

No. CA-03-008

Pascua Yaqui Tribe Court of Appeals

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Eva Flores, Appellant,

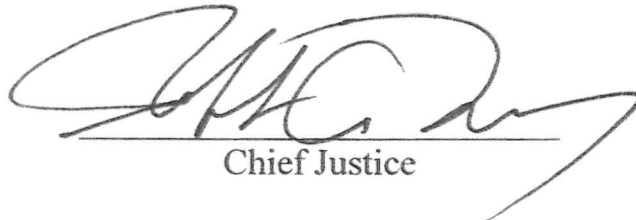
v.

Pascua Yaqui Tribe, Appellee.

ORDER

The above captioned case and Eddie Soto v. Linda Salomon, No. CA-03-005, bear the same docket number before the court of appeals. To alleviate confusion between the two cases, the docket number in the above entitled case shall hereafter be No. CA-03-008 and this correction shall be entered into the Court of Appeals docket book. A copy of this order shall be served on the Pascua Yaqui Tribe Office of the Prosecutor and Appellant Eva Flores.

So ORDERED this 20th day of September, 2007.



Chief Justice



has jurisdiction over the road, but is whether the Appellant was using it to “avoid traffic control devices.” Transcript at 6. The Appellant introduced a letter from the Pascua Yaqui Tribe Land Department to show that the road was not private property, but was an easement that was commonly used by tribal members. The relevant part of the letter states as follows:

[T]he property in question is owned solely by the Pascua Yaqui Tribe and is not listed to any individual tribal member. This area is designated as an easement. It is common for residents that reside within the reservation to utilize easements to access different locations within the reservation. To the best of our knowledge, the tribe has not required any enforcement, nor has posted signage indicating that these areas are prohibited for usage.

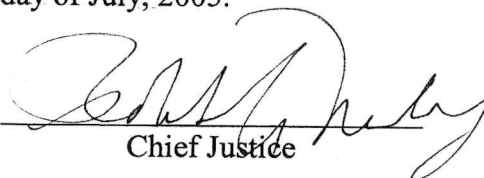
Letter dated April 7, 2003.

The Tribal Court ignored the issue of whether the road was “private property,” but instead found that “the easement is not a roadway and should not be used as a roadway, especially to avoid traffic control devices and the [Appellant] at the time the citation was issued was using the easement as a roadway.” Final Order (June 9, 2003). The Appellant was fined \$50 and ordered to pay \$100 in court costs. The Appellant filed a timely notice of appeal and a motion to stay enforcement of paying the fine and costs with this Court.

Section 28-651 states that the property that is used to avoid traffic control devices must be private property, private road, or private driveway. The Tribe did not introduce any evidence that the road was private property and the Tribal Court did not make a finding on this element of the statute. Instead, the Tribe and the Tribal Court focused on whether the road could be used “as a roadway” and the court accepted the Tribe’s position that it could “not be used as a roadway.” Final Order. Whether the property at issue is a “roadway” or used as a “roadway” is not an element of the statute. The Tribal Court committed manifest error.

Accordingly, we reverse the Tribal Court's Final Decision dated June 9, 2003 and dismiss the ticket. We further order that if the Appellant has paid a fine and court costs, that they be returned to her.

So ORDERED this 14 day of July, 2005.

  
\_\_\_\_\_  
Chief Justice

IN THE PASCUA YAQUI COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

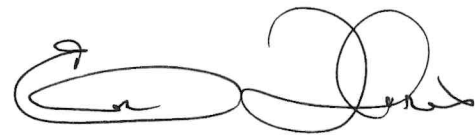
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EVA FLORES,  
Appellant,  
  
Vs.  
  
PASCUA YAQUI TRIBE,  
Appellee.

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CASE NO. CA-03-005  
  
Pascua Yaqui Tribal Court  
Case No. TR-03-3445

APPELLANT'S OPENING BRIEF



Eva Flores  
Appellant  
5527 Maaso Vood  
Tucson, Arizona 85746

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## I. TABLE OF AUTHORITIES

Constitution of the Pascua Yaqui Tribe

Court of Appeals Procedures Act of 2000, § 1.12

Arizona Revised Statute §28-651

## II. JURISDICTIONAL STATEMENT

Pursuant to the Constitution of the Pascua Yaqui Tribe, Article VIII, § 5 and the Court of Appeals Procedures Act of 2000, § 1.12, codified under Title 10 of the Pascua Yaqui Judicial Titles and Codes, this court has the power of judicial review over any Order of the Pascua Yaqui Tribal Court. Appellant, Ms. Eva Flores, appeals an order of the Pascua Yaqui Tribal Court dated June 9, 2003 in which the trial court found the testimony showed that the easement is not a roadway and should not be used as a roadway, especially to avoid traffic control devices. (Attachment A)

## III. STATEMENT OF FACTS

On April 22, 2003 at approximately 7:44 P.M, Appellant was driving on an easement in between Pascua Yaqui Headstart and Appellant sister's home. Appellant's sister usually parks in the back of her home and Appellant was check to see if her sister's car was there, when she was stopped by Officer Babcock.. Appellant was cited for violation of 28-651 under the Arizona law. The Appellant was avoiding traffic devises.

## IV. ISSUE PRESENT AND STANDARD OF LAW

Whether the trial court err in the application and interpretation of § 28-651, where the facts showed that the Appellant was not driving on the easement to avoid a traffic devise.

## V. STANDARD OF REVIEW

The interpretation and application of a statute is an issue of law that this Court reviews *de novo*. In this instance, the trial court misinterpreted and misapplied the provisions of Arizona Revised Statute 28-651.

## VI.

Arizona Revised Statute Section 28-651 states, "A person shall not drive on or through any private property, road or driveway to avoid obedience to traffic rules or traffic control devices." The area in which the Appellant was driving is considered by the Pascua Yaqui Land Department as an easement (See Attachment A). Appellant attempted to submit this attachment to the court during the civil hearing, but the court would not allow it to be admitted. Appellant believes the court erred in its ruling not to allow the attachment to be admitted, since this was a letter written by the Pascua Yaqui Land Department on letter head and signed by the Land Office Manager.

The letter clearly states that the area is designated as an easement and that it is utilized as an easements to access different location within the reservation. An common definition of an easement is defined as "A right of use over the property of another." Since the property in question is owned by the Pascua Yaqui Tribe and the property is an easement, the Appellant had the right of use.

The second issue is whether the Appellant was attempting to avoid a traffic rules or traffic control devices. The Officer presented no evidence or testimony that the Appellant was attempting to avoid such traffic rules or devices. The Officer recited where the devices were located on Cocoim and Calle Tetakusim, but in no way presented evidence that the Appellant attempted to avoid such devices. In fact, the Appellant's testimony was clear that she was proceeding to her sister's residence and used the easement, an easement routinely used by tribal members as noted in the Pascua Yaqui Land Department's letter, as a means of getting to there. The Officer presented no

evidence to refute the Appellant's testimony. Furthermore, the traffic devices were on the other side of the road and not on the easement which runs along the back of the Appellant sister's home, which was Appellant's destination.

Lastly, the Appellant respectfully requests this court to waive all court cost imposed by the trial court.

#### VII. CONCLUSION

Based on the facts presented to the court, and the letter from Pascua Yaqui Land Department, the court erred in finding that the Appellant had violated 28-651.

Respectfully submitted this 4<sup>th</sup> day August 2003.

A handwritten signature in black ink, appearing to read 'Eva Flores', written over a horizontal line.

Eva Flores  
Appellant

# ATTACHMENT A

# PASCUA YAQUI TRIBE

## LAND DEPARTMENT

April 7, 2003

To Whom It May Concern:

Ms. Eva Flores a tribal member and resident of the Pascua Yaqui Tribe has asked the Land Department to research the property located East to the new Pre-School, as to its ownership status. According to the Land Department's records the property in question is owned solely by the Pascua Yaqui Tribe and is not listed to any individual tribal member.

This area is designated as an easement. It is common for residents that reside within the reservation to utilize easements to access different locations within the reservation. To the best of our knowledge, the tribe has not required any enforcement, nor has posted signage indicating that these areas are prohibited for usage. The current no trespassing signage that is located throughout the reservation is strictly applicable to non-residents.

If you should have any questions please contact the Land Office Manager at 879-6319.

Sincerely,



Kelly Gomez  
Land Office Manager


CERTIFICATE OF SERVICE

Original and four copies of the foregoing delivered this 4<sup>nd</sup> day of August 2003 to:

Clerk of the Court  
Pascua Yaqui Tribal Court  
7474 S. Camino de Oeste  
Tucson, Arizona 85746

Copy of the foregoing delivered this day to:

Prosecutor  
Pascua Yaqui Prosecutor's Office  
7474 S. Camino de Oeste  
Tucson, Arizona 85746



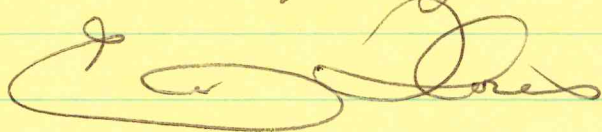
Eva Flores

July 28, 05

To the appellate Court

Because of work and being a single parent, I have been unable to prepare a brief and am seeking legal advice on preparing legal brief. I am asking and requesting an extension on this matter to be able to have the briefs completed on the require date.

Thank You for Your consideration



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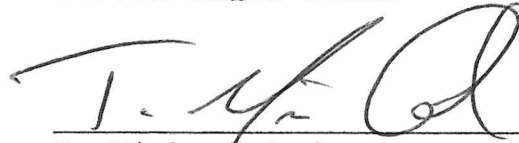
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Respectfully submitted this 17th day of July, 2003.

OFFICE OF THE PROSECUTOR  
PASCUA YAQUI TRIBE



T. Michael Andrews  
Chief Prosecutor

Original of the foregoing delivered/mailed  
This **date** to:

Clerk of the Court, Pascua Yaqui Tribal Court

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Tucson, AZ 85746

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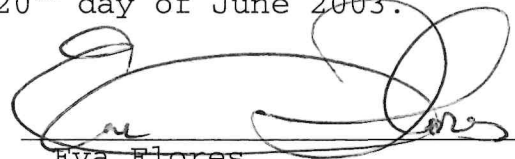
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1 EVA FLORES  
2 55527 Maaso Vood  
3 Tucson, Arizona 85746  
4 878-2380  
5 Tucson, Arizona

6 IN THE APPELLATE COURT OF THE YAQUI NATION  
7  
8 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

9	Eva Flores,	)	
10		)	
11	Appellant,	)	Case No.: <u>CA-03-005</u>
12		)	<del>TR-03-3445</del>
13	vs.	)	NOTICE OF APPEAL AND REQUEST
14		)	FOR TRANSCRIPT OF TRIAL
15	PASCUA YAQUI TRIBE,	)	
16		)	REQUEST FOR STAY OF EXECUTION
17	Appellee.	)	OF SENTENCE
18		)	

19 Pursuant to the Pascua Yaqui Rules of Appellate Procedure,  
20 Section 1.16 Appellant, Eva Flores, hereby timely files his  
21 Notice of Appeal to the Court of Appeals. Appellant requests  
22 appellate review of the Order of judgment and sentence of the  
23 Trial Court on on June 9, 2003, finding the Appellant, Eva  
24 Flores, responsible in the above entitled matter. The Appellant  
25 contends that the Court's finding is erroneous and not supported  
26 by the evidence presented at trial. The Appellant also contends  
27 that the trial court err as a matter of law when it found that  
28 the Appellant responsible.

Dated this 20<sup>th</sup> day of June 2003.  
  
Eva Flores

29 ORIGINAL of the foregoing delivered this date to  
30 Pascua Yaqui Tribal Court by:  


1 COPY of the foregoing delivered this date to Prosecutor's Office:

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PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE )  
Plaintiff )  
Vs. )  
Flores Eva Lori )  
Defendant )  
\_\_\_\_\_ )

NO. TR-03-3445

ORDER

The defendant appeared without legal counsel for trial hearing on the civil traffic charges on this 9<sup>th</sup> day of June, 2003. Officer Chet Babcock appeared.

The Court finds that the defendant has no objections to the Chief Judge presiding over this matter; after hearing testimony from both parties and reviewing the documents submitted by the defendant that the testimony and evidence showed that Ms. Flores had insurance for her vehicle on the day the citation was issued and the defendant is found not responsible for Count B; that the defendant is found responsible for Count A as the testimony showed that the easement is not a roadway and should not be used as a roadway, especially to avoid traffic control devices and that the defendant at the time the citation was issued was using the easement as a roadway; that the defendant objects and states that the letter issued by the Land Department states otherwise; that defendant states she will take this matter up to Tribal Council, the Chairman and the Council Secretary and that she will not pay any sanctions that are imposed; that defendant questions what laws are used and the Court explains that ARS-28 was adopted by the Tribe, that defendant questions the amount of the Court cost and the Court explains to defendant that the costs are described in the Law and Order Code and defendant questions why she was not informed of this prior to the hearing and the Court explains that it is the defendant's responsibility to inquire into all matters prior to the hearing.

IT IS ORDERED THAT the defendant is found not responsible in Count B and defendant is found responsible for Count A and defendant shall pay a fine of \$50.00 due on or by **July 9, 2003** and defendant shall pay Court cost of **\$100.00** due on or by **August 8, 2003**; all payments made shall be in the form of money orders.

SO ORDERED THIS 9<sup>th</sup> DAY OF June, 2003.

[Signature]  
\_\_\_\_\_  
Judge, Pascua Yaqui Tribal Court

Cc:  
Date: June 10, 2003  
 Tribe  Defendant/Counsel \_\_\_\_\_ C/S supervisor \_\_\_\_\_ Other  
[Signature]  
Clerk

IN THE APPELLATE COURT OF THE YAQUI NATION

PASCUA YAQUI TRIBAL COURT  
DATE AND TIME

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DOCKET NO. CA-03-005

P. Yaqui Tribe )  
Appellant or Petitioner, )

Vs. )  
Eva L. Flores )  
Appellee or Respondent. )

No. CA-03-005

NOTICE OF APPEAL

- 1. If the appeal is from the entire judgment:

"Notice is hereby given that the above named \_\_\_\_\_ appeals to the Appellate Court of the Yaqui Nation from the judgment entered in this action by \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_. (Name of the court or agency)

- 2. If the appeal is from part of the judgment:

"Notice is hereby given that the above named Eva L. Flores appeals to the Appellate Court of the Yaqui Nation from the following part of the judgment entered by the Pascua Yaqui Court on the 9th day of June, (Name of the court or agency)

2003. (Specify the part of the judgment appealed from here.)

I am requesting a review of the order of judgment and sentence of the trial court, due to contending the courts finding is erroneous and not supported by the evidence presented @ trial.

[Signature]

Name of the Attorney or Party taking appeal if not represented by Attorney