

**IN THE HUALAPAI COURT OF APPEALS
HUALAPAI NATION
PEACH SPRINGS, ARIZONA 86434**

Ina Jackson, Appellant

Appellate Court Case: 2008-AP-001

v.

HTC No. 2007-TR-094A

Hualapai Tribe, Appellee

OPINION AND ORDER

Statement of Relevant Facts and Procedural History

Ina Jackson (hereafter “Appellant”) appeals a Tribal Court judgment finding her civilly liable for violating Hualapai Law and Order Code § 17.44B, Permitting Unauthorized Person to Drive.¹ On October 8, 2007, Appellant’s son Valentino Washington, a minor who was not licensed to drive, drove Appellant’s car, along with two passengers. The car was involved in a single-car accident, and all three occupants sustained injuries. When Tribal Police interviewed Appellant, the police allege that Appellant confessed to having allowed her son to drive her car, even though she knew her son did not possess a driver’s license. Tribal Police issued Appellant a citation for violating Hualapai Law and Order Code § 17.44B.

Appellant denied responsibility for violating Hualapai Law and Order Code § 17.44B, and the Tribal Court conducted a bench trial on January 9, 2008. At the trial a passenger who was involved in the accident and the investigating Tribal Police officer testified as witnesses for the Tribe. The Appellant represented herself at trial. The Tribal Court found Jackson civilly liable for violating Hualapai Law and Order Code § 17.44B and imposed a \$300 civil penalty, payable in monthly installments of \$50.

The audio recording of the trial is incomplete. Three digital audio files comprise the entirety of the recording, and there is a gap of an indeterminable length between the second and third audio file. The second recording includes the complete direct and cross

¹ Hualapai Law and Order Code § 17.44B states:

It is a violation of this Subchapter for a person to authorize or knowingly permit a motor vehicle owned by that person or under that person’s control to be driven on a highway by any other person who is not authorized under this Subchapter or in violation of this Subchapter.

examination of one passenger in the car and the complete direct examination of the investigating police officer. Appellant's cross examination of the investigating officer, however, is incomplete and ends abruptly. The recording resumes at the beginning of closing arguments. It is unclear from the extant recording whether Appellant testified on her own behalf or called any witnesses of her own. Further, during Appellant's closing argument, the Tribal Prosecutor objected that the Appellant was testifying to facts outside the record rather than summarizing the facts and testimony already in the record. The Tribal Court sustained the objection and instructed the Appellant to restrict her closing argument to summarizing facts and testimony already in the record.

Appellant filed a timely Notice of Appeal, alleging (1) that she was not allowed to testify on her own behalf at trial, (2) that inadmissible hearsay evidence was relied on at trial, and (3) that she was denied a pre-trial hearing under Hualapai Law and Order Code § 3.4. The \$300 civil penalty levied against the Appellant was stayed by this Court, pending the outcome of this appeal.

Issue for Review

At issue in this appeal is whether the Appellant will be deprived of property without due process of law if this appeal proceeds with only a partial audio recording of the Tribal Court proceedings below. The Hualapai Constitution states: "Any party to a civil action ... who is dissatisfied with the judgment or verdict may appeal therefrom to the Tribal Court of Appeals." Hualapai Constitution, Art. VI, sec. 12. The Hualapai Constitution also requires that "The 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, (d). Additionally, the Hualapai Law and Order Code requires that traffic complaint proceedings are recorded. Hualapai Law and Order Code § 17.10D ("The trial shall be recorded."). Therefore, this Court must determine whether the incomplete audio record of the Tribal Court hearing violates the Appellant's constitutional right to due process of law in exercising her right to appeal the Tribal Court's judgment.

Discussion

In reviewing the Tribal Court's judgment, this Court will only address the Appellant's allegation of error that she was unable to testify on her own behalf in the Tribal Court hearing. The audio recording of the Tribal Court hearing ends midway through the Appellant's cross examination of the investigating Tribal Police officer and resumes with closing arguments. Any testimony she might have presented would have taken place in between these two parts of the hearing. Consequently, this Court cannot determine from the existing recordings whether the Appellant testified on her own behalf, whether the Appellant called any other witnesses to testify, or whether the Appellant simply declined to call any witnesses at all.

Appellate courts in other tribal and state jurisdictions have consistently held that when the recording of a key aspect of a trial court proceeding is incomplete or lost, the judgment of the trial court must be reversed and remanded for a new trial to create a reviewable record. In *George v. George* the Colville Confederated Tribes Court of Appeals reviewed a child custody dispute in which the trial court judge interviewed the child without any verbatim recording of the interview. 1 CCAR 52, Case No. AP90-CV90-1184 (Colville Confederated Ct. App. 1991).² The Colville court held that “[b]asic due process concepts dictate that the only remedy for an inadequate record is reversal and remand for a trial de novo to give the Trial Court an opportunity to make a reviewable record.” *Id.*

The Washington Supreme Court has also concluded that in cases where there is an incomplete recording of the trial court hearing, due process of law requires the reversal of the trial court judgment and remand for a new trial with a verbatim recording of the entire hearing. See *State v. Larson*, 62 Wash.2d 64, 381 P.2d 120 (1963). In *Larson*, the Appellant appealed an attempted burglary conviction, but the court reporter’s verbatim notes of the trial had been lost. *Id.* at 67-68. The Washington Supreme Court held that “we must have a ‘record of sufficient completeness’ for a review of the errors raised by the defendant” and granted the Appellant a new trial on due process grounds. *Id.* at 67 (quoting *Draper v. Washington*, 372 U.S. 487 (1963)).

Hualapai law also requires that Tribal Court hearings be recorded. The Hualapai Law and Order Code expressly requires traffic hearings to be recorded. Hualapai Law and Order Code § 17.10D. Additionally, the Hualapai Constitution guarantees both a right of appeal and due process of law for all hearings. Hualapai Constitution, Art. VI, sec. 12; Art. IX, (d). In the present case, this Court cannot determine whether there was reversible error in the Tribal Court’s procedure because of where the gap in the audio recording occurred.

Under some circumstances it may be possible to reconstruct an incomplete Tribal Court record for appellate review in a manner that ensures due process of law for an appellant. In the absence of any statute or rule of appellate procedure that governs the reconstruction of an incomplete Tribal Court record on appeal,³ this Court could possibly,

² Available at <http://www.tribal-institute.org/opinions/1991.NACC.0000004.htm>.

³ For example, when no adequate transcript of a trial court proceedings exists, the Blackfeet Tribal Law and Order Code provides a procedure for reconstructing the trial court record on appeal as follows:

(D) If there is no adequate transcript of the proceedings, the parties may prepare and sign a statement of the case showing what the substance of the testimony was at the original trial or hearing. The appellant first prepares a statement of the evidence at the proceedings from the best available means, including his or her recollection. This statement shall be prepared not less than three (3) days after notification by the Clerk of the Tribal Court that no adequate transcript exists. This statement shall then be served upon the respondent, who may serve objections or propose

on a case-by-case basis, create a process for such reconstruction. In this case, however, the Court deems it inadvisable to attempt reconstruction of the record below. Appellant represented herself at trial, and the gap in the audio recording occurred at the point in the trial when Appellant believes errors occurred.

The gap in the audio recording of the trial in this case is located precisely where the Appellant would have had her opportunity to testify: after the Tribe's case and before closing arguments. As such, it is impossible for this Court to determine whether the Appellant did in fact have the opportunity to testify on her own behalf. Moreover, the Trial Court sustained an objection by the Tribe during Appellant's closing argument that the Appellant was testifying rather summarizing facts and testimony already in the record. Given that the Appellant represented herself at trial, she may not have been familiar enough with trial procedure to know when she was allowed to testify or call other witnesses to testify at trial. But absent a full recording of the Tribal Court hearing, this Court can only speculate whether the Tribal Court respected the Appellant's due process right to testify on her own behalf. As such, this Court is left with no choice but to reverse the Tribal Court judgment and remand the case for a new trial to give the Tribal Court an opportunity to make a reviewable record.

Conclusion and Order

amendments to the statement within three (3) days after service of the statement upon him or her. There upon, the statement together with any objections or amendments shall be filed in the Tribal Court and the trial judge shall settle and approve the statement to constitute a "Statement of the Proceedings" to be included in the record on appeal. The approval by the trial judge must be within two (2) days after the filing of the statement. The statement shall contain the signatures of both the appellant and the respondent and shall be signed by the Tribal Judge approving the same.

(E) If any difference arises as to whether the record on appeal truly tells what occurred in the Tribal Court, the difference shall be submitted to and settled by that Court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident, or is misstated therein, the parties by stipulation, or the Tribal Court, either before or after the record is transmitted to the Court of Appeals, on proper suggestion or of its own initiative, and direct that the omission or miss-statement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Court of Appeals.

Blackfeet Tribal Law and Order Code, ch. 11, § 15(D)-(E), *available at* <http://www.narf.org/nill/Codes/blackfeetcode/blkftcode11appeal.htm>.

Because the audio recording of the Tribal Court hearing was insufficiently complete to allow this Court to review the Appellant's allegation that her due process rights were violated, the Tribal Court's judgment of civil liability is REVERSED and Appellant's case is REMANDED for retrial with a complete verbatim recording of the hearing.

A handwritten signature in black ink that reads "Carole Goldberg". The script is cursive and fluid, with the first name "Carole" and last name "Goldberg" clearly distinguishable.

Dated: December 17, 2008

Justice Carole Goldberg
Hualapai Court of Appeals