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2 Tucson, Arizona 85757
3 Jennifer Gutierrez
4 COUNSEL FOR: Defendant/Appellant

5 **IN THE PASCUA YAQUI TRIBAL COURT OF APPEALS**
6 **IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**

7 PASCUA YAQUI TRIBE,
8 Plaintiff,

9 vs.

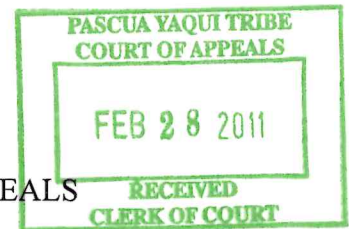
10 **FLORES, STEVIE,**
11 Defendant/Appellant
12

) Appellant Case No.: CA-10-001
) Case No.: TR-09-044
)
) Notice of Withdrawal

13 Pursuant to **3 PYTC § 2-3-310 - (Formerly 3 PYTRAP Rule 29)** Counsel for Appellant STEVIE
14 FLORES, formally withdraws as counsel for the above entitled case.
15

16 Dated this 29th day of November, 2011.

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19 
20 Jennifer Gutierrez
21 Lay Advocate
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IN THE PASCUA YAQUI TRIBE COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,

Plaintiff/Appellee,

vs.

FLORES, STEVIE

Defendant/Appellant.

) Appellate Case No: **CA-10-001**

) Tribal Court No.: **TR-09-044**

Opening Brief

Jennifer Gutierrez
Pascua Yaqui Tribal Bar No. 10061
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I. TABLE OF AUTHORITIES

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2. Miranda v. Arizona
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II. STATEMENT OF THE CASE

On August 7, 2009 the Tribe filed a criminal traffic complaint against appellant STEVIE FLORES charging him with one count of Driving Under the Influence and one count of Driving on a Suspended license. Mr. Flores' initial appearance was held on November 4, 2009. Mr. Flores was not represented by legal counsel. The lower court determined that there was probable cause to support the charges against Mr. Flores. The arraignment hearing set for November 12, 2009 in which the defendant elected to plead not guilty. He was represented at this hearing by counsel undersigned. A bench trial was set for January 6, 2010 with the submittal of a motion to dismiss due to the courts by December 14, 2009. The courts failed to serve the defendant and counsel the order of the last hearing and a new date was set for January 28, 2010. The motion was discussed in open court but the trial judge ruled against it. On January 28, 2010 the defendant was sentenced to 9 months probation, 30 days in detention, fines totaling \$780.00, ordered to complete an intake at Centered Spirit and follow recommendations thereof, and also to complete 20 hours of community service.

Following the bench trial, the defendant filed at motion to stay the proceedings on February 12, 2010. A petition for a trial de novo was also filed in the Court of Appeals that very day. The trial court granted the motion to stay.

III. STATEMENT OF FACTS

On August 7, 2009 the Tribe filed a criminal traffic complaint against appellant STEVIE FLORES (herein after FLORES) charging him with one count of Driving Under the Influence and one count of Driving on a Suspended license. According to the affidavit submitted in support of the case, on August 7, 2009, at 5:34 am, FLORES was approached by the arresting officer ANDRES GASTELUM (herein after GASTELUM) while parked at a residence, 7782 S. Maala Mecha Voo'O, Tucson, Arizona 85757. According to the officer, per his sworn affidavit, Officer Gastelum observed the defendant to show signs of alcoholic impairment. The officer asked FLORES his name and biographical information and then ran a license check which revealed that FLORES did not have a valid license. At this point, according to the affidavit, GASTELUM placed FLORES under arrest for suspicion of DUI. Though the actions of the accused were in violation of the law, the inalienable rights of the accused are still expected, mandated, to be held in accordance to the United States Constitution as well as tribal law.

FLORES was questioned, detained and transported to the Pascua Yaqui Police Department (PYPD) according to the affidavit, where he was subjected to various field sobriety tests and a blood withdrawal (conducted by Officer Christopher Thompson.) FLORES did verbally consent to such tests, according to officer's report, and he signed the documents needed to obtain permission. Per the officer's affidavit, this is the point where FLORES was read his rights by the arresting officer.

FLORES' initial trial was held on November 4, 2009. He was not represented by counsel. The lower court determined that there was probable cause to support the charges

against FLORES. The arraignment hearing was set for November 12, 2009 in which the defendant elected to plead not guilty.

At the time of sentencing on January 28, 2010, FLORES was represented by council undersigned. The lower court sentenced the defendant to 9 months probation, 30 days in detention, fines totaling \$780.00, ordered to complete an intake at behavioral health and follow recommendations thereof, and to complete 20 hours of community service.

The appellant FLORES was convicted of violating 8 PYTC § 6-4-10/A.R.S. § 28-3473(A) Driving Under the Influence and 8 PYTC § 6-4-10/A.R.S. § 28-1381(A) (1), Driving On a Suspended License. This appeal arises out of the trial courts' ruling of whether or not Officer GASTELUM violated the rights of the accused as he arrested, transported, detained and later produced documents that incriminated appellant FLORES without first properly reading his Miranda Warnings. In a Motion to Dismiss filed by the appellant (Dated 1/5/2010), the court held that "*Any statements made after the defendant was placed in handcuffs, resulting in the defendant's "restraint on freedom of movement" will be inadmissible at trial.*"

IV. STATEMENT OF ISSUES OF REVIEW

The issues presented in this case—which arises out of the Rules of the Court/ Rules of Criminal Procedure under 3 PYTC § 2-2-150, “*Notification of Rights after Arrest*” [formally 3 PYT R. Crim. P. Rule 15]— is whether the most basic policies of this section were satisfied. This issue derives with *Miranda v. Arizona*, 384 U.S. 436 (1966.)

Also, the issue of whether or not 3 PYTC § 2-2-70—(Formally 3 PYT R. Crim. P. Rule 7) was properly upheld when the arrest in this case is under question. *Mapp v. Ohio*, 367 U.S. 643 (1961), established the “Exclusionary Rule” by holding that "all evidence obtained by searches and seizures in violation of the Constitution is, by [the Fourth Amendment], inadmissible in a state court."

V. ARGUMENT

1. THE LOWER COURT'S RULING ON THE CASE WAS A VIOLATION OF THE PASCUA YAQUI TRIBAL CODE AND THE CONSTITUTIONAL RIGHTS OF THE APPELLANT.

The Pascua Yaqui Tribal Code provides that “A suspect who is under arrest shall be advised of the following rights prior to being questioned: (1) That he or she has the right to remain silent; and (2) That any statements made by the suspect may be used against him or her in court.”¹ The fact that FLORES was not immediately informed of this essential and fundamental right to remain silent was a direct violation of his Constitutional rights as a citizen of this country. The defendant was found to have been breaking the law; however, the arresting officer botched the investigation and therefore tainted evidence against FLORES. “Society is obliged to prosecute those who break its rules, but society may not break its own rules in the prosecution process.”² As Justice Scalia noted, paraphrasing the felicitous expression of Justice Holmes seventy years earlier, due process requires the government to “turn square corners.”

Pursuant to the IV Amendment of the United States Constitution, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...” this simultaneously reflects Article I (B) of the Pascua Yaqui Tribal Constitution. The suppression of all subsequently-obtained evidence: observations of appearance and behavior, field sobriety tests, breath test results, etc. should be seen as evidence of an illegal search. As part of the “Fruits of a poisonous tree” rule, all must be excluded. The case against FLORES should be looked at from the beginning, from the moment he was approached and questioned.

Relying on the U.S. Supreme Court ruling in *Miranda v. Arizona*, U.S. 384 (1966), the United States Supreme Court held that the “warning should be given when the individual is “in custody”—“or otherwise deprived of his freedom of action in any significant way.” This ruling sets precedence and clearly gives the guideline for proper interrogation tactics, as well as for the proper protocol every officer should follow while making an arrest. With that being said, FLORES should be found guilty only of the lesser charge of Driving on a Suspended License, which he was convicted.


¹ 3 PYTC § 2-2-150, “*Notification of Rights after Arrest*” [formally 3 PYT R. Crim. P. Rule 15]

² *Jones v. Thomas*, 491 U.S. 376, 396 (1989) (Scalia, J., dissenting).

VI. CONCLUSION

Appellant FLORES respectfully moves this Court to reverse the lower court's ruling which was a clear violation of the defendant's constitutional rights as it pertains to IV and V Amendments, as well as Pascua Yaqui Code 3 PYTC § 2-2-150. The fact that rules were broken to obtain a conviction should be considered, whether it was intentionally or not; the courts must follow the very rules it generates.

RESPECTFULLY SUBMITTED this 28th day February of, 2011.


Jennifer Gutierrez
Lay Advocate

CERTIFICATE OF SERVICE

I hereby certify that the original and five (3) copies of the Opening Brief were delivered this date to:

Clerk of the Court of Appeals
Pascua Yaqui Court of Appeals
7474 South Camino de Oeste
Tucson, AZ 85757


And that one copy of the Opening Brief was delivered this date to:

Pascua Yaqui Tribal Court
7474 South Camino de Oeste
Tucson, AZ 85757

And that one copy of the Opening Brief was delivered this date to:

Alfred Urbina
Chief Prosecutor
Office of the Prosecutor of the Pascua Yaqui Tribe
7474 South Camino de Oeste
Tucson, AZ 85757

DATED this 28th day of February, 2011.



Jennifer Gutierrez
Lay Advocate

Jan 28, 2011

ISSUED
CLERK OF COURT

CA-10-001

PASCUA YAQUI TRIBE COURT OF APPEALS

PASCUA YAQUI TRIBE, Plaintiff
v.

Flores, Stevie, Defendant

ORDER TO PROCEED ON APPEAL TRIAL DE NOVO

Jennifer Gutierrez, Lay Advocate, 5130 W Neokae, Tucson. 85757, for Defendant Stevie Flores.

Alfred Urbina, Pascua Yaqui Prosecutor's Office, Tucson, 85757, for the Plaintiff.

This matter came before the Court of Appeals upon a request for a *trial de novo*, in case no. TR-09-044.

This court held a pre-hearing conference pursuant to 3 PYTC § 2-3-290 – Formerly 3 PYTRAP Rule 27 on September 28, 2010. Ms Gutierrez and Mr Urbina provided briefs to the Court on the matter.

After reviewing the relevant Rules of the PYT, the Court hereby orders that the defendant has an adequate remedy by appeal. There is NO requirement in this instance to proceed with a trial de novo as described in Section 290 (C)(4).

The briefing schedule for this case is set as follows: the Appellant shall file an Opening Brief within 30 days from the date of this order, and thereafter the Appellee shall have 30 days to file his Response Brief.

So ORDERED this 28th day of January, 2011.



Mark McMillan, Judge pro tem

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PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR
7474 S. Camino de Oeste
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Alfred L. Urbina, Esq.
PYT Bar No. 10141
SBN: 026389
Interim Chief Prosecutor

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)	Trial Court Case No.: TR-09-044
Plaintiff/Appellee,)	
)	Appeals Court Case No. CA-10-001
vs.)	
)	APPELLEE'S MEMORANDUM
FLORES, STEVIE)	RE: RULE 290(C)(2)
Defendant/Appellant.)	
)	

COMES NOW the Pascua Yaqui Tribe, by and through counsel undersigned, pursuant to Article VIII § 1, 2, and 5 of the Constitution of the Pascua Yaqui Tribe; 3 PYTC § 2-3-290(C)(2) and *PYT v. Gomez*, CA-09-009, (*Gomez*), and respectfully requests the court deny Appellant's Petition for Trial de Novo. The grounds for this Motion are set forth in the following Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 28th day of September, 2010.

**PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR**



Alfred L. Urbina, Interim Chief Prosecutor

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **FACTS**

4 On January 28, 2010, in the Pascua Yaqui Tribal Court, after Bench Trial,
5 Appellant, who was represented by Lay Advocate, Jennifer Gutierrez, was found guilty
6 of Driving Under the Influence and Driving on a Suspended License by Judge Margaret
7 Flores. Appellant did not motion for a new trial, 3 PYT R. Crim.P. Rule 48, and the
8 Court proceeded with Sentencing on the same day. On February 12th, 2010, Defendant
9 filed a Motion to Stay in Tribal Court pending the resolution of “Trial de Novo.” On
10 February 12, 2010, The Tribal Court granted Appellant’s Motion to Stay. Appellant,
11 through Advocate, immediately filed a Petition for Trial de Novo based on Judge Flores’
12 January 28, 2010 Order. For the following reasons, the Tribe requests that this Court
13 Deny the Petition and rather permit Appellant to seek his remedy by appeal.
14
15

16 **I.**
17 **APPELLANT’S PETITION IS ADEQUATELY ADDRESSED BY APPEAL.**

18 Appellant Petitioned for a Trial de Novo. Appellant requests that the Court hear
19 his matter via Trial de Novo and requests a jury trial. The Appellant’s requests, however,
20 are unsupported given the facts, his remedy is adequately addressed through appeal, and
21 in accordance with the Pascua Yaqui Tribe Rules of Appellate Procedure (PYTRAP), he
22 is not entitled to a jury trial. *See* 3 PYTC § 2-3-290(B)(1) .
23

24 Article VIII, Section 5 of the Tribal Constitution provides that: “the Court of
25 Appeals of the Pascua Yaqui Tribe shall have the power of judicial review of all civil and
26 criminal matters appealed from the Pascua Yaqui Tribal Court. Article VIII § 5. “To
27 give full consideration to a petition for a trial de novo, the process referred to...requires
28

1 the presiding justice to conference with the parties “to discuss whether the defendant has
2 adequate remedy by appeal.” *PYT v. Gomez*, CA-09-009, at 3. Trial de novo means “[a]
3 new trial or retrial had in which the whole case is retried as if no trial whatever had been
4 had in the first instance. A trial of the entire case anew, both on law and on facts.”
5 Black's Law Dictionary 1046 (abridged 6th ed.1991). *See, e.g., Burris v. Davis*, 46 Ariz.
6 127, 132, 46 P.2d 1084, 1086 (1935) (on trial de novo, “the case will be heard on both
7 the law and the facts as though it has originated in the superior court”).
8

9
10 Here, the Tribal Code clearly demonstrates that an appeal is adequate to address
11 any remedies sought by Appellant. Appellant was found guilty by the Tribal Court
12 Judge, the proceedings were recorded, and Appellant received a fair and impartial trial.
13 Appellant has a Constitutional Right to Petition for a Trial de Novo, however that right is
14 controlled by Rule 290(C)(2). Traditionally, a Trial de Novo was taken from municipal
15 “police courts” that were not courts of record. No records were made of the proceedings
16 and an adequate remedy was not available via appeal. Here, an adequate record was
17 maintained by the Tribal Court. Furthermore, Appellant did not Motion for a new trial in
18 the Tribal Court, allege new facts, allege that the verdict was contrary to the law or to the
19 weight of the evidence, or that the prosecutor’s advocate was guilty of misconduct.
20

21 CONCLUSION

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23 Wherefore, for the foregoing reasons, the Tribe respectfully requests that this
24 Court deny Appellant’s Petition for Trial de Novo, and address any issues presented
25 through the appeal process.
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RESPECTFULLY SUBMITTED this 28th day of September, 2010.

**PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR**



Alfred L. Urbina, Interim Chief Prosecutor

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CERTIFICATE OF SERVICE

Pascua Yaqui Tribe)
) ss.
County of Pima)

Alfred L. Urbina hereby certifies that he is Interim Chief Prosecutor of the Pascua Yaqui Tribe in the above-entitled action and that on the 28th day of September, 2010, he caused to be delivered and/or e-mailed the following:

APPELLEE’S MEMORANDUM RE: RULE 290(C)(2)

That the original of the foregoing document was electronically filed with:

CLERK OF THE PASCUA YAQUI COURT OF APPEALS

7474 South Camino de Oeste

Tucson, AZ 85757

That two copies of the foregoing document were hand-delivered/e-mailed to:

Honorable Margaret Flores
Judge, Pascua Yaqui Tribal Court
7474 S. Camino de Oeste
Tucson, AZ 85757

Jennifer Gutierrez
Pascua Yaqui Advocate
Advocate for Defendant/Appellant
Tucson, AZ 85757



ALFRED L. URBINA
Interim Chief Prosecutor



PASCUA YAQUI TRIBE CO
P.O. BOX 10061
TUCSON, AZ 85757

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS 8:36
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,
Plaintiff/Appellee,
vs.
FLORES, STEVIE
Defendant/Appellant.

) Appellate Case No: **CA-10-001**
)
) Tribal Court No.: **TR-09-044**

Opening Brief

Jennifer Gutierrez
Pascua Yaqui Tribal Bar No. 10061
5130 W. Neokae
Tucson, Arizona 85757
520-869-9665
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COUNSEL FOR: Defendant/Appellant

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	1. THE LOWER COURT’S RULING ON THE CASE WAS A DIRECT VIOLATION OF THE PASCUA YAQUI TRIBAL CODE, THE INDIAN CIVIL RIGHTS ACT AND THE CONSTITUTIONAL RIGHTS OF THE APPELLANT.	
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I. TABLE OF AUTHORITIES

CASES

1. Mapp v. Ohio
367 U.S. 643 (1961).....10

2. Miranda v. Arizona
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CONSTITUTIONAL PROVISIONS

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II. STATEMENT OF THE CASE

On August 7, 2009 the Tribe filed a criminal traffic complaint against appellant STEVIE FLORES charging him with one count of Driving Under the Influence and one count of Driving on a Suspended license. Mr. Flores' initial appearance was held on November 4, 2009. Mr. Flores was not represented by legal counsel. The lower court determined that there was probable cause to support the charges against Mr. Flores. The arraignment hearing was set for November 12, 2009 in which the defendant elected to plead not guilty. He was represented at this hearing by counsel undersigned. A bench trial was set for January 6, 2010 with the submittal of a motion to dismiss due to the courts by December 14, 2009. The courts failed to serve the defendant and counsel the order of the last hearing and a new date was set for January 28, 2010. The motion was discussed in open court but the trial judge ruled against it. On January 28, 2010 the defendant was sentenced to 9 months probation, 30 days in detention, fines totaling \$780.00, ordered to complete an intake at Centered Spirit and follow recommendations thereof, and also to complete 20 hours of community service.

Following the bench trial, the defendant filed a motion to stay the proceedings on February 12, 2010. A petition for a trial de novo was also filed in the Court of Appeals that very day. The trial court granted the motion to stay.

III. STATEMENT OF FACTS

On August 7, 2009 the Tribe filed a criminal traffic complaint against appellant STEVIE FLORES charging him with one count of Driving Under the Influence and one count of Driving on a Suspended license. According to the affidavit submitted in support of the case, on August 7, 2009, at 5:34 am, Mr. Flores was approached by the arresting officer Andres Gastelum while parked at a residence, 7782 S Maala Mecha Voo'O, Tucson, Arizona, 85757. According to the officer, per his police report and sworn affidavit, Mr. Flores was already parked when the officer approached. The arresting officer stated that he observed the defendant to show signs of alcoholic impairment. The officer asked Mr. Flores his name and biographical information then ran a license check which revealed that that Mr. Flores did not have a valid license. At this point, according to the officer's report, he placed the defendant under arrest for suspicion of DUI. All of these actions were alleged to have occurred on August 7, 2009 at 5:34 am. Mr. Flores was arrested, searched, transported, questioned and detained without ever being read his Miranda Rights as per the police report.

Mr. Flores' initial appearance was held on November 4, 2009. Mr. Flores was not represented by legal counsel. The lower court determined that there was probable cause to support the charges against Mr. Flores. The lower court determined that there was probable cause to support the charges against Mr. Flores. The arraignment hearing was set for November 12, 2009 in which the defendant elected to plead not guilty.

At the time of his sentencing on January 28, 2009, Mr. Flores was represented by legal counsel. The lower court sentenced the defendant to 9 months probation, 30 days in detention, fines totaling \$780.00, ordered to complete an intake at Centered Spirit and follow recommendations thereof, and also to complete 20 hours of community service. Mr. Flores

was sentenced rather harshly when considering that the court based its ruling solely on the testimony of the officers' observations.

IV. STATEMENT OF THE ISSUE

Whether the lower court's ruling on the case was a violation of the Pascua Yaqui Tribal code, the Indian Civil Rights Act, and the United States Constitution.

V. STANDARD OF REVIEW

The Pascua Yaqui Tribal Code states that questions of law are subject to de novo review upon the request of the defendant pursuant to Rules 27(A), Pascua Yaqui Tribe Rules of Appellate Procedure. The defendant, through counsel undersigned, has formally requested a trial de novo and thus satisfied the rule as it reads.

VI. ARGUMENT

1. THE LOWER COURT'S RULING ON THE CASE WAS A DIRECT VIOLATION OF THE PASCUA YAQUI TRIBAL CODE, THE INDIAN CIVIL RIGHTS ACT AND THE CONSTITUTIONAL RIGHTS OF THE APPELLANT.

The Pascua Yaqui Tribal code provides that "Immediately upon arrest the suspect shall be advised of the following rights: (1) That he or she has the right to remain silent; and (2) That any statements made by the suspect can be used against him or her in the court; and (3) That the suspect has the right to obtain counsel at his or her expense and to have counsel present during all questioning."¹ Pursuant to the IV Amendment of the United States Constitution "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..." and simultaneously reflects Article I (B) of the Pascua Yaqui Tribal Constitution, any evidence gathered as a result of this illegal arrest will not be admissible at trial as part of the "fruits of the poisonous tree" rule. Because the defendant was unlawfully questioned and illegally detained as a result thereof, the Tribe should have never been allowed to bring forth charges against the defendant. The Pascua Yaqui Tribe is required to follow and comply with acts of the United States Congress.

Relying on the U.S. Supreme Court ruling in *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court held that the "warning should be given when the individual is "in custody"—"or otherwise deprived of his freedom of action in any significant way." The lower court justified its ruling based solely on falsely gathered evidence that was divulged only after the defendant's rights were violated. In *Mapp v. Ohio*,

¹ 3 PYT R. Crim. R. Rule 15 "Notification of Rights at Time of Arrest


367 U.S. 643 (1961), the U.S. Supreme Court established the “Exclusionary Rule” by holding that “all evidence obtained by searches and seizures in violation of the Constitution is, by [the Fourth Amendment], inadmissible in court.”

The overall issue in this case is police misconduct as it pertains to officers’ ANDRES GASTELUM and CHRISTOPHER THOMPSON and their individual roles in Mr. Flores’ arrest and detainment. Officer Thompson has since been demoted to a detention officer following a 45 day suspension in which he viciously and repeatedly tased a minor suspect while going against standard procedure. He also failed to follow protocol as he pursued another suspect in which resulted in his death.

VII. CONCLUSION

Appellant Stevie Flores respectfully moves this Court to reverse the lower court's ruling which violated the defendant's constitutional rights as it pertains to the IV and V Amendments, as well as Pascua Yaqui Code 3 PYT R. Crim. P. Rule 15.

DATED 28th day of September 2010.



Jennifer Gutierrez
Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that the Appellant's Opening Brief was hand-delivered to:

Clerk of the Court of Appeals
Pascua Yaqui Court of Appeals
7474 South Camino de Oeste
Tucson, AZ 85757


And that one copy of the Appellant's Opening Brief was delivered this date to:

Pascua Yaqui Tribal Court
7474 South Camino de Oeste
Tucson, AZ 85757

And that one copy of the Petition for Trial de Novo was delivered this date to:

Alfred Urbina
Chief Prosecutor
Office of the Prosecutor of the Pascua Yaqui Tribe
7474 South Camino de Oeste
Tucson, AZ 85757

DATED this 28th day of September, 2010.



Jennifer Gutierrez
Counsel for Appellant

Aug 04, 2010

ISSUED
CLERK OF COURT

CA-10-001

PASCUA YAQUI TRIBE COURT OF APPEALS

Pascua Yaqui Tribe, Plaintiff

v.

Flores, Stevie, Defendant.

**Order granting Request for Speedy Trial; and
Order setting Pre-Hearing Conference**

Jennifer Gutierrez, Lay Advocate, 5130 W Neokae, Tucson, 85757, for Defendant Stevie Flores.


Alfred Urbina, Pascua Yaqui Prosecutor's Office, Tucson, 85757, for the Plaintiff.

This matter came before the Court of Appeals upon a request for a *trial de novo*, in case no. TR-09-044.

On February 24th, 2010, the Petitioner Stevie Flores, by and through counsel, submitted a request for trial by jury and request for speedy trial. Rule 27(B) PYTRAP stipulates that there shall be no Jury Trials in the appellate court. Accordingly, the request for trial by jury is denied. The request for speedy trial is granted.

This court will hold a pre-hearing conference pursuant to Rule 27(B) to determine whether the Petitioner "has an adequate remedy by appeal" [Rule 27(B) PYTRAP]. A pre-hearing conference is hereby set for September 28, 2010 at 9:30 a.m.

So ORDERED this 4th day of August, 2010.


Mark McMillan, Judge pro tem

Feb 12, 2010

RECEIVED
CLERK OF COURT

1 5130 W. Neokae,
2 Tucson, Arizona 85757

3 Jennifer Gutierrez
4 COUNSEL FOR: Defendant/Appellant

5 IN THE PASCUA YAQUI TRIBE COURT OF APPEALS
6 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

7 PASCUA YAQUI TRIBE,
8 Plaintiff/Appellee,

9 vs.

10 FLORES, STEVIE

11 Defendant/Appellant.

) Appellate Case No: CA-10-

) Tribal Court No.: TR-09-044

) **PETITION FOR TRIAL DE NOVO**

12
13 COMES NOW Appellant STEVIE FLORES, through counsel and pursuant to Rules 27(A), Pascua
14 Yaqui Tribe Rules of Appellate Procedure, respectfully petitions for a Trial de Novo in the Pascua Yaqui
15 Tribe Court of Appeals.

16 Mr. Flores was convicted on January 28, 2010 of Driving under the Influence, a violation of 8 PYTC
17 § 6-4-10/A.R.S. § 28-3473 (A), and driving on a suspended, revoked, or cancelled license, a violation of 8
18 PYT § 6-4-10/ A.R.S. § 28-1381 (A) (1). A copy of the Tribal Court's Order is attached hereto.

19 Mr. Flores further requests a trial by jury pursuant to the Indian Civil Rights Acts, 25 U.S.C.A.
20 §1302(10).
21

22 RESPECTFULLY SUBMITTED this 10th day February of, 2010.

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25 

26 Jennifer Gutierrez
27 Lay Advocate
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that ~~the~~ original and five (5) copies of the Petition for Trial de Novo were delivered
3 this date to:

4 Clerk of the Court of Appeals
5 Pascua Yaqui Court of Appeals
6 7474 South Camino de Oeste
Tucson, AZ 85757


7 and that one copy of the Petition for Trial de Novo was delivered this date to:

8 Pascua Yaqui Tribal Court
9 7474 South Camino de Oeste
Tucson, AZ 85757

10 and that one copy of the Petition for Trial de Novo was delivered this date to:

11 Alfred Urbina
12 Chief Prosecutor
13 Office of the Prosecutor of the Pascua Yaqui Tribe
14 7474 South Camino de Oeste
Tucson, AZ 85757

15 DATED this 10th day of February, 2010.
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19 Jennifer Gutierrez
20 Lay Advocate
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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)	Case No.: TR-09-044
)	
Plaintiff,)	JUDGMENT AND SENTENCING ORDER
vs.)	
)	
FLORES, STEVIE,)	
)	
Defendant.)	
)	

On January 28, 2010 the defendant, Stevie Flores, appeared for Bench Trial hearing with Lay Advocate, Jennifer Gutierrez. Patricia Castro appeared for the Tribe.

Ms. Gutierrez presented a Motion To Dismiss based on the Tribe not having evidence to warrant a trial. The Tribe objected and the court denied the Motion To Dismiss, as the Tribe stated that the Tribe does have sufficient evidence to proceed to trial. The Lay Advocate also moved the Court to strike any evidence with regard to the blood test results, as the lab technician is not present to cross examine. After hearing from the Tribe the court granted the motion.

The court held a bench trial, heard testimony, reviewed documentary evidence, and it finds the defendant guilty beyond a reasonable doubt to Count 1: Driving Under The Influence and Count 2: Driving On Suspended/Revoked/Cancelled License.

The Tribe's Exhibit One, a certificate of Indian blood and Pascua Yaqui Tribal enrollment department record, was admitted, without objection. Through the certificate, the Tribe has proven that the defendant is an Indian and enrolled with the Pascua Yaqui Tribe.

As to the charge of Count 1: Driving Under The Influence the Tribe has proven beyond a reasonable doubt, that the defendant committed Driving Under The Influence and by the defendant driving a motor vehicle while being intoxicated with alcohol within the reservation boundaries. Officer Andres Gastelum testified that when the defendant was apprehended the defendant had red watery eyes, with his face flushed, that the defendant was perspiring and his speech was slurred and mumbled, with an odor of intoxicants. Officer Christopher Thompson testified that the defendant was back and forth with his responses and he was being argumentative. Officer Thompson also testified that the defendant had a strong odor of alcoholic beverage and that the defendant was staring off into the distance and would not look at the officer. The Tribe has proven beyond a reasonable doubt, that the defendant committed Driving On Suspended/Revoked/Cancelled License as Officer Andres Gastelum testified that a records check was preformed by police dispatch and the officer was told that the defendant did not have a license and that the defendant had suspended driving privileges. Tribe's Exhibit Two, Arizona Department of Motor Vehicle record, was admitted, without objection. Through the document, the Tribe has proven that the defendant's license is suspended with the date of 8/13/07.

1 **Having found the defendant guilty of the both Counts, the defendant, through his advocate,**
2 **had no objection to the Tribe proceeding to sentencing in the matter. The court should adopt the**
3 **Tribe's sentencing recommendations in part for detention days and probation. The defendant did**
4 **not object to any of the recommendations.**

4 **IT IS ORDERED** that the defendant, Stevie Flores, is guilty beyond a reasonable doubt of
5 **Count 1: Driving Under The Influence and Count 2: Driving On Suspended/Revoked/Cancelled**
6 **License. The defendant shall be sentenced as follows:**


6 **Count 1: Driving Under The Influence:**

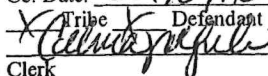
- 7 1. 30 days jail, suspended for nine (9) months of supervised probation;
- 8 2. Defendant shall pay a fine of \$250.00 within two (2) months, in the form of a money
9 order, payable to the Pascua Yaqui Tribe;
- 10 3. Defendant shall perform twenty (20) hours of community service to be conducted with
11 Pascua Yaqui Facilities Maintenance by calling Ramon Rivera at 879-5934 within one
12 week of today's date and shall submit completed community service hours to probation
13 within 30 days;
- 14 4. Defendant shall complete an "intake" with Pascua Yaqui Centered Spirit, within a
15 week to submit proof within two (2) working days after intake is completed;
- 16 5. Defendant shall complete the "comprehensive assessment" within thirty (30) days,
17 submit proof within two (2) working days after assessment is completed; defendant
18 must successfully complete all the recommendations made by CSP, any failure to
19 participate or comply with those recommendations can result in this probation status
20 being revoked and suspended time imposed;
- 21 6. Defendant shall not have in his possession or consume any alcoholic beverages;
- 22 7. Defendant shall be subject to random alcohol breath testing by Probation Officer;
- 23 8. Defendant shall attend a M.A.D.D. impact panel within thirty (30) days and submit
24 proof of completed session to probation within thirty (30) days;
- 25 9. Defendant shall pay probation fees in the amount of twenty (\$20.00) a month, due the
26 first of each month;
- 27 10. Defendant shall abide by all standard conditions of probation and shall initiate contact
28 with probation within two (2) working days;
11. Defendant shall pay a court cost of \$100.00 within thirty (30) days.

21 **Count 2: Driving On Suspended/Revoked/Cancelled License:**

- 22 1. \$250.00 fine or if defendant provides a valid driver's license to the Court within 45
23 days, the fine shall be reduced to \$25.00, due within 45 days.

23 SO ORDERED THIS 28TH DAY OF JANUARY, 2010.

24 
25 Associate Judge, Pascua Yaqui Tribal Court

26 Cc: Date: 02/10/10
27 Tribe Defendant Counsel Probation
28 
Clerk

IN THE PASCUA YAQUI TRIBAL COURT
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA

STANDARD CONDITIONS OF PROBATION

Pascua Yaqui Tribe:
Vs.

Defendant: STEVIE FLORES

Docket No. TR-09-044

1. Obey all Laws and Court Orders. Notify the Probation Officer within 72 hours of contact with any law enforcement agency.
2. Report to the Probation Officer as directed by the Tribal Court or Probation Officer. Obey the lawful orders of the Probation Officer.
3. To participate in education, training, treatment and /or counseling programs as directed by the Court or Probation Officer. Sign any release of information forms required by the agency and/or Probation Officer.
4. Not associate with any person who is in violation of the law or any convicted felon or any person on probation or parole in any jurisdiction.
5. Not possess or control any firearm(s), ammunition, knives or prohibited weapons.
6. To grant the Probation Officer safe access to your residence and property, to submit to search and seizure as directed by the Probation Officer.
7. Be subject to arrest without a warrant, by the Probation Officer or Law Enforcement Officer, if there is reason to believe I may have violated any condition(s) of probation. Waive extradition for any probation revocation proceedings.
8. Notify the Probation Officer of current address or change of address within 72 hours. Not leave the state of Arizona without first securing approval of the Court and/or Probation Officer.
9. Not to possess or use marijuana, dangerous drugs, narcotics, or drug paraphernalia, except as prescribed for you by a physician or dentist. **YOU SHALL SUBMIT TO RANDOM URINALYSIS TESTING**, as directed by the Probation Officer.
10. I have personally read, understand, and agree to abide by all of the preceding Terms and Conditions of Standard Probation. I understand that my failure to comply with one or more of the above conditions could result in my arrest and/or return to Tribal Court. I also understand that my continued violation of any one or more of the above-conditions while on probation may result in an unsatisfactory discharge from probation at the conclusion of my Court ordered probation period.

Date: 1-28-09

Stevie Flores
Defendant's signature

Date: 1/28/10

Margaret M. Johnson
Judge's signature

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE VS FLORES, STEVIE Defendant	COURT USE ONLY Case Number: TR-09-044
PROBATION ORDER	

IT IS ORDERED THAT:

- PROBATION PERIOD** **9 MONTHS**
- SUSPENDED SENTENCE OF** **30 DAYS IN DETENTION**
- PROBATION SHALL BE** **SUPERVISED**
- PROBATION SHALL BEGIN ON** **January 28, 2010** **AND TERMINATE ON** **October 28, 2010**

AS STANDARD CONDITION OF PROBATION YOU SHALL:

1. Obey all laws and Courts Orders. Notify the Office of Probation Services within 72 hours of any contact with any Law Enforcement Agency.
2. Report to the probation officer once a week, or as directed by the Probation Officer: and follow all reasonable directives of the Probation Officer.
3. To participate in education, training, treatment and/or counseling programs as directed by the Court or Probation Officer. Sign any release of information forms required by the agency and/or Probation Officer.
4. Not associate with any person who is in violation of the law or any convicted felon or any person on probation or parole in any jurisdiction.
5. Not possess or control any firearm(s), ammunition, knives or prohibited weapons.
6. To grant the Probation Officer safe access to your residence and property, to submit to search and seizure as directed by the Probation Officer.
7. Be subject to arrest without a warrant, by the Probation Officer or Law Enforcement Officer, if there is reason to believe you may have violated any conditions of probation. Waive extradition for probation revocation proceedings.
8. Notify the Probation Officer of current address or change of address within 72 hours. Not leave the state of Arizona without first securing approval of the Court and/or Probation Officer.

9. Not to possess or use marijuana, dangerous drugs, narcotics, or drug paraphernalia, except as prescribed by a physician or dentist. YOU SHALL SUBMIT TO RANDOM URINALYSIS TESTING, as directed by the Probation Officer.

AS SPECIAL CONDITION OF PROBATION YOU SHALL:

- A. Shall initiate contact with probation officer by January 30, 2010
- B. Shall pay \$20.00 in probation fees due the first of each month
- C. Shall pay \$250.00 fine (Count 1) within two (2) months and \$250.00 fine (Court 2) due within 45 days
- D. Shall pay \$100.00 court cost within thirty (30) days
- E. Shall complete an "intake" with Pascua Yaqui Centered Spirit, within a week to submit proof within two (2) working days after intake is completed
- F. Shall complete the "comprehensive assessment" within thirty (30), and must submit proof within two (2) working days after the assessment is completed; the Defendant must successfully complete all the recommendations made by the CSP, any failure to participate or comply with those recommendations can result in termination of the probation status being revoked and suspended time imposed
- G. Shall not consume or possess any alcoholic beverages; subject to random alcohol breath testing by Probation Officer
- H. Shall attend a M.A.D.D. impact panel within thirty (30) days and submit proof of completed session to probation within thirty (30) days;
- I. Shall complete 20 hours of community services, to be conducted with the Pascua Yaqui Facilities Maintenance by calling Ramon Rivera at 879-5934 within one week of today's date and shall submit proof of any completed hours to the probation officer and the hours shall be due by February 28, 2010

SO ORDERED THIS 28th DAY OF January, 2010

Margaret A. Flores
Judge Pascua Yaqui Tribal Court

Tribe Defendant Probation Dept

Date 2/10/10
Clerk Celia S. [Signature]