore did not get the mother's consent to transport the Juvenile or to get medical clearance for the blood alcohol breathalyzer test conducted on the Juvenile at the police station. Moore testified that neither he nor the police station staff forced or threatened force in an attempt to get the Juvenile to take the breathalyzer test. He did say that the staff tried to convince the Juvenile by explaining that the test was part of their intake policy. Ms. Uqualla testified that she never gave consent to the breathalyzer test on her son or for his transport to the medical center. She was never informed about these events and did not learn about them until she received the police report. Ms. Uqualla testified that she was not read Miranda rights by any officers on the scene.

Officer Williams, who was located with the victim, testified that at approximately 18:57 he advised Ms. Uqualla that her son had been placed under arrest. He testified that he did not go to Ms. Uqualla's residence. Officer Williams said that as he walked towards Ms. Uqualla's front yard she started making her way to where he was and so he met her half way. In Ms. Uqualla's testimony, however, she states that she first approached Officer Williams on the scene at approximately 18:30 while the officer appeared to be looking for something on the ground. She testified that the officers were not at her residence on Buck & Doe Road nor did any appear to be going towards her residence.

Officer Williams testified that he never spoke to the Juvenile and was not present when he was taken into custody. Officer Moore was the arresting officer at the scene. Moore and Williams both testified that it is accepted police practice for officers to share tasks on the scene and that there is no policy that they are aware of that it is the sole responsibility of the primary arresting officer to notify the guardian.

Herbert Dini, cousin of the Juvenile, testified that he was at a relative's house on Buck & Doe Road during the encounter. He was not at #24 Buck and Doe when the police arrived, but walked over to the scene to inquire and was told by police to get inside. Dini had no involvement with the incident other than watching from inside the house. On cross-examination he admitted to being intoxicated at the time. Dini testified that there were four or five police officers present at the scene and that there were officers on either side of the Juvenile. Dini testified that he walked over to Ms. Uqualla's house to let her know that the police had taken in the Juvenile. Dini testified that Ms. Uqualla did not know about the Juvenile's arrest until he went over to tell her. Ms. Uqualla's testimony corroborates this statement. She testified that she was notified of her son's

arrest by Dini at some time between 18:00 and 18:25 while she was preparing dinner at her residence.

On September 29, 2010, Judge *pro tem* Wilbur entered an order dismissing Counts B and C of the juvenile petition with prejudice. Judge Wilbur found that the Juvenile was not free to leave when the officer initially questioned the Juvenile and that the officer had exercised authority over the Juvenile when he decided to pat search him, place him in the patrol vehicle, and transport him to police facilities. September 29, 2010 Order at 2: 9-11. Judge Wilbur further found that the Officer was aware that he was investigating a minor and questioned the Juvenile without advising him of his rights or notifying a parent. *Id.* at 2: 1-4. The Juvenile Court concluded that parental notification within 40 minutes of an arrest could be considered a reasonable time period depending on the circumstances; however, in this case, the police did not make reasonable efforts to notify the parent, Muriel Uqualla, who lived across the street from the incident. *Id.* at 2: 13-15. It was Ms. Uqualla who actually approached Officer Williams to ask about her son. *Id.* Therefore, police took actions contrary to Law and Order Code §13.18(C). Consequently, evidence seized prior to placing the Minor in the back of a police vehicle and the breathalyzer results merited suppression. *Id.* at 3: 8-9. Judge Wilbur then dismissed Counts B and C with prejudice. *Id.* at 3: 19. Judge Wilbur further found that the statements of the alleged victim were lawfully obtained and sufficient to support the aggravated battery charge, so she declined to dismiss Count A.

On October 8, 2010, Judge Wilbur entered a separate order denying transfer of the Juvenile to adult status without a hearing. The Juvenile Court found that the August 13, 2010 Order issued by Judge Telayumptewa indicated that the Prosecutor's Motion to Transfer Juvenile to Hualapai (Adult) Court "...would be scheduled for a hearing if the case was not dismissed. Further, the Court ordered that the Tribe to [sic] submit authority that it was relying on to maintain jurisdiction and to transfer to adult court." October 8, 2010 Order at 1: 18-22. Judge Wilbur found that the Tribe had not provided any additional authority for transfer to adult court and that there appeared good cause to rule on the pleading without further argument. *Id.* at 1: 22-23.

On October 11, 2010, the Tribe filed a Notice of Appeal, appealing Judge Wilbur's order of dismissal of Counts B and C in the juvenile matter and her denial of the Tribe's motion to transfer. On October 14, 2010, the Tribe filed a Motion for Stay of the juvenile adjudication proceedings until the Court of Appeals has been able to consider the matter. On October 13, 2010, the Juvenile was taken into Federal Custody by Hualapai Criminal Investigators on a Federal Warrant of Arrest. After a detention hearing on October 19, 2010 at the Flagstaff Coconino County's Magistrate Court, the Juvenile was ordered to remain in Federal custody pending trial.

ISSUES PRESENTED FOR REVIEW

1. Is the Tribe a proper party to appeal an order from a Juvenile Court proceeding?

2. Are the two orders that the Tribe seeks to appeal appealable orders within this Court's jurisdiction?
3. Did the Juvenile Court err in denying the transfer of the Juvenile to prosecution as an adult without holding an evidentiary hearing?
4. Did the Juvenile Court err in suppressing evidence obtained from the Juvenile prior to taking him into custody and dismissing Counts B and C?

DISCUSSION

1. Is the Tribe a proper party to appeal an order from a Juvenile Court proceeding?

Under Law and Order Code §10.2(C), the Court of Appeals has jurisdiction over all appeals from final judgments or orders of the Juvenile Court. Any "dissatisfied party" to a civil action or defendant in a criminal action has a right of appeal. Law and Order Code §10.3. Section 10.3 is silent as to which parties may appeal in a juvenile proceeding. Chapter 13 of the Law and Order Code, which governs juvenile proceedings, is no more helpful. It states only that "Parties adversely affected by a final disposition shall be informed of their right to appeal under the provisions of Chapter 10 of this Code." Law and Order Code § 13.20(H). If a juvenile proceeding is treated the same as a criminal proceeding, the Tribe will be unable to appeal.¹ But if a juvenile proceeding is treated the same as a civil proceeding, the Tribe will be allowed to appeal as a "dissatisfied party."

Chapter 13 does not specify whether a juvenile adjudication is a civil or a criminal proceeding; but the Code states that juvenile adjudications are not criminal convictions. Law and Order Code §13.31(D). Furthermore, the revised Hualapai Law and Order Code § 10.3, though too recently amended to control in this case, expressly states that juvenile adjudications are civil proceedings. In view of Law and Order Code § 13.31(D), this Court interprets the recent amendment as a clarification, rather than a change in the characterization of juvenile matters. Accordingly, this Court concludes that the Tribe, as a dissatisfied party to a civil action, is a proper party to appeal the orders of the Juvenile Court in this case. This Court is mindful of the fact that double jeopardy problems may arise in situations where a juvenile is detained pursuant to an adjudication involving an offense that would be a crime if committed by an adult. The posture of the current appeal is such, however, that jeopardy has not yet attached. The Tribe has appealed the Juvenile Court's rulings on motions that were made before any trial or adjudication of the merits. This very timing, however, raises questions about the Court of Appeals' jurisdiction, given that we are allowed to review only "final judgment[s] or order[s]" of the Tribal Court in civil cases. Law and Order Code § 10.2(B).

¹ Double jeopardy problems would arise if the Tribe were permitted to appeal an acquittal in a criminal case.

2. Are the orders of the Juvenile Court appealable final orders within this Court's jurisdiction?

The Law and Order Code does not define a “final judgment or order” for purposes of § 10.2(B), governing juvenile proceedings. In typical legal usage, however, a judgment or order is considered final if it completely disposes of the litigation, leaving no further matters that could alter the ultimate outcome. Under Hualapai law, the requirement of a final judgment or order is not violated if an appeal is directed to a “collateral order,” meaning an order before final judgment that conclusively resolves an important and disputed question that is completely separate from the merits of the underlying action and is effectively unreviewable on appeal from final judgment. *Whatoname v. Beltran*, Hualapai Ct. App., 2008-AP-008 (2009) at 5 (allowing appeal of an eviction order entered during the course of an ongoing probate proceeding). A similar “collateral order” doctrine exists within federal law. *See, e.g., Midland Asphalt Corp. v. United States*, 489 U.S. 794, 799 (1989) (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978)). Thus, while there is no Hualapai precedent on the immediate appealability of transfer orders or dismissal orders in juvenile proceedings, Hualapai case law has made exceptions to the final judgment requirement for appeal of “collateral orders.”

a. The October 8, 2010 Order Denying Transfer of the Juvenile to Adult Status

In determining whether orders denying transfer of juveniles to adult status may be appealed before final judgment as “collateral orders,” this Court looks to federal law for guidance. Federal courts, including the Ninth Circuit, have consistently held that such orders are appealable before final judgment.

In *United States v. Doe*, 94 F.3d 532, 535 (9th Cir. 1996), the Ninth Circuit considered whether orders denying transfer of juveniles for adult prosecution are immediately appealable under the collateral order doctrine. The Court of Appeals found that the order denying the government’s motion conclusively determined a disputed question (whether the defendant would be tried as an adult), and this issue was completely separate from the merits of the defendant’s guilt or innocence. The Ninth Circuit also found that if the government was not allowed immediate appeal and was forced to wait until the conclusion of the juvenile adjudication, the government’s right to try the defendant as an adult would be forever barred by the double jeopardy clause and thus constituted “an asserted right the legal and practical value of which would be destroyed if it were not vindicated before trial.” *Id.* (quoting *United States v. MacDonald*, 435 U.S. 850 (1978)).²

² The United States Supreme Court, while recognizing that juvenile proceedings are not criminal proceedings, nevertheless makes applicable in juvenile proceedings constitutional guarantees associated with traditional criminal prosecutions, including the right to be free from double jeopardy. *Breed v. Jones*, 421 U.S. 519, 528-529 (1975).

The general policy behind the final judgment requirement in Hualapai law is to allow trial courts "...the time and space to complete their work without undue interference from the higher court." *Walema v. Hualapai Tribe*, Hualapai Ct. App. 2007-AP-004 (2008) at 3. Premature appeals risk interfering with the trial court, delaying trial, undertaking review of rulings that would be affirmed or that would be mooted by subsequent events, and requiring duplicative appellate review of related problems. In *United States v. Doe*, the Ninth Circuit nonetheless allowed appeal of the denial of transfer from juvenile to adult court because double jeopardy protections would effectively destroy the appeal after final judgment. This Court finds the same consideration persuasive in the Hualapai context. Like the United States Constitution, the Hualapai Constitution includes a prohibition on double jeopardy. Hualapai Const. Art. VI, sec. 13(a). Thus, as in the federal system, wrongful denials of transfer to adult status must be immediately appealable if they are to be appealable at all. If the Tribe were forced to wait until the conclusion of the juvenile proceeding in order to appeal the denial of transfer, jeopardy would have attached as of the time of appeal, and the right to appeal would therefore be "destroyed." Thus, this Court finds that the Juvenile Court's order denying transfer of the juvenile proceeding to adult court is a collateral order, appropriate for immediate appeal.

b. The September 29, 2010 Order Suppressing Evidence and Dismissing Counts B and C of the Juvenile Petition

This Court has not previously addressed whether trial court orders suppressing evidence and dismissing charges in juvenile proceedings are orders that may be appealed before final judgment as collateral orders. As to matters that are not covered by the Hualapai Constitution, codes, ordinances or resolutions of the Tribe or by Tribal Common Law or by applicable federal law or regulation, this Court may be guided by common law as developed by other Tribal, federal, or state courts. Law and Order Code § 3.1(D). Approaches to this issue in other jurisdictions are mixed. In the U.S. federal system, a statute allows the government to appeal suppression orders and dismissals in criminal cases, so long as the defendant is not subjected to double jeopardy.³ The Hopi Tribe, however, has adopted a different position, at least in cases of dismissal of criminal charges. In *Hopi Tribe v. Sahmea*, Appellate Court of the Hopi Tribe, No. 97AC000005 (1998), the Hopi Appellate Court dismissed the prosecutor's appeal of the trial court's order dismissing one of three charges to which the defendant had pled guilty. The Hopi

That Court has noted that the word "civil" is a "label of convenience, which has been attached to juvenile proceedings." *In re Gault*, 387 U.S. 1, 50 (1967).

³ 18 U.S.C. § 3731. Federal courts have held that an important way to avoid double jeopardy violations is for the trial court to stay the proceedings pending the government's appeal of the suppression and/or dismissal order. *See, e.g., United States v. Centracchio*, 236 F.3d 812 (7th Cir. 2001). The appeal must also not be for purposes of delay, and the evidence suppressed must be substantial proof of a material fact in the proceeding. *United States v. Adrian*, 978 F.2d 486, 489-91 (9th Cir. 1992); *United States v. Harrison*, 213 F.3d 1206, 1209 (9th Cir. 2000).

high court reasoned that the Tribe did not have the right to appeal a dismissed criminal charge because a dismissal is functionally equivalent to an acquittal and can never be appealed because of double jeopardy considerations. *Id.* at 2.

This Court is not inclined to be guided by either the federal or the Hopi way of dealing with appealability of orders of suppression and dismissal, at least for purposes of juvenile proceedings. Because the appealability of such orders under federal law is governed by statute rather than common law in criminal cases, Hualapai law does not authorize us to seek guidance from that source. Law and Order Code § 3.1(D). And the Hopi Appellate Court's ruling in *Sahmea* arose in a context that can be distinguished from the current case. Specifically, *Sahmea* was a criminal case; but as discussed above, under Hualapai law, juvenile adjudications are civil matters and thus the Tribe has a more expansive right to appeal than in a criminal case. Furthermore, double jeopardy concerns are not applicable in the case now before the Court because the Juvenile has yet to be tried on any of the offenses charged. Jeopardy did not attach at the time of dismissal of the counts because, at that point, there had been no adjudication of the facts, trial had not begun, and the Juvenile had not yet been punished.⁴ In *Sahmea*, by contrast, the defendant had already pleaded guilty to the charges involved, which meant that jeopardy had attached at the time the Tribe sought to appeal.

Unlike the appeal of the transfer order, an appeal of the Order for Suppression and Dismissal of Counts B and C does directly involve the trial of the underlying charges. The issue of whether police legally obtained physical evidence of drugs from the minor is directly relevant to the charge of drug possession and thus does not rise to the level of a separate and distinct part of the proceeding. However, there are strong policy reasons for allowing exceptions to the final order requirement to ensure that issues that would otherwise be unavailable for appeal at the close of final proceedings still may be presented to this Court. The suppression of evidence and dismissal of charges in this case would not be preserved for appeal at the conclusion of final proceedings because of the double jeopardy implications. The only way to secure review of the Tribal Court's decisions on such matters is to allow an appeal now, before jeopardy attaches. Thus, the legal right for the Tribe to be heard on the suppression and dismissal order would be effectively "destroyed" if not immediately appealable, and so this Court finds that at least in juvenile proceedings, suppression and dismissal orders should be appealable by the Tribe so long as jeopardy has not attached and there is no evidence that the appeal has been undertaken for purposes of delay.⁵

⁴ This discussion of when double jeopardy attaches in a juvenile adjudication is taken from *M.P. v. Hopi Children's Court*, Appellate Court of the Hopi Tribe, No. 00AC00000 (2001).

⁵ In the present case, the Tribal Court released the Juvenile pending adjudication. He is in custody under federal, not tribal charges.

3. Did the Juvenile Court err in denying the transfer of the Juvenile to prosecution as an adult without holding an evidentiary hearing?

Since this Court has found that the order denying transfer of the Juvenile's case to adult court is immediately appealable, this Court must now determine whether the Juvenile Court made any procedural errors in issuing the order. Law and Order Code § 10.9. In its brief, the Tribe asserts that it had anticipated that another evidentiary hearing would be scheduled after the Juvenile Court ruled on the Juvenile's motion to dismiss, based on the language of the August 16, 2010 Order (quoted on page 2, above). Instead of conducting another hearing, the Juvenile Court summarily denied the Tribe's motion to transfer the Juvenile to adult status. According to the Tribe, the Juvenile Court never conducted any analysis nor gave any reason for denying the transfer, except to state that the Tribe never gave "any additional authority to transfer to adult court." October 8, 2010 Order. This Court has not been able to locate any further reasons for the Juvenile Court's order in the record.

Under Hualapai law, if a child reaches the age of majority of 18 years after a case is initiated in the Juvenile Court but before final disposition of that case, the case is not to be dismissed, but: (1) the Juvenile Court may retain jurisdiction over the matter through final disposition; or (2) the Juvenile Court may transfer the matter to the Hualapai Tribal Court for final disposition. Law and Order Code § 13.4(B)(1-2). Although the Hualapai Code and case law do not indicate what factors the Juvenile Court should consider in making such a determination, in this case the Juvenile Court failed to cite *any* factors or reasoning for denying the transfer, other than the Tribe's failure to cite authority in support of transfer.⁶

The absence of any criteria for transfer or any hearing requirement in the Law and Order Code does not mean that under Hualapai law transfer decisions can be made

⁶ Some other Native nations as well as the United States do specify the factors that juvenile courts must consider in determining whether to transfer a case to adult court upon the minor achieving the age of majority. These factors include the seriousness of the crime and the possibility of rehabilitation of the child. *See, e.g.,* Fort Peck Tribes Comprehensive Code of Justice, Title V, § 304 [hereinafter CCOJ, Title V, § 304]; 18 U.S.C. § 5032. Both the Fort Peck Tribes and the United States also specify that a hearing must be held in the Juvenile Court to determine how those factors operate in each case where the government requests a transfer. CCOJ, Title V, § 304; 18 U.S.C. § 5032. In the federal system, judges are given the discretion to make transfer decisions "in the interest of justice" by balancing the factors, and courts have found that it is not an abuse of discretion to find one factor more compelling than the others. *United States v. Alexander*, 695 F.2d 298, 400 (9th Cir. 1982); *United States v. Hayes*, 590 F.2d 309 (9th Cir. 1979). The Ninth Circuit has held that such decisions are reviewed for abuse of discretion. *United States v. Brandon P.*, 387 F.3d 969, 976 (9th Cir. 2004). A federal district court abuses its discretion when it fails to make the findings required or when the findings it does make are clearly erroneous. *United States v. Doe*, 94 F.3d 532, 536 (9th Cir. 1996).

arbitrarily. Whatever factors the Juvenile Court takes into account,⁷ it should first hold a hearing to determine how to apply those factors. This Court interprets Law and Order Code § 13.4(B), regarding transfer of juvenile cases to adult court, as including an implicit procedural right to a hearing on motions to transfer. While the Juvenile Court judge maintains discretion to retain or transfer jurisdiction, the record and/or order should articulate particular findings and reasoning for the decision.

In the Juvenile's case, the Tribe was justified in believing such a hearing would be held, with appropriate notice to the parties. In her August 16, 2010 order, Judge Telayumtewa expressly stated that an evidentiary hearing on the transfer motion would be scheduled "on the Tribe's request" if the mother's motion to dismiss were denied. "At that time" (whether it's the time of the hearing or the time of the scheduling of the hearing is unclear), the Tribe was to "provide authority for extending jurisdiction over a juvenile matter and transferring jurisdiction to adult criminal court." Taking account of the language of Judge Telayumtewa's August 16, 2010 order, it was reasonable for the Tribe to believe that a further evidentiary hearing would be scheduled on the question of transfer before any court ruling on the issue. Under these circumstances, it was arbitrary for the Juvenile Court to deny transfer based on the Tribe's failure to provide any authority to support transfer. In other words, it is arbitrary for the Juvenile Court to indicate that a hearing will be held, not to notice or hold a hearing, and then to deny the motion based on the failure to produce evidence or arguments.

This Court observes that a new Juvenile Court judge assumed responsibility for the Juvenile's case following the August 16, 2010 order, which suggests that there may have been some confusion about the need to follow through with a hearing on the transfer question. Such errors would be avoided if the Tribal Court assigned a single Juvenile Court judge to a case throughout the proceeding.

4. Did the Juvenile Court err in suppressing evidence and dismissing Counts B and C?

In an order issued on September 29, 2010, the Juvenile Court suppressed evidence obtained from the Juvenile (a bag of marijuana, a smoking pipe, and results of a breathalyzer test) and dismissed Counts B and C that were based on that evidence, explaining that the police had violated Hualapai law by failing to notify the Juvenile's parent before questioning the Juvenile and receiving answers that led to the seizures. *See* Hualapai Law and Order Code § 13.18(C). Article VI, section 12 of the Hualapai Constitution provides that "[a]ll matters of law and procedure may be decided by the Court of Appeals. Findings of Fact shall be made by the Trial Court and shall be reviewable only when arbitrary and capricious." Thus, in considering this appeal, this Court must limit itself to review of legal errors in the proceeding below. This Court may reexamine facts found below only for the purpose of determining whether Juvenile

⁷ Given this Court's ultimate disposition of the transfer issue, there is no need for this Court to address the proper factors in this case.

Court's findings were "arbitrary and capricious." Law and Order Code § 10.7. Conclusions of law of the Tribal Court may be reviewed to determine their appropriateness based on the Tribal Court's factual findings and whether the judgment or order appealed from is supported by facts and applicable law. Law and Order Code § 10.9.

Whether the Juvenile Court erred in suppressing the evidence depends on the meaning and application of Law and Order Code § 13.18, which states that a juvenile may be taken into custody by a police officer without a warrant under specified circumstances, but "the officer shall *immediately* notify the parents, guardian, or custodian." *Id.* § 13.18(C) (emphasis added). Furthermore, the juvenile is not to be "detained by an officer any longer than is reasonably necessary to obtain the child's name, age, residence and other information, and to contact and obtain the appearance of the child's parent, guardian or custodian." *Id.* § 13.18(D). In its brief, the Tribe asserts that the officer received consent from the Juvenile to search his pockets and that such consensual searches do not violate Chapter 13 of the Law and Order Code. Additionally the Tribe argues that the unrefuted testimony shows that the Juvenile's statements were made voluntarily. However, the Juvenile Court suppressed the evidence even though it agreed that the Juvenile's statements were made voluntarily. The Juvenile Court concluded that even voluntarily provided evidence would be inadmissible against a juvenile if the police secured the juvenile's consent while the juvenile was in custody without first taking measures to notify the juvenile's parent or guardian.

In this case, therefore, the Court must determine the point at which the Juvenile was actually taken into custody. The Juvenile Court found that during the encounter on the night of the search and arrest, Officer Moore never indicated that the Juvenile was free to leave and the officer exercised further control over the Juvenile when he pat searched him, placed him in the patrol vehicle, and transported him to be identified. Such findings of fact can be supported by the audio record, summarized on pages 2-4 above, and therefore are not arbitrary and capricious. The Juvenile Court further concluded that parental notification within 40 minutes of taking the juvenile into custody – the time period that elapsed in this case – was not a reasonable time period under the circumstances, considering that the parent, Muriel Uqualla, lived across the street from the incident. Therefore, police took actions contrary to § 13.18(C). Consequently, evidence seized prior to placing the Juvenile in the back of a police vehicle and the later breathalyzer results merit suppression. This conclusion of law is supported by the facts presented to the Juvenile Court and the Hualapai Law and Order Code Chapter 13, particularly based on the unrefuted testimony that it was Ms. Uqualla who actually approached Officer Williams to ask about her son.

Assuming the evidence was unlawfully seized, the remaining question is whether a dismissal of charges with prejudice was the proper remedy. As there is no Hualapai law governing the question, this Court may look for guidance from other tribal, state, and federal law, at least where the underlying rationale for the foreign rule is relevant and furthers Hualapai policies, law, and concepts of fairness. Law and Order Code § 3.1(D); *Walema v. Hualapai Tribe*, Hualapai Ct. App. 2007-AP-004 (2008), at 6.

The consistent practice of tribal, state, and federal legal systems is to bar the admission of evidence that was obtained illegally. See *United States v. Morrison*, 449 U.S. 365, 365-66 n.4 (1981) (suppression based on constitutional violation); *United States v. Wendy G.*, 255 F.3d 761, 768 (9th Cir. 2000) (suppression based on violation of the Federal Juvenile Delinquency Act); *Confederated Salish and Kootenai Tribes v. Conko*, Confederated Salish Kootenai Tribes Court of Appeals, No. AP-96-1066-CR (1998) at 2-3 (borrowing from state law, suppression based on violation of tribal statute). Dismissal of the underlying charges, however, is not required. As a practical matter, motions to dismiss are often granted following suppression, because the evidence needed to prove the charges is unavailable. Nonetheless, a separate motion is required, in order for the judge to assess the sufficiency of other, non-suppressed evidence that may exist.

In her Juvenile Court Order, Justice Wilbur remarked:

The juvenile court system is based on the premise that a juvenile is different physically, mentally, and intellectually from an adult. When a minor is taken into custody, he must be advised prior to questioning that he has a right to have a parent, guardian, or custodian present during questioning. This is a consistent principle in the Federal, State, and Tribal justice systems. September 29, 2010 Order.

Considering this congruity of the different juvenile court systems, there is a strong argument that the treatment of evidence in such cases should be similar. Thus it was proper for the Juvenile Court to suppress the evidence obtained in violation of Law and Order Code § 13.18(C). However, the Juvenile Court erred in dismissing Counts B and C with prejudice *sua sponte*, on its own initiative. The proper remedy for the violation of Law and Order Code § 13.18(C) was to suppress the illegally-obtained evidence while still allowing the Tribe to present additional evidence if it had any.

In this case, the Juvenile Court's error appears to be harmless. A harmless error is one that does not affect the ultimate outcome of the case. *Walker v. Hualapai Tribe*, Hualapai Tribal Ct. of Apps. 2005-AP-009 (2007). In this case, the Tribe has given no indication of any additional evidence for the charges of drug possession and possession of drug paraphernalia, other than the suppressed evidence. Thus the Tribal Court's procedural error in automatically dismissing Counts B and C did not affect the ultimate outcome of the case, as the charges would have been dismissed anyway had the Juvenile made an appropriate dismissal motion. In future cases, however, the Juvenile Court should be mindful of the need to entertain a motion to dismiss before disposing of charges where evidence has been suppressed.

Order

For the reasons stated in this opinion, the Order Denying Transfer to Adult Status is REVERSED and REMANDED to the Juvenile Court to conduct an Evidentiary Hearing under Law and Order Code § 13.31(A) after proper notice is given to all parties.

For the reasons stated in this opinion, the Juvenile Court Order is AFFIRMED insofar as it suppressed the illegally-obtained evidence and dismissed Counts B and C of the petition filed against the Juvenile.

Date: March 31, 2011

A handwritten signature in black ink, reading "Carole Goldberg". The signature is written in a cursive, flowing style with a large, stylized "C" and "G".

Justice Carole Goldberg
Hualapai Court of Appeals