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**IN THE HUALAPAI NATION COURT OF APPEALS
HUALAPAI RESERVATION, ARIZONA**

HUALAPAI TRIBE,
Appellee,
v.
ERICA RANDALL,
Appellant.

App. Court Case No.: 2012-AP-001
Trial Court Case No.: 2011-CR-314

DECISION AND ORDER

Before Justice Carole Goldberg (Presiding), Justice Robert N. Clinton and Chief Justice Wes Williams, Jr.

Appellant Erica Randall (“Randall”) challenges her conviction for Driving or Actual Physical Control of a Vehicle while Intoxicated, pursuant to Law and Order Code section 6.280a. Randall asserts that the Tribal Court deprived her of rights under the Hualapai Constitution, the Hualapai Law and Order Code, and the Indian Civil Rights Act in convicting her based on the evidence presented at her trial. The Tribal Court allegedly violated these rights by admitting manipulated evidence, by making arbitrary and capricious findings of fact, by failing to follow the rules dictating the burden of proof in criminal cases, and by accepting the testimony of unreliable witnesses. The Court of Appeals finds no merit in Randall’s assignments of error, and affirms her conviction.

I. FACTUAL AND PROCEDURAL BACKGROUND

On August 7, 2011, Hualapai Police Department Officer John Goins (“Officer Goins”) responded to a report that Randall had run over Karen Walema with a motor vehicle while on the Hualapai Reservation. According to the police report, after being confronted by Officer Goins, Randall denied that she was intoxicated, but did admit to driving the vehicle in question and to drinking the previous night while being eight months pregnant. Officer Goins observed that Randall had watery, bloodshot eyes and a slightly slurred speech. Officer Goins found an open and three quarter’s empty bottle of whiskey on the driver side floorboard and three canned alcoholic beverages elsewhere in her vehicle. Officer Goins gave Randall two breathalyzer tests which allegedly gave blood alcohol content (“B.A.C.”) readings of .210 and .192.

On August 18, 2011, the Hualapai Tribe (the “Tribe”) filed a criminal complaint against Randall in the Hualapai Tribal Court. The Criminal Complaint alleged two counts: Driving or Actual Physical Control While Under the Influence (“D.U.I.”) in violation of Law and Order Code section 6.280A and Open Container in violation of Law and Order Code section 6.279.

1 During the bench trial held on February 6, 2012, the Tribe presented four witnesses:
2 Dorita Beecher, Karen Walema, Ervin Querta, and Officer Goins.

3 Witnesses Walema and Querta testified that they were passengers in the vehicle driven by
4 Randall and that they witnessed Randall drinking from the bottle of whiskey, which Officer
5 Goins found in the vehicle, while driving them around. Walema and Querta each admitted to
6 being extremely intoxicated, both misremembered the time that the incident occurred, both gave
inconsistent and vague testimonies as to the incident, and each testified to a different color of the
vehicle in question.

7 Officer Goins testified to the pertinent facts leading up to him arresting Randall. Those
8 facts include him giving Randall two breathalyzer tests using the Intoxilyzer 8000 ("I8000")
9 machine. According to Officer Goins, the test results gave Randall's B.A.C. reading as .210 and
10 .19. The Tribe attempted to admit into evidence the I8000 printout of the breathalyzer test
11 results. However, because the Tribe failed to give Randall a readable copy of the printout during
discovery, the Tribal Court refused to admit the document into evidence. The Tribal Court did let
Officer Goins review the printout and testify to its contents.

12 Officer Goins further testified that he recorded the breathalyzer test results that same day,
13 August 7th, on the Implied Consent Affidavit ("I.C.A.") form. The I.C.A. form provides, in
14 essence, the officer's reasonable suspicion for conducting the breathalyzer tests, the results of
those tests, and is signed and dated by the officer. The Tribal Court allowed Officer Goins to
review the I.C.A. form and testify to its contents.

15 On cross-examination, Randall revealed a discrepancy between the I.C.A. form that
16 Officer Goins testified to during the Tribe's direct examination and the I.C.A. form that the Tribe
17 had given to Randall during discovery. The I.C.A. form discovered by Randall listed the results
18 of her breathalyzer test as "PBT." However, the I.C.A. form testified to by Officer Goins was
19 modified with his own handwriting. Under the results of the breathalyzer test, "PBT" was
scribbled out and initialed by Officer Goins, and replaced with ".210/.19." Further, the I.C.A.
form testified to by Officer Goins contained additional information about him finding the alcohol
in Randall's vehicle, which was not in the I.C.A. form received by Randall.

20 Officer Goins was unable to answer why there was a discrepancy between the I.C.A.
21 form that Randall received during discovery sometime after her arraignment and the I.C.A. form
22 that he originally testified to. Nevertheless, Officer Goins maintained that he filled in the
23 breathalyzer test results on August 7th, before Randall received a copy of the I.C.A. form.
Randall submitted her copy of the I.C.A. form along with the Prosecution's form to the Tribal
Court as evidence, in order to discredit Officer Goins' testimony.

24 At the conclusion of the trial on February 6, 2012, the Tribal Court found Randall guilty
25 of D.U.I. and not guilty of Open Container. On February 13, 2012, at the sentencing hearing, the
26 Tribal Court fined Randall \$200, and sentenced her to 20 days in jail and four months supervised
27 probation. That same day Randall filed a timely Notice of Appeal.
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II. DISCUSSION

A. Randall's due process rights were not denied in the use of her Implied Consent Affidavit (I.C.A.).

Randall claims that Officer Goins manipulated the I.C.A. form by adding information, including information about the breathalyzer test results, and that the Tribe attempted to pass the manipulated form off as genuine during the trial. These actions, Randall argues, infringed on her constitutional rights under Article IX(d) of the Constitution of the Hualapai Indian Tribe and her civil rights under the Indian Civil Rights Act, 25 U.S.C. § 1302(a)(8). Article IX(d) of the Hualapai Constitution provides that “[t]he Hualapai Tribe, in exercising its powers of self-government shall not . . . deprive any person of liberty or property without due process of law.” The Indian Civil Rights Act provides the same guaranty. However, during the hearing on this appeal it became evident that the Tribe did not engage in any manipulation with respect to the I.C.A. form. Rather, a series of mistakes and misunderstandings led to confusion about what happened to the report before the Tribe attempted to introduce it into evidence.

Randall’s alleged evidence of manipulation of the I.C.A. form is that the version of the form that the Tribe attempted to introduce at trial differs from the one provided by the Tribe in discovery to Randall. Counsel stipulated during the hearing on this appeal, however, that the discovery was provided to Randall herself at her arraignment, at a time when she was not yet represented. Later, Randall provided the documents, or copies of those documents, to her counsel. Unfortunately, some of the documents that the Tribe had provided to Randall were obscured and illegible, including the breathalyzer results and the I.C.A. form. Randall’s counsel could have requested better copies from the Tribe in advance of trial, but did not.

The Tribal Court did not allow admission of the printout of the breathalyzer results because of the Tribe’s failure to provide the printout in readable form during discovery. The Tribal Court did allow Officer Goins to refresh his recollection regarding the breathalyzer results from the I.C.A. form. The I.C.A. form that was provided by the Tribe during discovery likewise was illegible. Randall, herself, however, apparently had another copy of the I.C.A. form that Officer Goins had given to Randall before he finished filling it out that same day. She apparently gave a copy of this more readable (but incomplete) version to her counsel,¹ and it was this copy that appeared to differ from the version Office Goins used in his direct testimony. Had Randall’s counsel requested a better copy of the I.C.A. form during discovery, counsel would have received a copy that matched the one Officer Goins testified to.

There was no manipulation of the I.C.A. form, and hence no violation of Randall’s due process rights. There was, however, some unfortunate practice that should be corrected in the future. First, Hualapai police officers should not hand incomplete copies of the I.C.A. form to individuals who have undertaken breathalyzer tests. Second, if illegible documents are produced during discovery, defense counsel should request readable copies before trial, rather than challenging them for the first time during the prosecution’s case at trial.

¹ The Tribe pointed out during the hearing that the copy of the I.C.A. form that Randall’s counsel used to demonstrate manipulation did not have the official stamp that the Tribal Prosecutor’s office uses for documents produced during discovery.

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B. The Tribal Court’s findings of fact were not “arbitrary or capricious.”

Randall claims that the Tribal Court “arbitrarily and capriciously” ignored or mistook important facts that were brought out during trial. She argues that witnesses, such as Walema and Querta, who cannot recall the correct date and time of an incident and who cannot recall the color or type of vehicle that they were riding in at a certain date and time, are not credible and reliable witnesses.²

This Court will only reverse the Tribal Court’s findings of facts if they were “arbitrary or capricious.” Hualapai Constitution, Article VI, sec. 12. “Arbitrary or capricious” is an extremely deferential standard of review. To overturn the Tribal Court’s ruling under that standard, this Court must find an absence of a rational connection between the evidence presented and the facts found. *Querta v. Hualapai Tribe*, 2009-AP-012 (2010).

The evidence presented in this case partly took the form of witness testimony. There is certainly a rational connection between Walema and Querta testifying that they witnessed Randall drinking whiskey while driving them around the Reservation and the Tribal Court finding that Randall was driving while under the influence of alcohol. The same could be said for Officer Goins’ testimony regarding Randall appearing intoxicated and her failing two breathalyzer tests. While the credibility of the three witnesses may have been put in doubt, this Court does not substitute its evaluation of witnesses’ credibility for that of the Trial Court unless it appears that there has been a serious abuse of discretion. *In the Matter of R.W.*, SWITCA No. 97-007-HTC (Southwest Intertribal Ct. App. for the Hualapai Tribe, 1997).

While it is troubling that witnesses Walema and Querta were so intoxicated at the time of the incident that they were unable to recall certain facts about the incident and made conflicting statements, this is a witness credibility issue for the Tribal Court to decide. It is not a serious abuse of discretion for the Tribal Court to decide that Walema and Querta were able to recall some major details about that morning, such as that Randall was drinking while driving them around, while not others, such as the time of the incident.

Further, aside from witness testimony, other evidence took the form of the police report which included photos of the alcohol Officer Goins found in Randall’s vehicle. There is certainly a rational connection between finding partly drunken bottles of alcohol in Randall’s vehicle and that Randall was driving while under the influence of alcohol. Randall did not dispute that Officer Goins found the alcohol in her vehicle or that the alcohol was hers. Randall also admitted to driving the vehicle and drinking the night before. Thus, the Tribal Court did not have to rely solely on witness testimony when convicting Randall of D.U.I., and the Tribal Court’s findings of facts were not “arbitrary or capricious.”

² Randall also argues that she successfully impeached Officer Goins, and therefore believes that this evidence should not have been relied on by the Tribal Court. However, the circumstances surrounding Officer Goins’ use of the I.C.A. report, discussed above, demonstrate that his testimony was in fact reliable.

1 **C. The Tribal Court followed the mandated procedure for determining whether**
2 **each element of the offense has been proven beyond a reasonable doubt.**

3 Randall claims that the Tribal Court violated her rights under Hualapai Law and Order
4 Code section 6.6, which provides that “[n]o person may be convicted of an offense unless the
5 prosecution proves each element of such offense is proven beyond a reasonable doubt. In the
6 absence of such proof the defendant shall be acquitted.” According to Randall, the facts clearly
7 show that there was reasonable doubt as to whether she was guilty of violating Hualapai Law and
8 Order Code section 6.280A: “It is a crime for any person who is under the influence of
9 intoxicating liquor or drugs to drive or to be in actual physical control of any vehicle within the
10 Hualapai Reservation.”

11 Insofar as this argument challenges the factual findings of the Tribal Court as to
12 Randall’s intoxication, it must fail. This Court has already determined that the Tribal Court’s
13 factual findings were not arbitrary or capricious. Alternatively, Randall may be arguing that as a
14 matter of law, there was insufficient evidence to prove an element of the offense – her
15 intoxication – beyond a reasonable doubt. As this Court stated in *Querta v. Hualapai Tribe,*
16 *supra*, “[t]he issue of sufficient evidence is a matter of law and, therefore, the Court of Appeals
17 reviews the question *de novo*.” Here, Officer Goins’ observations and testimony, combined
18 with the testimony of passengers in Randall’s vehicle, provide sufficient evidence to uphold the
19 Tribal Court’s finding of guilt. A rational trier of fact could readily have found the essential
20 element of intoxication was met beyond a reasonable doubt when viewing the evidence
21 presented, taken as a whole.

22 **D. The Tribal Court did not misuse Hualapai Law and Order Code section**
23 **6.280C(4).**

24 Randall claims that the Tribal Court erred in using Hualapai Law and Order Code section
25 6.280C(4) to accept the statements of unreliable witnesses on the issue of whether she was guilty
26 of D.U.I. Section 6.280C(4) provides that “Paragraphs 2, 3, or 4 of this Subsection shall not be
27 construed as limiting the introduction of any competent evidence bearing upon the question of
28 whether or not the defendant was under the influence of intoxicating liquor.” The referenced
“Paragraphs 2, 3, or 4” deal with evidentiary presumptions based upon a defendant’s blood
alcohol level following a breathalyzer test.

 Section 6.280C(4) merely clarifies that the Tribal Court can still admit competent
evidence on the issue of intoxication, regardless of the presumption created by a B.A.C. test
result. The additional evidence considered by the Tribal Court that Randall is challenging is the
testimony of the witnesses. As discussed above, whether this evidence was competent is a
question of fact. Any challenge to that decision by the Tribal Court must be done under the
“arbitrary or capricious” standard. This Court has already determined that it was not arbitrary or
capricious for the Tribal Court to have believed the witnesses who testified as to Randall’s
intoxication, especially in light of the other evidence of her intoxication introduced at trial. The
Tribal Court did not err when it considered the testimony of witnesses in determining that
Randall was guilty of D.U.I. Thus, the Tribal Court did not incorrectly use Hualapai Law and
Order Code section 6.280C(4) when it accepted evidence of Randall’s intoxication.

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III. CONCLUSION

When the claims of manipulated evidence are set aside, Randall’s appeal rests on a challenge to the credibility of the witnesses’ testimony regarding her intoxication. In essence, Randall argues that she so discredited the Tribe’s witnesses that the Tribal Court’s finding of intoxication was “arbitrary or capricious.” Unless there is a serious abuse of discretion, the credibility of witnesses is for the Tribal Court to determine. Further, there was other evidence, besides the Tribe’s witness testimony, that points to Randall’s intoxication. Therefore, no reversible error occurred in this case.

Based on the foregoing, the Tribal Court’s conviction of Randall for Driving or Actual Physical Control of a Vehicle while Intoxicated is hereby affirmed.

IT IS SO ORDERED



CAROLE GOLDBERG
JUSTICE OF THE
HUALAPAI COURT OF APPEALS

Dated: July 11th, 2012.

HUALAPAI TRIBAL APPELLATE COURT
HUALAPAI RESERVATION OF ARIZONA

APP. DIV. CASE NO.: 2012-AP-001
TRIAL COURT CASE NO.: 2011-CR-314

Erica Randall, Appellant –vs- Hualapai Tribe, Appellee

I, Muriel Coochwytewa hereby certify that I have provided a copy of the Decision and Order to:
Chief Prosecutor, Marie James via in box log this 11th day of July, 2012 at the time of 8:00 a.m.



By: Hualapai Tribal Court, Chief Court Clerk

HUALAPAI TRIBAL APPELLATE COURT
HUALAPAI RESERVATION OF ARIZONA

APP. DIV. CASE NO.: 2012-AP-011
TRIAL COURT CASE NO.: 2011-CR-314

Erica Randall, Appellant –vs- Hualapai Tribe, Appellee

I, Muriel Coochwytewa hereby certify that I have provided a copy of the Decision and Order to:
Public Defender, Estevan Hernandez via in box log this 11th day of July, 2012 at the time of 8:00 a.m.

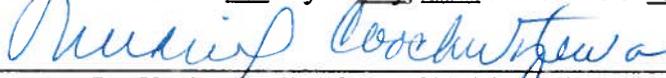


By: Hualapai Tribal Court, Chief Court Clerk

APP. DIV. CASE NO.: 2012-AP-011
TRIAL COURT CASE NO.: 2011-CR-314

Erica Randall, Appellant –vs- Hualapai Tribe, Appellee

I, Muriel Coochwytewa hereby certify that I have provided a copy of the Decision and Order to:
Criminal Case file this 11th day of July, 2012 at the time of 8:00 a.m.



By: Hualapai Tribal Court, Chief Court Clerk
