

No. 19-

IN THE
Supreme Court of the United States

ASHLEY R. HAMBRIGHT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

APPENDIX VOLUME

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 9, 2019

No. 18-51080
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ASHLEY R. HAMBRIGHT,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas

Before DAVIS, SMITH, and HIGGINSON, Circuit Judges.

STEPHEN A. HIGGINSON, Circuit Judge:

Ashley R. Hambright was charged by Information with one count of driving while intoxicated on the grounds of a military joint base. *See* 18 U.S.C. § 13; TEX. PENAL CODE § 49.04. Following a bench trial, the magistrate judge sentenced Hambright to twelve months of supervised probation. Hambright appealed to the district court and her conviction was affirmed. We apply the same standard of review used by the district court, “review[ing] the magistrate judge’s findings of fact for clear error and conclusions of law *de novo*.” *United States v. Vasquez-Hernandez*, 924 F.3d 164, 168 (5th Cir. 2019) (quoting *United States v. Hollingsworth*, 783 F.3d 556, 558 (5th Cir. 2015)). In the absence of

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clear error, we will not disturb the magistrate judge's credibility findings. *United States v. Cormier*, 639 F.2d 1177, 1182 (5th Cir. 1981).

During the trial, Hambright testified that she had taken Benadryl the night of her arrest, but she affirmed that she did not feel intoxicated. She also testified that she had not ingested any other substance that caused her to feel intoxicated. She argues that the magistrate judge improperly discredited her testimony, relying instead on the testimony of a base law enforcement officer who explained that he smelled alcohol on Hambright's breath and that Hambright exhibited behavior consistent with intoxication. Despite Hambright's assertions to the contrary, the magistrate judge was not required to credit her testimony, and his decision to credit the officer's version of the events over hers was not clearly erroneous. *See, e.g., Mid-Continental Cas. Co. v. Davis*, 683 F.3d 651, 654 (5th Cir. 2012) ("[W]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 573–74 (1985))). Hambright's additional argument that the magistrate judge improperly considered her reasons for testifying are likewise unsupported by the record.

Furthermore, contrary to Hambright's assertions, the record shows that the magistrate judge held the Government to its burden of proving that Hambright lacked "the normal use of her mental or physical faculties" by reason of having used "alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance." *See* § 13; TEX. PENAL CODE §§ 49.01(2)(A), 49.04(a); *United States v. Collazo*, 117 F.3d 793, 794 (5th Cir. 1997). Though the magistrate judge observed that the specific identity of the intoxicant was not relevant to Hambright's guilt, the magistrate judge did not relieve the Government of its

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burden of demonstrating causation under the statute. To the contrary, the evidence adduced at the bench trial established that Hambright had been to a bar just before the incident, was slurring her speech and had bloodshot eyes, failed several “technical” intoxication tests, used perfume to cover the smell of alcohol, and behaved belligerently throughout her interaction with the officers. This evidence was “sufficient to justify the trial judge, as the trier of fact, in concluding beyond a reasonable doubt that the defendant is guilty.” *United States v. Tovar*, 719 F.3d 376, 388 (5th Cir. 2013) (quoting *United States v. Esparza*, 678 F.3d 389, 392 (5th Cir. 2012)). As a result, Hambright has shown no error by the magistrate judge or the district court in her trial, conviction, or appeal. *See Hollingsworth*, 783 F.3d at 558.

The decision of the district court is AFFIRMED.

APPENDIX B

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FEB 20 2018

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY *[Signature]* DEPUTY

UNITED STATES OF AMERICA

v.

ASHLEY R. HAMBRIGHT,

Defendant

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, ASHLEY R. HAMBRIGHT, was represented by James Scott Sullivan, Esq.

The defendant was found guilty by the Court as to Count(s) One (1) of the Information on January 18, 2018. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 13 (Involving Section 49.04, Texas Penal Code)	Driving While Intoxicated at Joint Base San Antonio-Fort Sam Houston, Texas	On or about June 19, 2017	One (1)

As pronounced on February 20, 2018, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this 20th day of February, 2018.

[Signature]
ELIZABETH S. ("BETSY") CHESTNEY
United States Magistrate Judge

Defendant: Ashley R. Hambright
Case Number: 5:17-MJ-0742-ESC(1)

PROBATION

The defendant is hereby placed on supervised probation for a term of **TWELVE (12) MONTHS**.

While on probation, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court, and shall comply with the following additional conditions:

1. If the defendant is unable to pay the special assessment and fine immediately, the defendant shall pay the entire amount of the special assessment and fine at the rate of no less than \$10.00 per month, due by the third day of each month beginning March, 2018. The court imposed payment schedule shall not prevent statutorily authorized collection efforts by the U.S. Attorney. The defendant shall cooperate fully with the U.S. Attorney and the U.S. Probation Office to make payment in full as soon as possible.
2. The defendant shall participate in a substance abuse treatment program and follow the rules and regulations of that program. The program may include testing and examination during and after program completion to determine if the defendant has reverted to the use of drugs. The probation officer shall supervise the participation in the program (provider, location, modality, duration, intensity, etc.). During treatment, the defendant shall abstain from the use of alcohol and any and all intoxicants. The defendant shall pay the costs of such treatment if financially able.
3. The defendant shall submit to substance abuse testing to determine if the defendant has used a prohibited substance. The defendant shall not attempt to obstruct or tamper with the testing methods. The defendant shall pay the costs of testing if financially able.
4. The defendant shall not use or possess alcohol.
5. The defendant shall pay for and participate in the DWI Victim Impact Program and shall comply with all rules of the program. The probation officer shall supervise the participation in the program.
6. The defendant shall successfully complete a DWI education program that has been approved by the Texas Commission on Alcohol and Drug Abuse (TCADA) within 180 days of being placed on supervision.
7. The defendant shall not knowingly enter any [bar, tavern, etc.] without first obtaining the permission of the probation officer.
8. The defendant shall comply with the Debarment Letter dated June 19, 2017, prohibiting her from entering JBSA installations to include Lackland, Randolph, Camp Bullis, Fort Sam Houston, and any annex or leaseback facility.

Defendant: Ashley R. Hambright

Case Number: SA: 17-MJ-0742-ESC(1)

CONDITIONS OF SUPERVISION

Mandatory Conditions:

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not unlawfully possess a controlled substance.
- 3) The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
- 4) The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).
- 5) If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et. seq.*) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.
- 6) If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- 7) If the judgment imposes restitution, the defendant shall pay the ordered restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664.
- 8) The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.
- 9) If the judgment imposes a fine, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.
- 10) The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

- 1) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
- 3) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
- 4) The defendant shall answer truthfully the questions asked by the probation officer.
- 5) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

Defendant: Ashley R. Hambright
Case Number: SA: 17-MJ-0742-ESC(1)

- 6). The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.
- 7) The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
- 10) The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified, for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
- 13) The defendant shall follow the instructions of the probation officer related to the conditions of supervision.
- 14) If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- 15) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- 16) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.
- 17) If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report to the nearest U.S. Probation Officer.

Defendant: Ashley R. Hambright
 Case Number: 5:17-MJ-0742-ESC(1)

CRIMINAL MONETARY PENALTIES/ SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 655 E. Cesar E. Chavez Blvd. Room G-65, San Antonio, Texas 78206.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTAL: \$110.00	\$10.00	\$100.00
		\$0.00

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of \$10.00. Payment of this sum shall begin immediately.

Fine

The defendant shall pay a fine of \$100.00. Payment of this sum shall begin immediately.

Schedule of Payments

Payment shall be made at the rate of no less than \$10.00 per month, due by the third day of each month beginning March, 2018. The Court imposed payment schedule shall not prevent statutorily authorized collection efforts by the U.S. Attorney. The defendant shall cooperate fully with the U.S. Attorney and the U.S. Probation Office to make payment in full as soon as possible.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.