

No. CA-19-003

Pascua Yaqui Tribe court of Appeals

Antonio Madrid, Appellant

vs.

Pascua Yaqui Tribe, Appellee

ORDER

Upon application from the Pascua Yaqui Office of the Public Defender,

IT IS ORDERED that the Motion to Stay the Appellate proceedings is DENIED.

IT IS FURTHER ORDERED that this appeal is dismissed without prejudice so that the Parties can address any outstanding issues with the trial court.

SO ORDERED this 24th day of May 2019.



Hon. Robert Miller



Hon. Rebecca Plevel



Hon. Kendra A. Martinez

IN THE PASCUA YAQUI COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

ANTONIO MADRID,
Appellant,

v.

PASCUA YAQUI TRIBE
Appellee.

) APPELLATE CASE NO. CA-19-003
)
) PASCUA YAQUI TRIBAL COURT NO.
)
) AC-18-003
)
)
)
)
)

APPELLANT SENTENCING TRANSCRIPT

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1 THE PASCUA YAQUI TRIBAL COURT
2 IN AND FOR THE PASCUA YAQUI INDIAN NATION

3 PASCUA YAQUI TRIBE,) Case No.: AC-18-003
4 Plaintiff,)
5 vs.)
6)
7 ANTONIO MADRID) Pascua Yaqui Nation
8 Defendant.) Tucson, Arizona
9) January 4, 2019
10) 10:04 a.m.
11)
12)

13 BEFORE: THE HONORABLE MELVIN STOOF, TRIBAL JUDGE

14 TRANSCRIPT OF PROCEEDINGS: SENTENCING HEARING

15 APPEARANCES:

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Transcripts prepared by: Lilian Contreras, Lay Advocate, Pascua Yaqui Tribe Office of the Public Defender.

1 PROCEEDINGS

2 (Proceedings Commenced at 10:04 a.m., as follows:)

3 **Court:** The time is now uh, 10:04. Mr. Madrid has arrived.

4 The Court has issued a bench warrant for your arrest based on your failure to appear. How does
5 the tribe wish to proceed?

6 **Tribe:** We'd withdraw that bench warrant

7 **Court:** Quash warrant. And contempt of court carries with it a potential penalty of up to
8 a \$500 fine, 60 days in jail or both fine and jail, and you are here to show good cause, if any, as
9 to why you should not be held in contempt of court for failing to appear five minutes ago. Why
10 are you five minutes late?

11 **Defense:** May I just- real quick? Um your honor, as I've indicated previously he's having
12 some knee pain and it was a little bit hard for him to walk [inaudible 1:28].

13 **Court:** Does the Tribe fee that that is a legally sufficient reason not to hold Mr. Madrid
14 in contempt?

15 **Tribe:** Your Honor, the Tribe at this time does um, we'd give him the benefit of the
16 doubt.

17 **Defense:** Thank-you.

18 **Court** I will go ahead and grant excusable neglect as the reason for why he did not
19 appear. And no contempt. Ok, we can proceed now with the uh, sentencing. And this is a
20 sentencing hearing. This is an opportunity for you to have recommendations made. The court
21 will be hearing from the Tribe as well as from probation and then you'll have the opportunity to
22 make recommendations as to how the matters should be resolved as far as recommendations.
23 And did you get a copy of the presentence report or presentence investigative report?

24 **Defense:** Mm-hmm.

25 **Court:** Ok, and I have also received the defendant's sentencing recommendations. Ok.

1 **Probation:** Thank you, your Honor. Probation made a couple of attempts to make
2 contact with Mr. Madrid but was unable to. He never made it into the probation office so I
3 wasn't able to conduct the interview with him, therefore I didn't get too much background on his
4 person. I did uh a background check through the probation database and the court's database and
5 Mr. Madrid shows as not a good candidate for probation. He has been most recently revoked in
6 CR-18-049, he served two days in detention and while CR-18-049 he accumulated new charges
7 that were dismissed as part of a plea agreement to revoke his probation, therefore for this case we
8 are recommending for count 1 failure to provide veterinarian care, defendant to pay a \$250 fine
9 or complete 50 hours community service to the Pascua Yaqui Tribal court in lieu of the fine.
10 Defendant to pay a \$100 court cost or complete and submit 20 hours of community service to the
11 Pascua Yaqui Tribal court in lieu of court costs. Defendant not be allowed to acquire any new
12 animals for a period of one year. And of given to complete an animal cruelty education class
13 with the humane society of Southern Arizona and submit proof to the Pascua Yaqui Tribal Court.
14 For this class he can contact the human the Humane Society and speak with Stephanie Gray, the
15 phone number provide on the presentence investigation.

16 **Court:** The Tribe?

17 **Tribe:** You honor, the Tribe does concur with all these recommendation but the Tribe
18 does also um, believe that the defendant should also be sentenced to 10 days of detention
19 suspended for six-months - of probation of supervised probation. The Tribe does have a prior
20 case in an unrelated matter in AC-18-18028 where the defendant was sentenced in that case to 10
21 days detention suspended for six months of probation and the Tribe um believes that that is um
22 fair in this case as well.

23 **Court:** The prior AC case what were the...

24 **Tribe:** AC-18-18028.

25 **Court:** And the disposition in that one?

1 **Tribe:** Was a - was 10 days detention suspended for 6 months of probation, \$50 court
2 costs, report to probation, probation fees. Did you ask for the defendant's name your honor?

3 **Court:** Mm-hmm.

4 **Tribe:** Adeline Soto.

5 **Court:** Ok. Ok, anything else?

6 **Tribe:** No, Your Honor.

7 **Court:** Ok. Any response?

8 **Defense:** Thank you, Your Honor. May I just request— so this AC was not Mr. Madrid?

9 **Tribe:** No.

10 **Defense:** Ok, so Your Honor, as I stated in the sentencing memorandum, it is the first
11 time Mr. Madrid himself has an AC, uh case against him. Um, I agree with probation that Mr.
12 Madrid is not a good candidate for probation. But I also would like to note the financial burden
13 of having a \$250 court costs - \$250 fine and \$100 court costs. Mr. Madrid only takes \$70 a
14 month plus he is on food stamps. He is willing to do community service. He likes to help the
15 community. The issue is just the alternative for the \$250 and \$100 would be 70 hours of
16 community service, where, um, as he just stated he is having chronic knee pain and his back also
17 hurts. I understand that would be a normal sentencing position for a person of perhaps of my age
18 and good health. This is not the case with Mr. Madrid. The class with the Humane Society also
19 costs \$75, which this is more than what he takes a month at home. So, I think the financial
20 burden for that class that it would not allow to complete community service would be a huge
21 burden on him. So my recommendation would be a \$250 fine, but instead he could offer 30
22 hours of community service, I would object to the \$100 courts cost, because he is indigent, so my
23 recommendation would be that the court orders that he is no allowed to allowed to own any pet
24 for a period of one year and the \$250 fine where he could complete with 30 days- uh 30 hours of
25 community service. I would note that if he is not allowed to have an animal I don't know how he

1 could benefit from this class. It would take another year before he would be allowed to own any
2 pet. Uh, if the court is not willing to except those recommendations I have spoke previously with
3 Mr. Madrid and he would be willing to serve one to two days in jail and have the case closed.
4 Um, he does want this case resolved and I think putting him on probation would set him up for
5 failure at this point. Thank you very much.

6 **Court:** And notwithstanding the um listing of the priors of which he was unsuccessful on
7 probation. Which was a CR-10-250, which was domestic violence, back in 2010. I also have a
8 probation revoke in CR-1-18049 and CR-1-4467, but I also show that he has um served out some
9 other cases, and had successfully completed probation back in 2002. So based on that I am going
10 to adopt the recommendation of 10 days of detention suspended for six months of supervised
11 probation. Now as far the probation fees, probation does make a determination based on a
12 person's income, as to what kind of arrangement for monthly probation fees would be imposed.
13 The court does feel it's a reasonable \$250 fine or 50 hours of community service within 90 days,
14 it does um address the issues of not caring for the animal. The \$100 court cost is mandatory, it's
15 mandated by the code as a \$100 after a trial. Or 20 hours of community service in 90 days, to
16 have no new animals for a period of one year and to complete the animal cruelty education class
17 with the Humane Society of southern Arizona and provide proof to The Pascua Yaqui Tribal
18 Court and then he'll need to contact Stephanie Gray at 520-312-3704 Ext. 125 to make
19 arrangements for the animal cruelty education class. Ok. And they can provide a community
20 service-I'm sure that they have community service for people who have physical problems or
21 physical issues and I'll go ahead and prevent probation to try to locate such a community service.
22 So I'll have you sign off on a standard condition of probation form. Ok, thank-you. Ok, Mr.
23 Madrid you'll need to report to your probation officer by a Monday at 5 and your probation
24 officer will provide you a copy of your final order along with your standard conditions of
25 probation form. And are there any other matters to before the court?

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Tribe: No, your honor

Defense: No, your honor

Court: Court's adjured

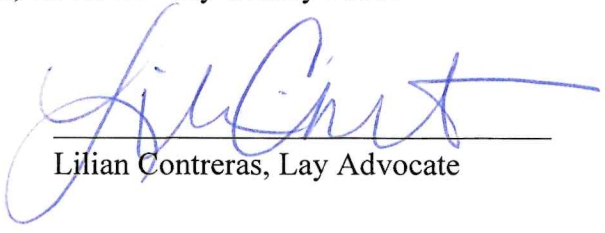
Bailiff: All rise.

[End 11:38]

CERTIFICATE

I, Lilian Contreras, lay advocate for the Pascua Yaqui Tribe Office of the Public Defender, declare that this transcript of the proceedings was prepared from the video recording of the proceedings, provided by the Pascua Yaqui Tribal Court.

Signed in Tucson, Arizona, on the 21st day of May 2019.



Lilian Contreras, Lay Advocate

IN THE PASCUA YAQUI COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

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Appellant,

v.

PASCUA YAQUI TRIBE
Appellee.

) APPELLATE CASE NO. CA-19-003
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APPELLANT REPLY BRIEF

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Table of Contents

IN THE PASCUA YAQUI COURT OF APPEALS.....	1
I. The Court of Appeals have broad discretion to review the matter because justice in this case so requires.....	4
II. The Tribe suppressed significant evidence Mr. Madrid was entitled to have, and the cumulative effect of the suppressed evidence prejudiced Mr. Madrid’s constitutional rights and casted doubt in the court’s judgment, and there is a reasonable probability the result could have been different had the Tribe disclosed evidence favorable to Mr. Madrid in a timely matter.	7
III. There is no testimony on the record indicated that there was a failure to provide veterinarian care.	18
IV. Conclusion	19

Cases

<i>Alleynne v. United States</i> , 570 U.S. 99, 104 (2013)	18
<i>Banks v. Dretke</i> , 540 U.S. 668, 124 S. Ct. 1256, 157 L. Ed. 2d 1166 (2004)	14,15,16
<i>Cone v. Bell</i> , 556 U.S. 449 (2009)	12
<i>DiSimone v. Phillips</i> , 461 F.3d 181, 197 (2d Cir. 2006)	10
<i>Douglas v. Workman</i> , 560 F.3d 1156 (10th Cir. 2009)	17
<i>Giglio v. United States</i> , 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972)	9
<i>Gonzalez v. Wong</i> , 667 F.3d 965 (9th Cir. 2011).	7
<i>Kyles v. Whitley</i> , 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).....	5,7,9,10,12,15,16
<i>Leka v. Portuondo</i> , 257 F.3d 89 (2d Cir. 2001).....	11
<i>PYT v. Alvarez</i> , CA-18-002 (Ct. of App. 2018).....	5
<i>PYT v. Campoy</i> , CA-07-009, p. 4 (Ct. of App. 2011).....	4, 6, 8
<i>PYT v. Coleman</i> , CA-15-003 (Ct. of App. 2015)	5
<i>PYT v. Godoy</i> , CR-19-039	12, 15
<i>PYT v. Molina</i> , CA-04-002 (Ct. of App. 2006)	6
<i>PYT v. Soto</i> , CA-06-010 (Ct. of App. 2007).....	5, 6
<i>Roviaro v. United States</i> , 353 U.S. 53, 77 S.Ct. 623 (1957).....	17
<i>Smith v. Cain</i> , 132 S.Ct. 627 (2010)	11
<i>Spaziano v. Singletary</i> , 36 F.3d 1028 (11th Cir. 1994)	18
<i>Strickler v. Greene</i> , 527 U.S. 263 (1999)	8
<i>Trevino v. Thaler</i> , 133 S.Ct. 1991 (2013).....	6
<i>United States v. Agurs</i> , 427 U.S. 97, 96 S.Ct. 2392 (1976).....	12
<i>United States v. Bagley</i> , 473 U.S. 667, 105 S. Ct. 3375 (1985)	9, 17
<i>United States v. Phillip</i> , 948 F.2d 241 (6th Cir. 1991)	18
<i>Youngblood v. West Virginia</i> , 547 U.S. 867, 126 S. Ct. 2188, 165 L. Ed. 2d 269 (2006).....	15

PYT Statutes

1 PYTC § 2-30	8
3 PYTC § 2-2-380 (A)(3)	7
3 PYTC § 2-2-380(D)	16
3 PYTC § 2-2-410.....	6
3 PYTC § 2-2-430.....	18
3 PYTC § 2-2-540(B)	7
3 PYTC § 2-3-110 (A)(1)	4
3 PYTC § 2-3-50.....	4, 5, 7

I. The Court of Appeals have broad discretion to review the matter because justice in this case so requires.

According to 3 PYTC § 2-3-50, “the appellate court may, upon motion for good cause shown, suspend the requirements or provisions of any of these rules in a particular case, and may order proceedings in accordance with its discretion. These rules shall be construed to do justice.” Therefore, this Court has broad discretion to review a case with new evidence introduced and determine the appropriate relief, if justice so requires.

The Tribe mistakes its interpretation of 3 PYTC § 2-3-110 (A)(1) that it limits the appellate review to the record created at the trial court level. The statute rather states that the trial court shall submit to the appellate court the original documents, not copies, filed with the trial court clerk.¹ It is clear the code does not limit the Appellate Court’s review of the case to the trial court’s record. In fact, this Court has looked outside of the trial court record. *See PYT v. Campoy*, CA-07-009, p. 4 (Ct. of App. 2011) (In holding that the prosecutor failed to properly disclose, “the Court of Appeals checked several closed criminal cases between 2002 until the present and every case where disclosure documents were submitted contained a Notice of Disclosure.”).

The Tribe also has introduced evidence on appeal that it failed to introduce with the trial court. In *PYT v. Alvarez*, CA-18-002 (Ct. of App. 2018), the Tribe appealed to the evidentiary hearing held on May 2, 2018. During the evidentiary hearing, the Tribe failed to move the trial court to admit the alleged victim 911 call. On Appeal, it introduced the call to its brief to support its arguments. Although defense counsel objected to the introduction of 911 call, the Tribe nevertheless in its reply brief indicated that this Court may choose to disregard it or to consider.

¹“The papers making up the record on appeal shall be the original papers, exhibits and other objected filed with the trial court clerk, a reporter’s transcript, transcription of an electronic recording or narrative or agreed statement, and copies of all entries.” 3 PYTC § 2-3-110 (A)(1)

The Tribe also cited to other jurisdictions case law to support its argument that this Court is not allowed to review evidence on appeal. However, other jurisdictions do not have a statute similar to 3 PYTC § 2-3-50, granting broad discretion in this Court to change the rules in the name of justice. Other jurisdictions also provide a defendant with opportunities to pursue state post-conviction relief claims and federal habeas relief.

Moreover, the Tribe cites to *PYT v. Soto* and *PYT v. Coleman*, indicating that this Court is only allowed to review what happened at the trial court level. This argument is misguided. In *Soto*, one of the issues was whether an appeal should be dismissed due to the “Plaintiff/Appellant Tribe’s (Tribe) failure to file a transcript within thirty days of filing its notice of appeal; or alternatively, due to the Tribe’s failure to file the trial court record with this Court[.]” *Soto*, CA-06-010 (Ct. of App. 2007). The issues in *Soto* involved an oversight during the filing of the record on appeal, not an issue of evidence that comes to light during the appeals phase.

In *Coleman*, the special action petition remanded the issue of admissibility of the evidence because although the issue was contemplated during trial court proceedings, there was no motion filed on the matter. “Therefore, [the] case [was] remanded for the Tribal Court to determine whether the motion was properly raised before the Tribal Court.” *Coleman*, CA-15-003, p.4 (Ct. of App. 2015). Although this Court has indicated it would “not review evidence that has not been submitted to and considered by the Tribal Court[.]” all the cases the Tribe cited involved evidence that existed during the trial court’s proceedings and it was *known* to all parties and there was a failure to move the trial court to its admission. *Id.* at 5.

The present case involves issues of due process where Mr. Madrid was and is being prejudiced by the Tribe’s suppression of evidence that was only discovered after the trial and sentencing. This Court have addressed disclosure violations issues numerous times in the past. *See*

PYT v. Campoy, CA-07-009 (Ct. of App. 2011) (affirming dismissal of a case with prejudice due to the Tribe's failure to comply with disclosure rules); *PYT v. Soto*, CA-06-010 (Ct. of App. 2007) (upholding the trial court's dismissal with prejudice for failure to comply with disclosure); *PYT v. Molina*, CA-04-002 (Ct. of App. 2006) (Affirming the "power of the Tribal Court, both *Trial and Appellate*, to impose sanctions as necessary" when the prosecutor violates disclosure laws) (emphasis added).

Although in those cases such violations were discovered before trial, the fact that the violation was discovered after trial does not waive the right to contest as the Tribe has an ongoing obligation to disclose information. *See* 3 PYTC § 2-2-410 ("if *at any time* after a disclosure has been made any party discovers additional information or material which would be subject to disclosure had it then been known, such party shall promptly notify all other parties of the existence of such additional material, and make an *appropriate disclosure.*") (emphasis added). This still has not happened here.

The Supreme Court of the United States has made it clear that constitutional claims exceeding the scope of the trial record must be brought at the first available opportunity, i.e. either on direct appeal or state post-conviction proceedings. *See generally Trevino v. Thaler*, 133 S.Ct. 1991 (2013) (discussing a defendant's meaningful opportunity to raise an ineffective assistance of counsel claim in state court proceedings and whether lack of such meaningful opportunity constitutes a procedural default in federal habeas claims). Mr. Madrid's only meaningful opportunity to raise his claim is now on direct appeal because there are no post-conviction relief proceedings in the PYT code nor is there a federal habeas option for Mr. Madrid. *See* 3 PYTC § 2-2-540(B) (A federal writ is only permitted if a defendant is arrested.)

This Court is not limited to review only the record made with the trial court because 3 PYTC § 2-3-50 affords this Court discretion to “suspend the requirements or provisions of any of these rules in a particular case, and may order proceedings” if justice so requires. Because the PYT code does not provide post-conviction relief proceedings, to ignore materials that did not emerge until the appeals proceedings started would be to reward the prosecutor for withholding evidence and it would create a dangerous precedent in this jurisdiction. *See Gonzalez v. Wong*, 667 F.3d 965, 980 (9th Cir. 2011).

II. The Tribe suppressed significant evidence Mr. Madrid was entitled to have, and the cumulative effect of the suppressed evidence prejudiced Mr. Madrid’s constitutional rights and casted doubt in the court’s judgment, and there is a reasonable probability the result could have been different had the Tribe disclosed evidence favorable to Mr. Madrid in a timely matter.

Pursuant to 3 PYTC § 2-2-380 (A)(3), “(A) [n]o later than ten days after the arraignment, the prosecutor **shall** make available to the defendant for examination and reproduction the following material and information within the prosecutor’s possession or control: (3) [t]he names and addresses of experts who have personally examined a defendant *or any evidence in that particular case*, ... including all written reports or statements by them in connection with the particular case.” (emphasis added). Additionally, “[t]he prosecutor’s obligation ... extends to material and information in the possession or control of members of his or her staff and of any other persons who have participated in the investigation or evaluation of the case and who are under the prosecutor’s control.” *Id.* at (D). The plain meaning of the statute casts no doubt in its interpretation.²

² “Words **shall** be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.” 1 PYTC § 2-30 (A) (emphasis added)

It is clear, contrary to the Tribe's assertion, the prosecutor *shall* disclose information whether or not he or she intends to use it in trial because its ethical obligation to disclose goes beyond of *Brady/Giglio/Henthorn/Kyles*. It is also clear The Tribe has the obligation to disclose any information relating to the case it is investigating, not only exculpatory or impeaching evidence. For example, in this specific case the Tribe disclosed materials and pictures it did not use during trial. It is also common practice for the Tribe to continue to disclose materials to defense even after the case is closed.

In regards to *Brady/Giglio/Henthorn/Kyles* violation, the Tribe's disclosure obligation turns to the cumulative effect of all suppressed evidence favorable to the defense, *not on the evidence considered item by item*. See *Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995) (holding, "in determining whether evidence not disclosed by states was 'material,' in violation of *Brady*, cumulative effect of all suppressed evidence favorable to the defendant is considered, rather than considering each item of evidence individually") (emphasis added); see also *Strickler v. Greene*, 527 U.S. 263, 289-90 (1999).

The Tribe neglected to cite case law on this issue and inaccurately claimed it is under no obligation to disclose materials to Mr. Madrid, but this Court has ruled over and over again on its expectations on the Tribe to disclose materials to a defendant, which the Tribe continues to ignore. *PYT v. Campoy*, CA-07-009, p.7, 15-18 (Ct. of App. 2011) ("The Tribe has been sanctioned before for... compliance issue, therefore it has notice of the Court's expectation of compliance with disclosure rules."). The Tribe mistakenly claims its only obligation is to disclose exculpatory evidence that is material to the issue of guilt or punishment. See Appellee Response Brief, p. 21.

In *Giglio*, the United States Supreme Court extended the prosecution's obligations to include the disclosure of information affecting the credibility of a government witness. *Giglio v. United States*, 405 U.S. 150, 154, 92 S. Ct. 763, 766, 31 L. Ed. 2d 104 (1972) As the court later explained, "[i]mpeachment evidence, ... as well as exculpatory evidence, falls within the *Brady* rule" because it is "evidence favorable to an accused, ... so that, if disclosed and used effectively, it may make the difference between conviction and acquittal." *United States v. Bagley*, 473 U.S. 667, 676, 105 S. Ct. 3375 (1985) (quotations omitted).

Here the Tribe violated Mr. Madrid's rights on several occasions. First, when it told Mr. Madrid Officer Wells did not seize the dog in question. Second, when it casually informed Mr. Madrid on the eve of trial that Officer Wells had in fact seized the dog and that it was not going to call its expert witness to testify as previously disclosed. Third, when it informed Mr. Madrid there was nothing in Officer Wells' personnel files relevant to Mr. Madrid's case. Fourth, when it never disclosed Officer Lily Machado's involvement with this case and that she had written a report in the matter.

a) The Tribe's misleading information about Officer Wells' participation in this case and its late disclosure that Officer Wells seized the dog at Mr. Madrid's house.

Information is suppressed for *Brady* purposes if disclosure is delayed to the extent that the defense is not able to make effective use of the information in the preparation and presentation of its case at trial. The issue here is not Officer Wells' failure to report that he had seized the dog from Mr. Madrid's residence without a warrant. Rather, the concern is that the Tribe misled Mr. Madrid to believe Officer Wells did not seize the dog in question, only disclosing the information on the eve before trial, when the trial in this case had been continued numerous times.

Mr. Madrid does not need to educate the Tribe on the strategies he could have taken had he known about this information in a timely matter. Mr. Madrid needs to show, (1) the information must be favorable to him; (2) the information must be suppressed by the prosecutor; and (3) the information must be material to guilt or punishment. *See Strickler*, 527 U.S. at 281-82.

First, the information is favorable as it involved a police officer entering Mr. Madrid's residence, without a warrant and illegally seizing an animal. The exigent circumstances the tribe claimed at trial now makes little sense because the animal control officer was on duty that day, and therefore there was no reason for Officer Wells to wait 18 hours to return to Mr. Madrid's home if he believed it was an emergency. Officer Wells' own actions demonstrate he had plenty of time to secure a warrant and ask for help if he was busy as he testified. Had Mr. Madrid been informed of this information in a timely matter, he could have used it effectively by filing a timely motion to suppress evidence illegally seized, which would have weakened the Tribe's case in chief. Therefore, the information of an illegal seizure was favorable to Mr. Madrid.

Next, the information was suppressed because the late disclosure impeded defense counsel of assimilating the new fact and making an effective use of that information on the eve before trial. "The more a piece of evidence is valuable and rich with potential leads, the less likely it will be that late disclosure provides the defense an opportunity for use." *DiSimone v. Phillips*, 461 F.3d 181, 197 (2d Cir. 2006) (internal quotations omitted). Specifically, "[w]hen such a disclosure is first made on the eve of trial, or when trial is under way, the opportunity to use it may be impaired. The defense may be unable to divert resources from other initiatives and obligations that are or may seem more pressing. And the defense may be unable to assimilate the information into its case. ... Moreover, new witnesses or *developments* tend to throw existing strategies and preparation into disarray." *Leka v. Portuondo*, 257 F.3d 89, 101 (2d Cir. 2001).

Finally, this information was material to the case. Under *Brady*, information is considered material “when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” *Smith v. Cain*, 132 S.Ct. 627, 630 (2010) (quotations omitted). “A reasonable probability does not mean that the defendant ‘would more likely than not have received a different verdict with the evidence,’ only that the likelihood of a different result is great enough to ‘undermine [] confidence in the outcome of the trial.’” *Id.* (quoting *Kyles v. Whitley*, 514 U.S. at 413) (alteration in original).³

The trial court denied Mr. Madrid’s motion to suppress evidence acquired after an illegal search and seizure, “due to surprise and untimely motion, because the case has been pending since May [14], 2018.” Case No. AC-18-003 Judgment and Order Setting Sentencing Hearing, p.1, 13-14. Had the Tribe timely disclosed the information, Mr. Madrid would have filed a motion to suppress the evidence in a timely matter. There is a reasonable probability that the trial court would have granted a timely motion to suppress evidence, which would have effectively undermined the Tribe’s case.

The prosecutor’s obligation is first and foremost to seek justice. Due to the significant amount of power prosecutors have to arrest, charge, and incarcerate the accused, the PYT Code and the United States Supreme Court provided them with guidelines to ensure that defendants receive a fair trial. The Tribe is required to timely disclose information to a defendant regardless of a defendant’s request.⁴ Here, the Tribe failed its duty and obligation with Mr. Madrid.

³ See also *Banks v. Dretke*, 540 U.S. at 698-99 (“[o]ur touchstone on materiality is *Kyles v. Whitley*”); *Kyles*, 514 U.S. at 434 (“The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.”); *United States v. Bagley*, 473 U.S. 667, 682 (1985) (“A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome.”)

b) Officer Wells' personnel file includes impeachment information relevant and favorable information to this case.

When it is uncertain whether information is favorable or useful to a defendant, “the prudent prosecutor will err on the side of transparency, resolving doubtful questions in favor of disclosure.” *Cone v. Bell*, 556 U.S. 449, 470 n.15 (2009); *See also Kyles*, 514 U.S. at 439-40; *Agurs*, 427 U.S. 97, 108, 96 S.Ct. 2392 (1976).

After Mr. Madrid filed his opening brief, the trial court ordered the Tribe to disclose Officer Wells' personnel files to the Office of the Public Defender (the Office) in case *PYT v. Godoy*, CR-19-039. However, the Office is under a protective order to use the file only after requesting permission for the court to do so. Nevertheless, the Tribe alleges Officer Wells' personnel files only relates to use of force. Appellee's Response Brief, p. 23. This assertion is incorrect. Although there were numerous investigations in relation to this officer's excessive use of force, the circumstances where he was investigated reveals failure to follow his department's guidelines and protocols, propensity to write vague police reports, and inaccurately reported incidents.

The trial court, not the prosecutor, admits the evidence into the record at trial. Had the Tribe disclosed the evidence, Mr. Madrid would have been afforded the opportunity to effectively impeach Officer Wells' reliability and credibility. Officer Wells wrote a vague police report in this case, claimed he combined the investigation from May 14 and 15, 2018 in one report, when in fact he did not, provided to nonfactual testimony, and failed to secure a search and seizure warrant as required by law.

Officer Wells' was the Tribe's only witness, and thus the ability to impeach his reliability was extremely important for Mr. Madrid's case. Instead, the Tribe deprived Mr. Madrid of the opportunity to have a fair trial by suppressing relevant evidence that was favorable to Mr. Madrid.

Just as the Tribe is allowed to use a defendant's prior felony convictions to impeach his or her credibility while testifying, the defense is allowed to impeach the credibility of a government's witness to testify against a defendant.

Where, as here, "the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within this general rule." *Giglio*, 405 U.S. at 154. Under *Brady*, evidence "favorable to the accused" and/or "exculpatory" is defined broadly, and the prosecutor has the obligation to turn over many things that do not directly go towards a claim of innocence. *Id. Brady*, 373 U.S. 83. For example, due process requires disclosure of any evidence that provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the Tribe's witnesses, or to bolster the defense case against prosecutorial attacks. *See Kyles*, 514 U.S. at 442. This includes loose police reports that show inconsistent behavior or statements by police, incompetence or failure to follow guidelines or protocols for investigation, and general sloppiness in investigating the crime or in failing to follow leads or investigate anything that would not help convict a defendant. *Id.* at 418. Officer Wells' personnel files indeed should have been disclosed here, or at the very least the Tribe should have informed defense counsel in her first request that there were materials in his files and submitted to a in camera review.

Moreover, the Tribe's claim that Mr. Madrid "failed to his claims of alleged *Brady* and *Henthorn* violations at trial" is disingenuous. Appellee's Response Brief, p. 23. Mr. Madrid did exactly what is the common practice in this jurisdiction — to request the Tribe's via formal letter or email correspondence the disclosure of evidence.⁵ Mr. Madrid specifically stated, "[i]f the Tribe

⁵ The PYT Chief of Prosecutor has specifically requested the Office of the Public Defender to request disclosure directly to the Tribe first. It has been common practice under this jurisdiction until now.

is unsure of the materiality of the information, the records can be submitted to the court for inspection in camera.” The Tribe responded to the request saying, “[u]pon review, no [impeachment] material exists.” On the day after the bench trial, counsel attempted to talk to the Tribe about Officer Wells’ personnel files and the prosecutor assured there was nothing discoverable in Officer Wells’ personnel files.

Defense counsel is entitled to rely on the information provided by the Tribe prior to trial. A similar issue was addressed in *Banks v. Dretke*, 540 U.S. 668, 124 S. Ct. 1256, 157 L. Ed. 2d 1166 (2004). Banks was convicted of murder and sentenced to death. His conviction was largely based on the testimony of two witnesses, in which one was a confidential informant. *Id.* at 676. Despite defense counsel’s request for disclosure about the informants, the prosecutor denied the request on the theory that the information was privileged. *Id.* at 676-77. Based on the prosecution’s assertion, the defense did not file any discovery motions. *Id.* at 677, 692.

When defense counsel discovered the informant had received a generous deal to testify against Banks, Banks filed a third appeal, for the first time alleging the prosecution had concealed information that violated Banks’ Fourteenth Amendment rights. *Id.* at 683. The prosecution repeatedly objected to the appeal on the assertion that “nothing was kept secret from the defense.” *Id.* at 683. Banks filed a federal habeas and the case went to the United States Supreme Court, which found that Banks established cause and prejudice through his *Brady* claim. Specifically, the Court focused on the deceptive nature of the prosecution’s actions through the pretrial, trial, and post-conviction phases of litigation. *Id.* at 696-98.

In *Banks*, the Court explained that a defendant is not required to keep hunting for relevant records or interviews when the State offers open discovery *or explains that such evidence does not exist*. *Id.* at 698. (emphasis added). In its ruling the Court noted, “[w]e assign no overriding

significance to Banks's failure to invoke state court assistance to which he had no clear entitlement." *Id.* at 697. In reality, it is not incumbent on a defendant "to prove these representations false; rather, [a defendant is] entitled to treat the prosecutors' submissions as truthful." *Id.* at 698.

Mr. Madrid only had confirmation there may be discoverable evidence in Officer Wells' personnel files in motions written by the Tribe in *PYT v. Godoy*, CR-19-039. In that case, the Office got the court involved because of contradictory information the Tribe continued to provide about Officer Wells' personnel files. The materials are now disclosed, but defense counsel is barred from introducing it here absent the Court's permission. However, as discussed above counsel vows there are relevant impeachment information that the Tribe concealed from Mr. Madrid.

The law requires the prosecutor to produce *Brady* and *Giglio* materials whether or not the defendant requests any such evidence. *Strickler*, 527 U.S. at 280; *Agurs*, 427 U.S. at 107; *Giglio*, 405 U.S. at 154. The prosecutor must automatically produce impeachment material and "has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Id.*; *Kyles*, 514 U.S. at 433; *Youngblood v. West Virginia*, 547 U.S. 867, 126 S. Ct. 2188, 165 L. Ed. 2d 269 (2006). In sum, Officer Wells' personnel files are material and favorable to Mr. Madrid, and it is troubling that defense counsel had to request three times for evidence and to date has received nothing in this case, when the prosecutor had the duty and the ethical obligation of disclosing information despite defenses request.

c) The Tribe violated PYT disclosure laws and Brady/Giglio when it suppressed Officer Machado's involvement in this case and her report.

Officer Machado was involved in this investigation and wrote a report about it. The Tribe finally disclosed the existence of this information during the appellate phase. The Tribe insists it

has no obligation to disclose the report since the case is on appeal and the record on appeal is limited to the trial court record. The Tribe now also argues that “Officer Machado’s report did not contain exculpatory or impeachment value, and its non-disclosure was not a violation.” Appellee’s Response Brief, p. 29. The Tribe is mistaken.

The Tribe’s argument fails for a number of reasons. The Tribe has an ongoing duty to disclose and failure to do so violates PYT laws of disclosure. In addition, the continued suppression of the evidence violates *Brady/Giglio* because the information was favorable to Mr. Madrid and he was prejudiced by its suppression of relevant information and evidence.

As mentioned above, the prosecutor has a duty to disclose “information in the possession or control of members of his or her staff and of any other persons who have participated in the investigation or evaluation of the case and who are under the prosecutor’s control.” 3 PYTC § 2-2-380(D).⁶ Officer Machado’s report was written in May 2018, well before the trial, and Mr. Madrid was entitled to have the report and to know Officer Machado’s involvement in the case. Mr. Madrid was entitled to this information irrespective of whether it was exculpatory or impeaching, or whether the Tribe intended to call Officer Machado as a witness because the Tribe is required to disclose information in possession of those who are under the prosecutor’s control, and not only what it intends to use at trial. *See generally Roviario v. United States*, 353 U.S. 53, 64, 77 S.Ct. 623 (1957) (holding that the disclosure of a witness identity is necessary because the witness could have “amplify[ied] or contradict[ed] the testimony of government witnesses.”)

⁶ Prior to conviction, a prosecutor is obligated to locate and disclose any impeachment or exculpatory evidence held by any state or federal agency that participated in the investigation or evaluation of evidence. *Kyles*, 514 U.S. 419, 437 (1995) (quoting the ABA Standard for Criminal Justice, Prosecution Function and Def. Function 3-3-11 (a) (3d ed. 1993) and the Model Rules of Prof’l Conduct R. 3.8(d)). This is particularly easy under this jurisdiction where there is only one animal control officer working for this reservation, Officer Machado.

The Tribe further argued, “[a]ppellant has not demonstrated that disclosure of the report would have resulted in a ‘reasonable probability’ of a different outcome” of the trial. Appellee Response Brief, p. 29. This argument is misleading. Mr. Madrid needs to demonstrate that the *cumulative result* of the suppressed evidence violated Mr. Madrid’s rights to a fair trial. *See Douglas v. Workman*, 560 F.3d 1156, 1173 (10th Cir. 2009); *Bagley*, 473 U.S. at 678; *Kyles*, 514 U.S. at 420. A reasonable probability of a different result is accordingly, shown when the government’s evidentiary suppression undermines confidence in the outcome of the trial. *Kyles*, 514 U.S. at 433 (quoting *Bagley* at 682). The suppression of Officer Machado’s participation in this case and the report she wrote about it is only one evidence out of three others the Tribe suppressed in this case. Yet, it was relevant and favorable evidence to Mr. Madrid.

Due process imposes an “inescapable” duty on the Tribe “to disclose known, favorable evidence rising to a material level of importance.” *Id.* at 438. Officer Machado is an officer who has testified as an expert witness for the Tribe in animal cases numerous times and her participation in this case was relevant. She transported the dog to PACC, she observed the dog, she has a Veterinarian Tech degree, and she may have followed up with PACC and had conversations with Officer Wells’, who took Officer Machado’s animal patrol vehicle to seize a dog while Officer Machado was on duty. It is impossible for Mr. Madrid to know the exact extent of Officer Machado’s participation in this case based solely on the Tribe’s assertion without more.

Mr. Madrid’s rights were violated, as he could have been afforded the opportunity to investigate and prepare to call Officer Machado to testify for impeachment purposes, to provide an expert opinion, or to provide additional information defense counsel was expected Doctor Wilcox to testify. Officer Wells testified to information he did not write in his report and the trial court made findings about that testimony. Thus, even if assumed Officer Machado’s report only

included irrelevant information — which Mr. Madrid disagrees, as he demonstrated he would have impeached Officer Wells — the suppression of this information and evidence prejudiced Mr. Madrid in several ways, as Officer Machado’s would be allowed to testify beyond of what is was written in the report, just like Officer Wells did. *See generally Spaziano v. Singletary*, 36 F.3d 1028, 1044 (11th Cir. 1994) (“A reasonable probability of a different result is possible only if the suppressed information is itself admissible evidence or would have led to admissible evidence.”); *United States v. Phillip*, 948 F.2d 241, 249 (6th Cir. 1991) (“information withheld by the prosecution is not material unless the information consists of, or would lead directly to, evidence admissible at trial for either substantive or impeachment purposes”)

III. There is no testimony on the record indicated that there was a failure to provide veterinarian care.

As mentioned in Appellant’s Opening Brief, the Pascua Yaqui Tribe Rules of Criminal Proceedings and the Constitution of the United States require that each element of a crime be proved beyond a reasonable doubt. 3 PYTC § 2-2-430; *See also Alleyne v. United States*, 570 U.S. 99, 104 (2013).

Here, Mr. Madrid was convicted of failure to provide veterinarian care. Under the statute, the essential element is that the animal **receives care and medical treatment** for debilitating injuries, parasites and diseases, sufficient to maintain the animal in good health and minimize suffering. The meaning of the statute is unambiguous. The Tribe failed to prove its case beyond a reasonable doubt.

First, Officer Wells specifically testified he did not check if the dog was already receiving veterinary care. Trial Transcript, p. 19, 4-11; p. 35, 12-14. Second, Officer Wells testified that on May 14, 2018, the dog “was laying on the couch. It usually is active like

the other two dogs, it would come to the fence uh, greet people but it wasn't." Trial Transcript, p. 5, 16-18. On May 15, 2018, the dog got up to greet Officer Wells' and was drinking water. On the next day the dog appears to be acting differently than what Officer Wells first observed, which indicates the suffering was being minimized. Third, Officer Wells testified he was not qualified to "distinguish whether the injuries were from neglect or it could have been an accident." Trial Transcript, p. 18, 1-3. Lastly, the pictures show the dog had food and water.

Officer Wells investigation fell short of proving the statute the Tribe elected to charge Mr. Madrid. The dog had food, water, and shelter, and there is no evidence on the record of the type of injuries the dog suffered and whether there was a treatment already in place. The pictures suggest that the dog was acting better on May 15 than it was on May 14. The Tribe needed to prove Mr. Madrid failed to provide care and medical treatment, which it failed in this case.

IV. Conclusion

Based on the foregoing, Mr. Madrid respectfully asks this Court dismiss the case with prejudice due to the Tribe's disclosure violations, or to overturn Mr. Madrid's conviction and find there was insufficient evidence to convict Mr. Madrid. Alternatively, Mr. Madrid requests that a trial *de novo* be granted, so he is afforded the opportunity to have a fair trial where his constitutional rights are protected.

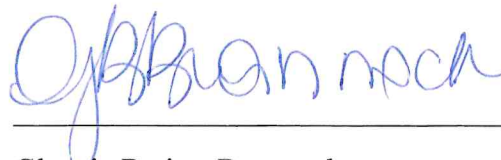
CERTIFICATE OF SERVICE

On May 21, 2019, the original and three copies of the *Appellant's Opening Brief* were filed and conforming copies were sent to the following:

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Antonio Madrid, Appellant

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Attorney for Appellant Antonio Madrid

IN THE PASCUA YAQUI COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

ANTONIO MADRID,
Appellant,

v.

PASCUA YAQUI TRIBE
Appellee.

) APPELLATE CASE NO. CA-19-003
)
) PASCUA YAQUI TRIBAL COURT NO.
) AC-18-003
)
)
)
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)
)

APPELLANT SUPPLEMENTAL BRIEF

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MEMORANDUM OF POINTS AND AUTHORITIES

Appellant/Defendant, Antonio Madrid, through counsel, pursuant to 3 PYT § 2-2-300, respectfully submits supplemental briefing as requested by this Court on whether the PYT Court of Appeals have authority to stay appellate matters and remand it to the trial court for further proceedings. After careful review of this Tribe's code and applicable rules, Mr. Madrid argues that this Court has broad discretion to stay the appeal and remand the case with the trial court, as well as accept jurisdiction to review on appeal evidence that was not introduced at trial due to no fault of Mr. Madrid.

Mr. Madrid filed a motion for mistrial/vacate convictions or alternatively to grant a new trial with the trial court on March 21, 2019. He also filed with this Court a motion to stay the appeal and remand the case with the trial court on the same day. Due to no orders issued in his motion and for concerns that failure to follow the deadline would constitute a waiver of his appeal rights, Mr. Madrid filed his Appellant Opening Brief on April 5, 2019. Because an appellate brief has already been filed and responded and a reply will be filed by the deadline, and because PYT statute clearly permits this Court to consider Mr. Madrid's claims on appeal, Mr. Madrid defers to the Court's discretion on whether to stay the Appeal or proceed with it.

The accompanied memorandum of points and authorities supports this brief.

STATEMENT OF FACTS

Mr. Madrid incorporates by way of reference the facts outlined in his Appellant Opening Brief filed on April 5, 2019.

Additionally, on April 10, 2019, the trial court denied Mr. Madrid's motion to lift the stay and declare a mistrial for finding to have no jurisdiction to entertain the motion. The trial court ordered the denial of Mr. Madrid's motion "until the Court of Appeals resolves the matter." (*See*

Appellant/Defendant Exhibit A). In its order, the trial court indicated there is not post-conviction relief proceedings in the code. *Id.*

LAW AND ARGUMENT

According to 3 PYTC § 2-3-50, “the appellate court may, upon motion for good cause shown, suspend the requirements or provisions of any of these rules in a particular case, and may order proceedings in accordance with its discretion. These rules shall be construed to do justice.” Therefore, this Court has broad discretion to order a stay of appellate proceedings and remand the case to the trial court or review a case with new evidence introduced and determine the appropriate relief, if justice so requires.

The Tribe mistakes its interpretation of 3 PYTC § 2-3-110 (A)(1) that it limits the appellate review to the record created at the trial court level. The statute rather describes that the trial court shall submit to the appellate court the original documents, not copies, filed with the trial court clerk.¹ It is clear the code does not limit the Appellate Court’s review of the case to the trial court’s record. In fact, this Court has looked outside of the trial court record. *See PYT v. Campoy*, CA-07-009, p. 4 (Ct. of App. 2011) (“the Court of Appeals checked several closed criminal cases between 2002 until the present and every case where disclosure documents were submitted contained a Notice of Disclosure.” In holding that the prosecutor failed to properly disclose). The Tribe also has introduced evidence on appeal that it failed to introduce with the trial court. In *PYT v. Alvarez*, CA-18-002 (Ct. of App. 2018), the Tribe appealed to the evidentiary hearing held on May 2, 2018. During the evidentiary hearing, the Tribe failed to move the trial court to admit the alleged victim 911 call. On Appeal, it introduced the call to its

¹“The papers making up the record on appeal shall be the original papers, exhibits and other objected filed with the trial court clerk, a reporter’s transcript, transcription of an electronic recording or narrative or agreed statement, and copies of all entries.” 3 PYTC § 2-3-110 (A)(1)

brief to support its claim that the actions were not continuous. Although defense counsel objected to the introduction of 911 call, the Tribe nevertheless in its reply brief indicated that this Court *may* choose to disregard it or to consider.

The Tribe also cited to other jurisdictions case law to support its argument that this Court is not allowed to review evidence on appeal. However, other jurisdictions do not have a statute similar to 3 PYTC § 2-3-50, granting broad discretion in this Court to change the rules in the name of justice. Other jurisdictions also provide a defendant with opportunities to pursue state post-conviction relief claims and federal habeas relief, which this jurisdiction does not.

Moreover, the Tribe cites to *PYT v. Soto* and *PYT v. Coleman*, indicating that this Court is only allowed to review what happened at the trial court level. This argument is misguided. In *Soto*, one of the issues was whether an appeal should be dismissed due to the “Plaintiff/Appellant Tribe’s (Tribe) failure to file a transcript within thirty days of filing its notice of appeal; or alternatively, due to the Tribe’s failure to file the trial court record with this Court[.]” *Soto*, CA-06-010 (Ct. of App. 2007). In *Coleman*, the special action petition remanded the issue of admissibility of the evidence because although the issue was contemplated during trial court proceedings, there was no motion filed on the matter. “Therefore, [the] case [was] remanded for the Tribal Court to determine whether the motion was properly raised before the Tribal Court.” *Coleman*, CA-15-003, p.4 (Ct. of App. 2015). Although this Court has indicated it would “not review evidence that has not been submitted to and considered by the Tribal Court[.]” all the cases the Tribe cited involved evidence that existed during the trial court’s proceedings and it was *known* to all parties, which differs from the case in question. *Id.* at 5.

The present case involves issue of due process where Mr. Madrid was and is being prejudiced by the Tribe’s suppression of evidence that was only discovered after the trial and

sentencing. This Court have addressed disclosure violations issues numerous times in the past. *See* *PYT v. Campoy*, CA-07-009 (Ct. of App. 2011) (affirming dismissal of a case with prejudice due to the Tribe's failure to comply with disclosure rules); *PYT v. Soto*, CA-06-010 (Ct. of App. 2007) (upholding the trial court's dismissal with prejudice for failure to comply with disclosure); *PYT v. Molina*, CA-04-002 (Ct. of App. 2006) (Affirming the "power of the Tribal Court, both *Trial and Appellate*, to impose sanctions as necessary" when the prosecutor violates disclosure laws) (emphasis added). Although in those cases such violations were discovered before trial, the fact that the violation was discovered after trial does not waive the right to contest as the Tribe has an ongoing obligation to disclose information and this Court has recognized its power to sanction the Tribe due to disclosure violations. *See* 3 PYTC § 2-2-410 ("if *at any time* after a disclosure has been made any party discovers additional information or material which would be subject to disclosure had it then been known, such party shall promptly notify all other parties of the existence of such additional material, and make an *appropriate disclosure*.") (emphasis added).

The Supreme Court of the United States has made clear that constitutional claims exceeding the scope of the trial record must be brought at the first available opportunity, i.e. either on direct appeal or state post-conviction proceedings. *See generally Trevino v. Thaler*, 133 S.Ct. 1911 (2013) (discussing a defendant's meaningful opportunity to raise an ineffective assistance of counsel claim in state court proceedings and whether lack of such meaningful opportunity constitutes a procedural default in federal habeas claims). Mr. Madrid's only meaningful opportunity to raise his claim is now on direct appeal because there is no post-conviction relief proceedings in the PYT code nor is there a federal habeas option for

Mr. Madrid. *See* 3 PYTC § 2-2-540(B) (A federal writ is only permitted if a defendant is arrested.)

CONCLUSION

Mr. Madrid agrees with the Tribe that this Court has discretion to stay the appellate proceedings and remand it to the trial court. However, Mr. Madrid disagrees with the Tribe that this Court would be limited to review only the record made with the trial court because 3 PYTC § 2-3-50 affords this Court discretion to “suspend the requirements or provisions of any of these rules in a particular case, and may order proceedings” if justice so requires. Because the PYT code does not provide post-conviction relief proceedings nor grants leave for a defendant to file a federal habeas claim, to ignore materials that did not emerge until the appellate proceedings started would be to reward the prosecutor for withholding evidence. *See Gonzalez v. Wong*, 667 F.3d 965, 980 (9th Cir. 2011).

Whereof, Mr. Madrid respectfully submits to this Court’s discretion the appropriate course of action.

RESPECTFULLY SUBMITTED this 17th day of May 2019.

PASCUA YAQUI PUBLIC DEFENDER



Gláucia Batista Brannock
Deputy Public Defender
Attorney for Antonio Madrid

The original of foregoing was filed in Pascua Yaqui Tribal Court on May 17, 2019, and copy of was delivered this same date to:

Pascua Yaqui Office of the Prosecutor
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Tucson, AZ 85757

Ben Casey
Pascua Yaqui Tribe Court of Appeals

Conforming copy to Antonio Madrid, Appellant/Defendant

IN THE PASCUA YAQUI COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA

ANTONIO MADRID

Appellant

vs.

PASCUA YAQUI TRIBE,
OFFICE OF THE PROSECUTOR,

Appellee

APPELLATE CASE NO: CA-19-003

TRIBAL COURT CASE NO: AC-18-003

Supplemental Briefing re: Stay Powers

The Tribe respectfully submits the following memorandum of points and authorities to this Court regarding whether the Court has the authority to stay an appellate case. For the reasons discussed below, the Court has stay powers. The Tribe takes no position on whether this particular case should be stayed and, instead, defers the matter to this Court’s discretion.

The Tribe incorporates by way of reference the facts as outlined in its Response to the Appellant’s Opening Brief, which was filed on May 6, 2019. On April 3, 2019, counsel for both parties were informed that this Court desired supplemental, and limited, briefing regarding whether the Court of Appeals has the authority to stay a proceeding under the Pascua Yaqui Tribal code.¹

¹ Based on statements contained in the Appellant’s opening brief, undersigned counsel is ethically required to clarify the record. Undersigned counsel spoke with Appellant’s counsel on April 3, 2019. Undersigned counsel had three different appellate briefs due in *PYT v. Thomas*, CA-19-002, *PYT v. Rodriguez*, CA-19-004, and *PYT v. Valencia*, CA-19-005 on April 5, 2019. All of these appellate briefs involved complex legal issues in the area of criminal and/or Indian law. During conversations with counsel, undersigned counsel indicated that she would not be able to adequately research the “stay” issue as requested by this Court — or to discuss the form of a proposed order regarding a stay, or to begin to draft the requested supplemental briefing — until April 5, 2019. Out of an abundance of caution, counsel for both parties

The Appellee hereby submits its notice of supplemental briefing and authority. The Appellee also reiterates its position, as documented in the Appellant’s Emergency Motion for Stay that it takes no position regarding the request for stay and, instead, defers the issue to this Court’s discretion. *See* “Motion to Stay Appeal...”, CA-19-003, at p. 3 (March 21, 2019). The Appellee leaves the request for stay to the sound discretion of this Court, but respectfully requests that the Court consider the following summary of points and authorities when determining whether the discretionary issuance of a stay is within the interests of justice.

I. The Pascua Yaqui Tribal Code does not specifically discuss whether the Court of Appeals has the power to stay proceedings, or to remand proceedings to the trial court level; however, this Court’s inherent powers include that of stay.

Appellate proceedings in this jurisdiction are governed by the Pascua Yaqui Tribal Code Rules of Appellate Procedure. *See generally* 3 PYTC § 2-3-30, *et seq.* The rules allow this Court, “upon motion for good cause shown,” to “suspend the requirements or provisions of any” of the appellate procedural rules “in a particular case.” 3 PYTC § 2-3-50. This includes shortening or extending the deadline for the filing of appellate briefs. 3 PYTC § 2-3-70(B).² In the event that any normal rules of procedure are suspended, this Court “may order proceedings in accordance with its discretion.” *Id.* Further, and in the spirit of the Pascua Yaqui Tribal Code and Rules, the rules of appellate procedure “shall be construed to do justice.” *Id.* Justice is not a one-way street but,

discussed the fact that no official stay had been granted, nor a request and subsequent order extending the deadline for Appellant’s opening brief issued. As a result, and in the interest of ensuring that the Appellant did not lose his right to appeal due to a technical late filing of his opening brief, the parties discussed the Appellant submitting his brief by to the April 5th deadline previously imposed by this Court. The parties also discussed how this course of action would allow the parties to comply with the Pascua Yaqui Rules of Appellate Procedure, while still submitting the requested supplemental briefing requested by this court as to the “stay” issue. Finally, the parties described possible courses of action in the event that the Appellant wished to supplement the issues raised in his opening brief in the event that the case is remanded to the trial court for further development of the record. Counsel reached an understanding wherein the Appellee would not object to the Appellant amending his opening brief so long as the Appellee was given an adequate chance to respond to any arguments not raised in the April 5th filing.

² “The time for doing any act provided for in [the rules of appellate procedure], or by order of the appellate court, or by any applicable law, may be shortened or extended upon stipulation of the parties and filed with the appellate court, or upon written motion for good cause shown.” *Id.* The only caveat provided by this rule is that the Court may not alter the deadlines for the filing of a notice of appeal. *Id.*

rather, an avenue that should encourage the parties to make a record and fully litigate issues at the trial court level prior to submitting briefing to an appellate court for review. It is also a boulevard that requires the reviewing Court to evaluate justice from the perspective of both parties, and from the perspective of justice provided by the Pascua Yaqui Tribal Code.

3 PYTC § 1-2-30 sets up the structure of the Pascua Yaqui Tribal Courts. It specifically establishes separate trial and appellate courts. *Id.* Art. VIII, § 5, Pascua Yaqui Const., specifically outlines the Appellate Court’s responsibilities and power as a court of review. While the Court can order trial *de novo* in criminal cases, its primary duty is to review lower court proceedings for error. *Id.* Being a court of review, it is limited to the record created at the trial court level. The Pascua Yaqui Rules of Appellate Procedure expressly state that the record on appeal “shall be the original papers, exhibits and other objects filed with the trial court clerk, a reporter’s transcript, transcription of an electronic recording or narrative or agreed statement, and copies of all entries.” 3 PYTC § 2-3-110(A). “If a dispute arises as to whether the record discloses what actually occurred in the trial court, the difference shall be settled by the trial court, and the record made to conform to the truth.” 3 PYTC § 2-3-110(I).


“The trial court record is critical to the appellate process because the appellate court uses it to understand what occurred” before the trial court. *Soto*, CA-06-010, at p.5 (*citing Lamone v. Navajo Nation*, 3 Nav. R. 87 (1982)). “[A]n appellate court can only rule on issues in the record.” *Id.* at 6 (*emphasis added*). Further, the Court of Appeals has the power to remand a case to flesh out the record regarding individual issues. *See e.g. PYT v. Coleman*, CA-15-003, p.1 (special action petition in which the Court of Appeals remanded two of the issues raised by the parties regarding disclosure and the admissibility of evidence to the trial court). Additionally, the Court has refused to consider evidence “that has not been submitted to and considered by the Tribal Court” in the past. *Id.* at 5 (*citing United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) (indicating that an appellant

bears the burden of an incomplete factual record)); *also, PYT v. Campoy*, CA-07-009, p.3 (PYT Ct. App., Jun. 17, 2011) (finding that the prosecution erred in failing to file a formal disclosure pleading with the court, even though the prosecution indicated it had sent a letter to defense counsel, where there was no information in the record indicating the defense had received the letter); *but also see Id.* at 4 (indicating that the sole appellate judge involved in the case checked unrelated case files from previous years). The Court has, likewise, previously stayed appellate proceedings. *See e.g. PYT v. Jaimez*, CA-17-005 (PYT Ct. App. Jul. 10, 2017) (staying appeal to allow proceedings in a related appeal to go forward).

II. CONCLUSION:

It is the Tribe's position, as outlined in its Repsonse brief, that this Court may choose to rule on the record before it. However, the Court has the power to stay a case, or even to remand it to the trial court if it feels that further development of the record is necessary. The Tribe takes no position on the Appellant's motion for stay and, instead, leave89s the matter to the sound discretion of this Court.

RESPECTFULLY submitted this 7th day of May, 2019.



Coleen Thoene
Deputy Prosecutor

CERTIFICATE OF SERVICE

I hereby certify that the Tribe's pleading was delivered this date to:

Benjamin Casey
Ben.Casey@pascuayaqui-nsn.gov
Clerk of the Court of Appeals
Pascua Yaqui Court of Appeals
7777 S. Camino Huivisim
Tucson, AZ 85757

And that one (1) copy of the Tribe's pleading was delivered, this date to:

Glaucia Brannock
Glaucia.Brannock@pascuayaqui-nsn.gov
Pascua Yaqui Office of the Public Defender
7474 S. Camino de Oeste
Tucson, AZ 85757

And that one (1) copy of the Tribe's pleading was delivered this date to:

Associate Judge Melvin Stoof
Pascua Yaqui Tribal Court
7777 S. Camino Huivisim
Tucson, AZ 85757

Dated this 7 day of May, 2019.

PASCUA YAQUI PROSECUTOR



Coleen Thoene
Deputy Prosecutor

**IN THE PASCUA YAQUI COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA**

ANTONIO MADRID

Appellant

vs.

PASCUA YAQUI TRIBE,

Appellee

APPELLATE CASE NO: CA-19-003

TRIBAL COURT CASE NO: AC-18-003

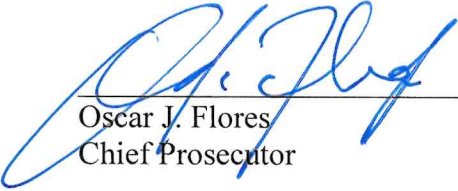
APPELLEE/RESPONDENT'S SUPPLEMENTAL EXHIBITS

Oscar J. Flores,
Chief Prosecutor
Kendrick Wilson, Coleen Thoene,
Deputy Prosecutors
Pascua Yaqui Office of the Prosecutor
7777 S. Camino Huivisim
Bldg. A, 2nd Floor
Tucson, AZ 85757
Telephone: (520) 876-6251
Oscar.J.Flores@pascuayaqui-nsn.gov

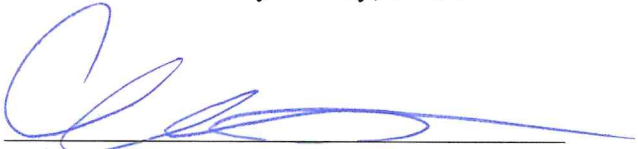
Attorneys for the Pascua Yaqui Tribe

In its Response to the Appellant's Opening Brief, also filed this date, the Appellee made reference to several exhibits. Those exhibits are attached to this pleading for this Court's consideration pursuant to 3 PYTC § 2-3-110(c) and (e).

RESPECTFULLY submitted this 6th day of May, 2019.



Oscar J. Flores
Chief Prosecutor



Coleen Thoene
Deputy Prosecutor

CERTIFICATE OF SERVICE

I hereby certify that the Tribe's pleading was delivered this date to:

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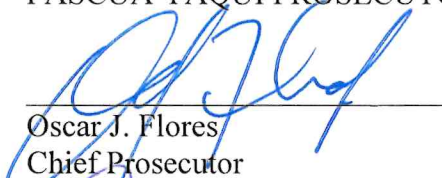
Glaucia Brannock
Glaucia.Brannock@pascuayaqui-nsn.gov
Pascua Yaqui Office of the Public Defender
7474 S. Camino de Oeste
Tucson, AZ 85757

And that one (1) courtesy copy of the Tribe's pleading was delivered this date to:

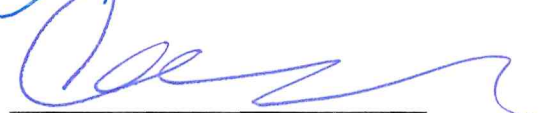
Associate Judge Melvin Stoof
Pascua Yaqui Tribal Court
7777 S. Camino Huivisim
Tucson, AZ 85757

Dated this 6 day of May, 2019.

PASCUA YAQUI PROSECUTOR



Oscar J. Flores
Chief Prosecutor

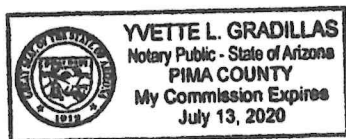


Coleen Thoene
Deputy Prosecutor

Sworn before me this 6th day of May, 2019



Notary Signature



Appellee's Exhibit A
(Copy of Criminal Complaint and Affidavit filed
in *PYT v. Madrid* AC-18-003)

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA

2018 MAY 24 PM 1:26

Pascua Yaqui Tribe,
Plaintiff,

vs.

MADRID, ANTONIO FRANCISCO
AKA: Tony

Defendant.

Case No. DOCKET NO. AC-18-003

CLERK *lw*

ANIMAL CONTROL COMPLAINT

The PASCUA YAQUI TRIBE, hereby complains and alleges, upon information and belief, that the above named defendant, an Indian, while on the Pascua Yaqui Reservation, did commit the following offense(s):

COUNT 1: 8 PYTC § 6-1-60 (B) (4) ~ Failure to Provide Veterinary Care

On or about May 14, 2018 at approximately 9:45 p.m., at or near 7600 S. Camino Huivisim, Defendant failed to provide that an animal under his care, custody or control received care and medical treatment for debilitating injuries, parasites and diseases, sufficient to maintain the animal in good health and minimize suffering, to wit: *Failed to provide veterinary care for a dog with scabs and open sores.*

And such violations, upon conviction, are punishable under the Pascua Yaqui Tribal Codes. The undersigned hereby swears or affirms that this complaint is based upon information and belief, and the attached Affidavit and Verification, or signed statement.

DATED this 24th day of May, 2018.

Meredith D. V. [Signature]
Complainant/Attorney

Pursuant to Article I, § 1(g) of the Pascua Yaqui Constitution, 4 PYTC § 4-20, and 25 U.S.C. § 1302(a)(b), If found guilty at sentencing or plea agreement, the Pascua Yaqui Tribe will seek punishment that includes imprisonment.

DEFENDANT: Antonio Francisco Madrid
ADDRESS: 7621 S. Camino Huivisim, Tucson, AZ 85757
DOB: 03/09/1955 SSN: 526-13-3569 ORIGIN: Pascua Yaqui Tribe #2694U06504
SEX: Male HT: 5'06" WT: 170 EYES: Brown HAIR: Black

Note: Accused persons may obtain disclosure information about their case ten days after arraignment by contacting the Prosecutor's Office at 7777 S. Camino Huivisim, Bldg. A, 2nd Floor, Tucson AZ 85757. [3 PYT R.Crim.P. Rule 38]

MAY 15 10 58 AM '18

**IN THE PASCUA YAQUI TRIBAL COURT
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**

AL COURT
TIME

1:26

AC-18-003

PASCUA YAQUI TRIBE, Plaintiff

Vs.

Madrid, Antonio F., Defendant

DOCKET NO. _____
CLERK _____ *mm*

COURT USE ONLY

Case Number
P18051439

PROBABLE CAUSE STATEMENT

AFFIRMATION

1. I **3L28-Kevin Wells** being a duly authorized law enforcement officer of the Pascua Yaqui Indian Tribe and for the Pascua Yaqui Indian Reservation, declare under penalty of perjury, the following is true and correct:

- A. I am the arresting officer in this case; OR
- I am a law enforcement officer and make this statement on information and belief derived from Officer .

2. **SUSPECTED PARTY (Defendant)**

Name: **Madrid, Antonio F.**

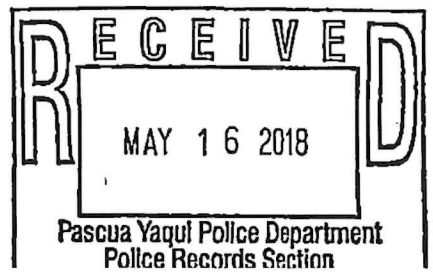
Driver's license number: **B13516506**

Tribal enrollment number: **2694U06504**

Date of birth: **3/9/1955**

Madrid, Antonio F. is an enrolled member of the **Pascua Yaqui** Tribe.
 is an Indian subject to the jurisdiction of the Pascua Yaqui Tribe.

3. The defendant was **Long Formed without a warrant** on **5/15/2018** at **15 MAY 2018 PM 4:12**
3:00:00 PM



4. I have probable cause to believe that the defendant committed the following offense(s) at or near **7600 S Camino Huivisim** which is within the exterior boundaries of the Pascua Yaqui Indian Reservation.

PYTC 8 PYTC 6-1-60A5c Cruelty of Animals

Select... 8 PYTC 6-1-60B4 Neglect of Animals

5. Statement of Probable Cause:

Narrative:

On May 14, 2018 at approximately 2145 hours, I was at 7600 Camino Huivisim on an unwanted person (P18051438) when I observed an brown medium sized dog with scabs and opens sores all over its body. I have seen this dog at this residence before and it was moving and friendly. Today the dog would not move, lying on a couch under the carport shaking as if cold.

The dog has been at this residence for over 6 months and kept in the yard by a fence the owner of the residence keeps secure. The owner of the residence is Antonio Francisco Madrid, DOB 03/09/1955. I could not locate Mr. Madrid after finishing the previous call.

The information contained herein is true and accurate to the best of my knowledge and belief.

6. I request that the Court make a probable cause determination and, if the defendant is custody, that he be continued in custody, pending further proceedings.

Kevin W. Wells
Signature of Officer

EXECUTED ON: May 15, 2018
Date

Appellee's Exhibit B
(Copy of Judgment and Order Setting Sentencing
Hearing, filed in *PYT v. Madrid* AC-18-003)

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)	
PLAINTIFF,)	CASE NO. AC-18-003
vs.)	JUDGMENT AND
MADRID, ANTONIO)	ORDER SETTING
DEFENDANT.)	SENTENCING HEARING

The defendant, Antonio Madrid, appeared for a bench trial, on December 12, 2018, and he was represented by legal counsel, Annmarie Valdivia. Appearing for the Tribe was Kendrick Wilson. Also appearing was Officer Kevin Wells, Belinda Makes Room for Them and Lilian Contreras.

The court held a trial, heard testimony, reviewed documentary evidence, and it finds the defendant guilty beyond a reasonable doubt to Count One, Failure to Provide Veterinary Care. The court denied the defendant's motion to suppress due to illegal seizure of the dog without a warrant, due to surprise and untimely motion, because the case has been pending since May 24, 2018.

The Tribe's Exhibit 2, a certificate of Indian blood and Pascua Yaqui Tribal Enrollment Program record, was admitted as an official record of the Tribe and as a self-proving public record under Pascua Yaqui Rule of Evidence, Public Records and F.R. Evid 803(8).

The court finds as follows: Based on the testimony of Officer Wells, in the evening of May 14, 2018, at the address of 7621 S. Camino Huivisim, within the reservation, at approximately 9:30 p.m., the defendant, Antonio Madrid, had control of 3 dogs in his yard which was secured by a fence and locked gates. Officer Wells observed an older dog sitting on a couch near a door to the home, and the dog appeared with red splotches over the dog's chest, face, paws and other parts of its body. There appeared to be loss of hair on the animal, and as the officer approached closer, he tried to contact the owner of the home, Antonio Madrid, without success.

The next day, officer Wells, returned to the 7621 S. Camino Huivisim address to check on the animal, and in the daylight he observed large scabs on the dog, the officer took photos of the animal. The officer unhooked the chain link fence, entered the yard, and seized the animal, due to the dog's poor condition, and took the dog to animal control. Animal control was not there to check on whether the animal had a chip, because the machine that reads such imbedded chips was broken and was not replaced. The dog had no tags, so there would not have been any way to determine ownership through tags. The officer explained that he had returned after 18 hours from his first view of the dog the previous day, because he has priority calls to cover.

1 The court denied the defendant's motion for directed verdict, because the Tribe met its
2 burden.

3 Defendant's witness, Lilian Contreras, showed photos she took of the home on
4 November 15, 2018, but she admitted that she did not see the dog or its condition on either
5 May 14, 2018 or May 15, 2018. Belinda Makes Room for Them testified that she has known
6 Mr. Madrid all of his life and that he has never owned any dogs. She stated that there are
7 holes in Mr. Madrid's fence and she has seen stray dogs wander into the yard through small
8 holes in the fence, or when a guest has left his gate open. She also stated that she did not see
9 the dog on May 14, 2018 or May 15, 2018.

10 Officer Wells indicated he had seen the dog several times in the past in the defendant's
11 yard, but he could not provide specific dates as to when he previously saw the dog in the
12 defendant's yard.

13 The court finds credible the testimony of the officer and Wells who was upset about
14 the dog's condition, took action necessary to ensure it was provided medical care, and took
15 photos to memorialize the dog's condition on May 15, 2018.

16 The court finds that the Tribe has proven beyond a reasonable doubt that the defendant
17 committed the offense of Count One, Failure to Provide Veterinary Care, based on the
18 testimony and observations of officer Wells and as supported by substantial evidence of the
19 dogs injuries, through the officer's photos taken the next day, showing the mange on the dog,
20 scabs, red sores on its face, ears, cheeks, chest, front legs and paws that went untreated,
21 resulting in pus filled sores on the dog. The court denies the defendant's motion to dismiss,
22 due to lack of ownership, because the statute holds accountable those individuals, whose
23 animal are under their care, custody or control. The three dogs and diseased dog seized by the
24 officer, were within the custody and control of the defendant, who had placed them into the
25 yard of Mr. Madrid, which is surrounded by a chain link fence and a locked gate.

26 The court should set the matter for a sentencing hearing and the court should grant the
27 Tribe's request to maintain the current release conditions until the defendant may appear for
28 sentencing hearing in this matter.

IT IS ORDERED that the defendant, Antonio Francisco Madrid, is found guilty
beyond a reasonable doubt, of Count One, Failure to Provide Veterinary Care.

The defendant shall be released on a \$100.00 bond, suspended, he shall appear at all
future hearings, and obey all laws.

IT IS FURTHER ORDERED that this matter shall be set for a sentencing
hearing on January 4, 2019 at 10:00 a.m..

THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

1 IT IS FURTHER ORDERED that probation shall provide the court with its pre-
2 sentence report, no later than December 31, 2018.

3 SO ORDERED THIS 12th DAY OF DECEMBER, 2018.



4
5 Associate Judge Pascua Yaqui Tribal Court

6 cc: Date 12/14/18
7 Tribe Defendant/Counsel Probation

8 *Monica Romero*
9 Clerk

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Appellee's Exhibit C
(Copy of Transcript of Trial Proceedings, filed in
***PYT v. Madrid* AC-18-003)**

1 THE PASCUA YAQUI TRIBAL COURT
2 IN AND FOR THE PASCUA YAQUI INDIAN NATION

3 PASCUA YAQUI TRIBE,) Case No.: AC-18-003
4 Plaintiff,)
5 vs.)
6)
7 ANTONIO MADRID) Pascua Yaqui Nation
8 Defendant.) Tucson, Arizona
9) December 12, 2018
10) 8:58 a.m.
11)

12 BEFORE: THE HONORABLE MELVIN STOOF, TRIBAL JUDGE

13 TRANSCRIPT OF PROCEEDINGS: BENCH TRIAL

14 APPEARANCES:

15 For the Tribe:

16 Pascua Yaqui Tribe –Office of the Prosecutor
17 Kendrick Wilson, Deputy Prosecutor
18 7777 S. Camino Huivism
19 Tucson, AZ 85757
20 (520) 879-6251

21 For the Defendant:

22 Pascua Yaqui Tribe – Office of the Public Defender
23 Glaucia Brannock, Deputy Defender
24 Annamarie Valdivia, Senior Staff Attorney
25 4725 W. Calle Tetakusim, Bldg. B.
Tucson, AZ 85757
(520) 883-5013

Transcripts prepared by: Marliza S. Rivera, JD, University of Arizona, James E. Rogers College of Law, Indigenous Peoples Law and Policy Program, LL.M. Candidate, Extern for the Office of the Public Defender at the Pascua Yaqui Nation.

21 MAR 2019 AM 11:51

1 PROCEEDINGS

2 (Proceedings Commenced at 8:58 a.m., as follows:)

3 **The Court:** This is AC 18003 Pascua Yaqui Tribe vs. Antonio Madrid. He is present
4 with counsel, Annamarie Valdivia and Glaucia Brannock, and for the Tribe, Kendrick Wilson.
5 And is the Tribe ready to proceed?

6 **Mr. Wilson:** We are your Honor. The Tribe notes for the court that the Tribe's only
7 witness is Officer Kevin Wells who is the Tribe's investigating officer and we are moving to
8 invoke the rule.

9 **The Court:** And is your client waiving reading of rights or would you like to have rights
10 read?

11 **Ms. Brannock:** No. Your Honor we waive reading our rights but I do have two
12 preliminary matters, first I just would like the Court to know that Ms. Valdivia has a hearing at
13 10, in front of Judge Flores so she may have to step out for a few minutes for that hearing, just
14 would like the court to be aware of it, and I would also like to, make an oral motion, to suppress
15 the Tribe's evidence. In this case, the pictures, Officer Wells took pictures of the dog in Mr.
16 Madrid's residence. He entered, he entered the residence without a warrant, according to his
17 report, Mr. Madrid keeps the house secure. His first report was done on May 14th at 10pm. He
18 returned to Mr. Madrid's house 18 hours later to seize the dog and there was no attempt to secure
19 a warrant or no attempt to contact Mr. Madrid. So I'm making oral motion to suppress those
20 pictures. Thank you.

21 **Mr. Wilson:** Your Honor the Tribe would object to this motion as being untimely. The
22 trial has been set for quite some time now, this is the morning of trial when this is being made. If
23 the court does entertain that motion I would note for the court that there were exigent
24 circumstances in this case, as evidenced by the photographs of the condition of the dog. The
25 report also indicates that officer Wells was unable to locate Mr. Madrid and had tried to do so.

1 Because of that, after waiting until the next day, still unable to locate him, I believe the court, in
2 reviewing those photographs, will see what the exigent circumstances were for seizing that dog,
3 given the condition of the dog in this case. So for those reasons, if the court is willing to entertain
4 the untimely motion, we would ask that it be denied.

5 **Ms. Brannock:** Your Honor, I understand that this may be untimely however, this is for
6 my client's rights. I don't understand the, the [inaudible] sorry, exigent circumstances because it
7 was 18, he waited until 18 hours later to go back. It was almost the end of the day of the next
8 day. So, if he waited 18 hours he could easily have secured a warrant and that would make it
9 easier to locate Mr. Madrid and even check if the, if the dog was his or even if the dog was being
10 cared for. Thank you.

11 **The Court:** I'm going to deny the motion to suppress for untimeliness as a surprise and
12 does not afford the Tribe a reasonable opportunity to respond to the allegations. And although
13 this is not a jury trial, the court regularly follows the federal rules that any pre-trial motion
14 affecting the outcome of the case, including motions to dismiss, motion to suppress, should be
15 filed seven days prior to any trial date so I follow that as a general rule. There's no provision in
16 our code that states that but in any event the court's practice has been that in order to have avoid
17 last minute, as I used to call it, a trial by motion, motion by ambush. I've set that seven-day rule
18 in all of them. Jury trials at least. But the court's going to deny based on surprise and the late
19 filing. And the rule has been invoked. And you have just one witness?

20 **Mr. Wilson:** We have just one witness but I believe the defense has [inaudible]...

21 **Ms. Brannock:** We have two.

22 **The Court:** Okay we'll go ahead and swear-in all witnesses. Anyone who is going to
23 testify, if you could raise your right hands. Do you swear or affirm that the testimony you're
24 about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

25 **Witness:** I do.

1 **The Court:** Ok. And the rule of exclusion has been invoked. (Cough) Excuse me. And as
2 an effect, it means it has to be observed by all witnesses during the trial until it's over and until
3 the result is [inaudible] announced. This will mean that all witnesses have to remain outside of
4 the courtroom during the entire trial except when you are being called to the witness stand. Now
5 the witnesses will have to wait in the waiting area, to be directed by the bailiff, unless other
6 arrangements have been made with the attorney who is calling them. And the rule forbids
7 witnesses from talking to anyone but their lawyers. And then if the witnesses do talk to the
8 lawyers about their testimony, other witnesses and jurors, there's no jurors here, they should
9 avoid being present or over-hearing. And the [inaudible] the lawyers know this, and that they
10 should be aware from time to time to lookout, keep a careful lookout to prevent any potential
11 witnesses from remaining in the court room if they inadvertently enter. Of course the defendant
12 can remain in the courtroom. We'll go ahead and excuse the other witnesses until they're called.
13 Thank you. Ok, waiving reading of complaint or would you like to have the complaint read?

14 **Ms. Brannock:** We'll waive, your Honor.

15 **The Court:** Any openings?

16 **Mr. Wilson:** The Tribe waives opening, Your Honor.

17 **Ms. Brannock:** Reserved.

18 **The Court:** Ok. And you can call your first witness, Mr. Wilson.

19 **Mr. Wilson:** The Tribe calls Officer Kevin Wells to the stand. Good Morning. Would
20 you please introduce yourself?

21 **Officer Wells:** My name's officer Kevin Wells. I'm with the Pascua Yaqui Police
22 Department.

23 **Mr. Wilson:** And how long have you been with the department?

24 **Officer Wells:** I've been with the department approximately 18 years.

25 **Mr. Wilson:** And back on May 14, 2018, were you on duty that day?

1 **Officer Wells:** Yes, I was.

2 **Mr. Wilson:** That evening did you happen to come upon 7600 Camino Huivism?

3 **Officer Wells:** Yes, I responded to that address on a different call.

4 **Mr. Wilson:** And that address, is that here on the Pascua Yaqui Indian Reservation?

5 **Officer Wells:** It is.

6 **Mr. Wilson:** When you got there, what did you observe?

7 **Officer Wells:** Uh, there was three dogs in the yard. The, the yard is fenced front and
8 back by a, um, metal chain link fence. The gate to the, um, yard is always kept closed and
9 secured. Same with the driveway gate. And there was three dogs in the yard. And --

10 **Mr. Wilson:** And on that date, when you were there, were was the, was the gate closed,
11 that day?

12 **Officer Wells:** Yes, it was.

13 **Mr. Wilson:** And did you observe anything particularly about any of those dogs?

14 **Officer Wells:** Uh, the oldest of the three dogs, uh, was just, uh, not uh, moving. It was
15 laying on the couch. It usually is active like the other two dogs, it would come to the fence uh,
16 greet people but it wasn't.

17 **Mr. Wilson:** And that day did you notice anything about it, physically?

18 **Officer Wells:** Uh, I could see that, uh, it had splotches all over its, uh, front of its chest,
19 head, paws, front paws and along its body and with hair loss.

20 **Mr. Wilson:** And, in the course of your work as a police officer had you seen that
21 residence before?

22 **Officer Wells:** Yeah, I'd been to that residence numerous times, uh, for different calls.

23 **Mr. Wilson:** And have you seen that dog there on the previous times that you've been
24 there?

25 **Officer Wells:** Yes, I have.

1 **Mr. Wilson:** And on previous times have you seen the gate --

2 **Ms. Brannock:** Objection your Honor. Leading.

3 **Mr. Wilson:** Your Honor, I didn't ask the question.

4 **Ms. Brannock:** No, it was the before one. I was late. I'm sorry.

5 **The Court:** Oh, the bell's been rung, I mean, he already responded to the question.

6 **Ms. Brannock:** I am sorry.

7 **The Court:** What was the object- You can put your objection on the record.

8 **Ms. Brannock:** It was just he was leading if he ever saw the dog before at the residence.

9 **Mr. Wilson:** And your Honor, my response is that that's not leading. The question is
10 just, have you seen the dog? I'm not suggesting that (inaudible at 08:28).

11 **The Court:** Overruled.

12 **Mr. Wilson:** And on previous occasions when you had been there had you seen the gates
13 opened or closed?

14 **Officer Wells:** The gates are always kept closed, uh, even if uh, there's no one at the
15 residence or even if there is someone at the residence. You always have to open the gate and
16 walk to be able to get into to the residence.

17 **Mr. Wilson:** And, over the course of your work have you ever had contact with the home
18 owner at that residence?

19 **Officer Wells:** Yes, I have.

20 **Mr. Wilson:** And do you know that person's name?

21 **Officer Wells:** Um, Bro, uh, Fra, uh, Madrid. I can't think if it's Francis or Frank. I don't
22 remember.

23 **Mr. Wilson:** Did you produce a report in connection with this case?

24 **Officer Wells:** Yes, I did.

25 **Mr. Wilson:** If you were to view that would that would that refresh your recollection?

1 **Officer Wells:** Yes, it would.

2 **Mr. Wilson:** Your Honor Defense Counsel has been marked Tribe's exhibit one. May I
3 approach the witness, Your Honor?

4 **The Court:** Yes

5 **Mr. Wilson:** I'm showing you what's been marked Tribe's exhibit one. Is that your
6 report?

7 **Officer Wells:** Yes, it is.

8 **Mr. Wilson:** And, having a chance to look at that, would it refresh your recollection as to
9 the name of the home owner?

10 **Officer Wells:** Yes, it would.

11 **Mr. Wilson:** Once you had a chance to refresh if you could (inaudible at 9:28).

12 **Officer Wells:** Yeah.

13 **Mr. Wilson:** And who is that?

14 **Officer Wells:** Antonio Francis Madrid, um.

15 **Mr. Wilson:** And in any of the course of your previous contacts, do you see that person
16 in the court room today?

17 **Officer Wells:** Uh, he's sitting at the defense table, next to the lady in red. He's wearing
18 that black shirt with uh, some kind of design on it. He's got uh, grey hair and it's in a ponytail,
19 which he normally wears it that way.

20 **Mr. Wilson:** And Your Honor, may the record reflect that this witness has identified the
21 defendant.

22 **The Court:** So noted.

23 **Mr. Wilson:** Your Honor, I'm showing defense counsel what's been marked Tribe's
24 exhibit two. May I approach the witness?

25 **The Court:** Yes.

1 **Mr. Wilson:** I'm showing you what's been marked, Tribe's exhibit two. Do you know
2 what that is?

3 **Officer Wells:** Yeah. It's a certification of Indian blood from the uh, [inaudible] tribal
4 enrollment office.

5 **Mr. Wilson:** And does that have an authorizing signature?

6 **Officer Wells:** It does.

7 **Mr. Wilson:** And does that person, the authorizing signature, has that been notarized?

8 **Officer Wells:** Yes, it has.

9 **Mr. Wilson:** Does that person have a title of the authorizing signature?

10 **Officer Wells:** Um, Enrollment Research Specialist.

11 **Mr. Wilson:** Your Honor, at this time the Tribe wishes to admit Tribe's exhibit two as
12 self-authenticating under rule 48(b) of the Tribe's rules of evidence, that it is a tribal government
13 document that is not sealed but does have an authorizing signature.

14 **The Court:** Any objections?

15 **Ms. Brannock:** No objection.

16 **The Court:** We'll go ahead and admit into evidence Tribe's exhibit number two CIB.

17 **Mr. Wilson:** And, in reviewing a previously admitted Tribe's exhibit two, does that
18 correspond to a particular person?

19 **Officer Wells:** Yes, it does.

20 **Mr. Wilson:** And who is that?

21 **Officer Wells:** Sorry. Excuse me (coughing). Antonio Francis. Uh, in this case it just
22 says F Madrid.

23 **Mr. Wilson:** And does that indicate that that person's enrolled with the Pascua Yaqui
24 Tribe?

25 **Officer Wells:** It does. It shows enrollment number.

1 **Mr. Wilson:** Now officer did you take pictures of the dog in question?

2 **Officer Wells:** Yes, I did. I took inside the yard and when I got'em into the animal
3 control truck I also took some other ones.

4 **Mr. Wilson:** And Your Honor, I'm showing defense counsel what's been marked as
5 Tribe's exhibits three, four, and five.

6 **Ms. Brannock:** Your Honor, I going to object to admitting these pictures. His report
7 happened on May 14, 2018, at 2145 at 9:45pm. These pictures were taken on May 15th at 3:45 I
8 believe. And it was on the next day. It's not very accur- It's not even accurate. When he first saw
9 the dog it was night, now it was day. The dog was not sitting on the couch as (inaudible at 12:05)
10 like he observed on the day before, so I object to the admission. It's not accurate with what he
11 has in the report.

12 **Mr. Wilson:** And you Your Honor. I can lay more foundation, I do ask permission to
13 approach the witness to show him these photographs.

14 **The Court:** Well, I'm going to overrule the objection for the time being but I'll reserve
15 depending on the foundation whether he can recognize those, if there some facts laid out. At this
16 time though, I'm overruling the objection.

17 **Mr. Wilson:** May I approach the witness?

18 **The Court:** Yes.

19 **Mr. Wilson:** I'm showing you what's been marked as Tribe's exhibits three, four, and
20 five, and do you recognize those?

21 **Officer Wells:** Yes, I do.

22 **Mr. Wilson:** And what are those photographs of?

23 **Officer Wells:** Uh, the dog I was mentioning uh, on the front porch next to the couch uh,
24 or not front porch, the carport of the house, next to the couch that the dog was laying on when I
25

1 first observed him and the other dogs are in the photo and it's mostly of them, the most of the
2 photos are of the main dog that I ended up uh, seizing.

3 **Mr. Wilson:** Now, in looking at those three photographs, were those taken on the same
4 day or a different day from when you first observed the dog?

5 **Officer Wells:** They were all taken on the same day, which was the day I was there. Uh,
6 the time-stamp is incorrect on the photographs. I never went back a second day. I did everything
7 on the same day without ever leaving the property.

8 **Mr. Wilson:** Now, you had mentioned in your previous testimony that you had observed
9 scabs on the dog.

10 **Officer Wells:** uh huh.

11 **Mr. Wilson:** Although the dog is not depicted on the couch, other than that, do those
12 pictures clearly and accurately depict how the dog looked when you first observed him?

13 **Officer Wells:** Yes, it does.

14 **Mr. Wilson:** Your Honor, based on that, the Tribe is moving to admit exhibits three,
15 four, and five.

16 **Ms. Brannock:** Your Honor, he said that there is a mistake on the time-stamp, however,
17 on May 18 at 9:45p.m., it's supposed to be night. Clearly on these pictures it shows the sunlight
18 and I don't know if the court wants to take judicial notice. I did research about the moon on that
19 day. It was a new moon. It was not even a full moon where it would be some light or any
20 confusion. It is clearly not taken on the same day in this picture.

21 **The Court:** I'm going to overrule the objection, based on the fact that he said it
22 reasonably depicts it at or near the time. So, I'm going to go ahead and permit admission of
23 exhibit three, four, and five.

24 **Mr. Wilson:** I have no further questions.

25 **The Court:** Cross.

1 **Ms. Brannock:** Your Honor, permission to remain seated?

2 **The Court:** No problem.

3 **Ms. Brannock:** Thank you. Good morning Officer Wells. What did you do to prepare for
4 today's trial?

5 **Officer Wells:** I just uh, read my report before I came in.

6 **Ms. Brannock:** So you checked your report for accuracy, correct?

7 **Officer Wells:** I just re-read it. I didn't check it for accuracy. I checked it when I did the
8 report. I didn't re-check it for accuracy.

9 **Ms. Brannock:** Ok, let's talk about, a little bit about your training. As part of your
10 training you learn to document your impressions in a police report, correct?

11 **Officer Wells:** Yes, I do.

12 **Ms. Brannock:** And part of documenting you can take pictures to document your
13 impressions and it's part of the evidence, correct?

14 **Officer Wells:** Correct.

15 **Ms. Brannock:** Isn't it true that you are not a veterinarian?

16 **Officer Wells:** A what?

17 **Ms. Brannock:** A vet.

18 **Officer Wells:** Oh, yes, I am not a veterinarian.

19 **Ms. Brannock:** You are not a vet tech?

20 **Officer Wells:** I'm not a vet tech.

21 **Ms. Brannock:** Ok, so your testimony today, you're testifying just as a lay witness,
22 correct?

23 **Officer Wells:** Correct.

24 **Ms. Brannock:** Ok. So let's talk about the incident, a little bit. On May 14th you
25 responded to a call at a different residence, correct?

1 **Officer Wells:** Mmhmm.

2 **Ms. Brannock:** It wasn't at Mr. Madrid's residence.

3 **Officer Wells:** I don't remember what residence it was at but it was there on a different
4 call. I don't remember what address I was originally sent to.

5 **Ms. Brannock:** But not Mr. Madrid's house?

6 **Officer Wells:** I do not remember that. I'm tellin... that's what I'm saying. I do not
7 remember what address I responded to. If you want me to I can go pull up my reports from that
8 date and look at the that call and find out what I responded to at that address and what the
9 address was.

10 **Ms. Brannock:** May I approach the witness Your Honor?

11 **The Court:** Yes.

12 **Ms. Brannock:** I'm showing to you, your report which has been marked as Tribe's
13 exhibit one, to refresh your recollection.

14 **Officer Wells:** Well that, like I said, that tells me that I went to a residence but I don't
15 know what – it gives me the case report number but I didn't look up that case report number to
16 see what residence I went to so I don't know if I went to that residence or a different residence
17 on that street. I just know I was in that area, on that call. I don't know what address that call was
18 at. I did not look that call up.

19 **Ms. Brannock:** The question is just whether or not you went to Mr. Madrid's house
20 (inaudible at 17:15).

21 **Officer Wells:** I don't know what that call address is. You're asking me if I went to the
22 residence on that other call. I don't know what that other address is.

23 **Ms. Brannock:** I'm not asking you to remember. It's just if whether or not it was Tony
24 Madrid's house. Because you mentioned it was an unwanted person but you also said you
25

1 couldn't locate him at the residence. So it's fair to say you weren't answering a call at Mr.
2 Madrid's house, right?

3 **Officer Wells:** That's what I'm assuming but I don't know because I didn't look up that
4 call.

5 **Ms. Brannock:** Ok, so you said you observed the dog inside Mr. Madrid's yard, correct?

6 **Officer Wells:** Correct.

7 **Ms. Brannock:** And the dog was laying on the couch, correct?

8 **Officer Wells:** When I first observed him, yes.

9 **Ms. Brannock:** Does the couch face the street?

10 **Officer Wells:** I don't understand by - what do you mean by it faces the street? You can
11 see it from the street. It's on under the carport. You can see it from the front gate.

12 **Ms. Brannock:** Ok, so where you stand, is the cushions faces the street?

13 **Officer Wells:** No, as you can see in the photos, it's facing to the uh, basically, get my
14 direction correct on the sun. It's facing to the southeast. So it's facing sort of the house but
15 mostly the backyard. Uh, based on that photo.

16 **Ms. Brannock:** So, this is an accurate picture of how the couch was facing?

17 **Officer Wells:** Correct.

18 **Ms. Brannock:** Mostly facing the house. Ok, so and the dog was laying down on this
19 couch, correct?

20 **Officer Wells:** Correct.

21 **Ms. Brannock:** And you were able to observe open scabs and open sores, right?

22 **Officer Wells:** Correct.

23 **Ms. Brannock:** So was it dark when you saw the dog?

24 **Officer Wells:** When I saw the dog? Um, I couldn't uh. I'm not sure how dark it was. It
25 was dark outside but I don't remember.

1 **Ms. Brannock:** Ok. So did you walk toward Mr. Madrid's residence once you saw the
2 dog?

3 **Officer Wells:** Right. Cause I was up – went to the residence – I'm pretty sure it was the,
4 that residence I was going for the unwanted person but I, like I said, I didn't review so I went
5 into the yard and knocked on the door.

6 **Ms. Brannock:** Ok, so you also mentioned that the owner keeps the fence secure,
7 correct?

8 **Officer Wells:** Gate closed. Usually some kind of a chain wrapped around it but it
9 doesn't have a padlock or anything. It's just hooked to the fence.

10 **Ms. Brannock:** Ok. Did you check if there were any holes in the fence?

11 **Officer Wells:** I did not walk around the whole yard looking for holes in the fence.

12 **Ms. Brannock:** Ok.

13 **Officer Wells:** I was looking for a person at the time.

14 **Ms. Brannock:** Ok. You did not look for any gaps in the fence?

15 **Officer Wells:** There uh, I've been in that yard and around that house numerous times
16 and I never seen any gaps in the fence.

17 **Ms. Brannock:** So the answer is no. (Officer Wells continues speaking over Ms.
18 Brannock.)

19 **Officer Wells:** I can't say if there's any holes under the fence but there's no gaps in the
20 fence.

21 **Ms. Brannock:** So, on the day of this incident, is it fair to say that you did not look for
22 any gaps in the residence, correct?

23 **Officer Wells:** Correct.

24 **Ms. Brannock:** Ok. Did you check the back of the residence to see if the fence was
25 knocked down?

1 **Officer Wells:** No. I went to the back of the residence and... (Ms. Brannock interrupts.)

2 **Ms. Brannock:** So the answer is no. (Officer Wells continues to speak.)

3 **Officer Wells:** ...I looked to see if the subject was there but I didn't see and I didn't
4 check the fence but I didn't see the fence down.

5 **Ms. Brannock:** So, this is a yes or no question. The answer is no, right?

6 **Officer Wells:** What's a yes or no question? Did I go to the backyard? You asked me did
7 I go to the backyard. Yes, I went to the backyard.

8 **Ms. Brannock:** And did you check if the fence was knocked down?

9 **Officer Wells:** I did not see the fence knocked down.

10 **Ms. Brannock:** Ok. And this was around 10pm on May 14th, correct?

11 **Officer Wells:** Correct.

12 **Ms. Brannock:** And you were able to make all those observations when it was dark
13 outside?

14 **Officer Wells:** Yes.

15 **Ms. Brannock:** And you mentioned you were not able to locate Mr. Madrid, correct?

16 **Officer Wells:** Correct.

17 **Ms. Brannock:** So, if the gate is closed, Mr. Madrid is not there, how were you able to
18 ent - he keeps the fence secure, how were you able to enter the residence?

19 **Officer Wells:** I unhooked the chain from the fence and walked in to knock on the door.

20 **Ms. Brannock:** And this was on May 14th?

21 **Officer Wells:** Yes.

22 **Ms. Brannock:** So why you didn't take pictures then?

23 **Officer Wells:** Because I didn't have my camera at that time.

24 **Ms. Brannock:** Ok. So you came back on May 15th when it was light?

25 **Officer Wells:** Correct.

1 **Ms. Brannock:** Did you try to locate Mr. Madrid?

2 **Officer Wells:** Correct. (Mr. Brannock attempts to interrupt) I knocked on the door
3 again.

4 **Ms. Brannock:** Why you didn't write any report on it?

5 **Officer Wells:** That I tried to contact Mr. Madrid again?

6 **Ms. Brannock:** You returned to the residence without any warrant, and seized the dog
7 that you are claiming is his.

8 **Officer Wells:** I went to the residence, knocked on the door, tried to make contact with
9 him, could not make contact with him. At that time, I decided for the safety of the dog, to take
10 the dog into custody.

11 **Ms. Brannock:** If it was such exigent circumstances, why you didn't take the dog on
12 May 14th?

13 **Officer Wells:** Because I had other calls pending. And I was still looking for an
14 unwanted subject.

15 **Ms. Brannock:** So you had to wait 18 hours to come back and you did not secure a
16 warrant?

17 **Officer Wells:** I didn't have to wait 18 hours. I waited 18 hours because I was finished
18 my work for that day, went home, came back and had time free that I could go back and check
19 on the animal the next day.

20 **Ms. Brannock:** So it was not exigent circumstances, correct? You could have sent any
21 other police officer or animal control to pick up the dog.

22 **Officer Wells:** Animal control was not there that day, if I remember correctly. Because I
23 can't remember what day if that is a weekday or weekend or whatever.

24 **Ms. Brannock:** And why that's not in your report?
25

1 **Officer Wells:** I didn't think I needed to write what weekend day was. I could look on a
2 calendar and look that up at some time.

3 **Ms. Brannock:** So you did not report it and not document it, correct?

4 **Officer Wells:** Correct.

5 **Ms. Brannock:** I'm a little confused. When you were testifying for the Tribe you said all
6 the pictures -- you only went there one day and now you're testifying that you went back there on
7 May 14th and May 15th. Do you want to clarify that?

8 **Officer Wells:** Yes. I made a mistake. I meant that the pictures I took were -- all the
9 same day and I misspoke. So yes, I was on there two different days when I saw the dog.

10 **Ms. Brannock:** And you did not write a report that you went there the second day, even
11 though you went to (inaudible at 23:51 -- Officer Wells interrupts)

12 **Officer Wells:** No. That's the report that I -- yeah, I combined it all into the one report.

13 **Ms. Brannock:** This report does not even mention you took pictures of the dog.

14 **Officer Wells:** Your, it's correct.

15 **Ms. Brannock:** Correct. Ok. So...

16 **Officer Wells:** It doesn't mention that I called animal uh security

17 **Ms. Brannock:** I'm sorry Mr. Madrid, Mr. Wells, Officer Wells, I will ask that you just
18 answer the questions I'm asking you, ok?

19 **Officer Wells:** That's fine.

20 **Ms. Brannock:** Thank you. So when you came back on the last day, the dog was not
21 lying on the couch, correct?

22 **Officer Wells:** No, he was still lying on the couch.

23 **Ms. Brannock:** So it's not accurate with the pictures you took he seems to be walking
24 and actually drinking water.

25 **Officer Wells:** You're correct. He's walking right now and drinking water.

1 **Ms. Brannock:** Yeah, ok. So it was different from the 14th, correct?

2 **Officer Wells:** No, you asked me if he was still lying on the couch. I said yes he was.

3 **Ms. Brannock:** Why you didn't document that? Why there's no pictures?

4 **Officer Wells:** Because he got off the couch before I got a photo of him.

5 **Ms. Brannock:** Ok, ...

6 **Officer Wells:** I couldn't, I don't control the dog's actions.

7 **Ms. Brannock:** Ok, so when you returned on the second day did you check for holes,

8 gaps in the in the fence, anything?

9 **Officer Wells:** No. The fence was intact. As far as I could see.

10 **Ms. Brannock:** So, so let's talk...

11 **Ms. Valdivia:** If we could just have a moment Your Honor?

12 **The Court:** Yes.

13 **Ms. Brannock:** So let's move to the dog's health. In your lay opinion the dog needed

14 veterinary care, correct?

15 **Officer Wells:** Correct.

16 **Ms. Brannock:** And since you are not a vet you cannot distinguish whether the injuries

17 were from neglect or it could have been an accident, correct?

18 **Officer Wells:** Correct.

19 **Ms. Brannock:** Ok. And you didn't check whether the dog was already receiving

20 treatment by anybody, correct? You didn't check the ownership?

21 **Officer Wells:** There was no way to check the ownership. There's no tag on the dog.

22 **Ms. Brannock:** Ok, so the answer is no, correct? You did not check.

23 **Officer Wells:** I couldn't check.

24 **Ms. Brannock:** You did not call the PAC officer to to make sure what was -

25

1 **Officer Wells:** It doesn't, if there's no tag on the dog she can't look up a name that's the
2 owner.

3 **Ms. Brannock:** Did you scan it for chip?

4 **Officer Wells:** We don't have scanners.

5 **Ms. Brannock:** Who is we?

6 **Officer Wells:** We, as in the department. The animal control officer did have a scanner.
7 It broke. It has never been replaced. The department does not have any scanners.

8 **Ms. Brannock:** But you did not speak with anybody around the neighborhood to see who
9 is the dog belonged to, correct?

10 **Officer Wells:** It was in that yard secured in that yard. There was no need for me to go -

11 **Ms. Brannock:** (interrupts) You did not, Mr. Wells -

12 **Officer Wells:** You asked me a question, I'm trying to answer it.

13 **Ms. Brannock:** Yeah but my question is, did you speak to anybody-

14 **Officer Wells:** I'm trying to answer that question.

15 **Ms. Brannock:** The answer is no.

16 **Officer Wells:** You didn't ask me a yes or no. You asked me a question. I was trying to
17 answer the question and you're interrupting me.

18 **Ms. Brannock:** So, I will repeat it. You did not speak to anybody about the dogs, on that
19 street, on that day, correct?

20 **Officer Wells:** I attempted to speak with the owner of the house, he was not available. I
21 did not go to all the other houses to check if there was anybody there that knew about the dog
22 because the dog was secure in that yard.

23 **Ms. Brannock:** Ok, so the answer is no?

24 **Officer Wells:** Correct. That's what I just said.

1 **Ms. Brannock:** And you, so, and you said you didn't scan for chip. And, and you don't
2 really know who the owner is of this dog, correct? You just assumed it was Mr. Madrid?

3 **Officer Wells:** Correct. Because he has it secured in his fence of his property.

4 **Ms. Brannock:** Ok. Could I have a moment, Your Honor?

5 **The Court:** Yes.

6 **Ms. Brannock:** Although you assumed he was the owner because it was in his yard and
7 it was fenced yard you still didn't check for holes and gaps in the fence, right?

8 **Mr. Wilson:** Objection asked and answered.

9 **The Court:** Sustained. Let's get to a new question.

10 **Ms. Brannock:** I have no further questions. I have no further questions, Your Honor.

11 **Mr. Wilson:** No redirect, Your Honor.

12 **The Court:** No redirect? Ok, then you're excused. Thank you.

13 **Officer Wells:** You want me to uh, you want this back, Your Honor?

14 **The Court:** Oh, that'd be great. Thanks. Actually, I only have one exhibit. Do you have
15 the other exhibit?

16 **Mr. Wilson:** The Tribe rests, Your Honor. I believe there are two other admitted
17 exhibits.

18 **Ms. Brannock:** Yeah, well I would like to renew my motion as far as the dog pictures
19 go. There was inconsistent statements. First off, officer said took the pictures on one day. He
20 actually went on two days. It was not, it's not, it was not under the same circumstances he went
21 on the first day, it is clearly daylight, there's no picture of the dog laying on the couch and there
22 was no exigent circumstances for him to enter the property the second time without a warrant,
23 without even trying to, to locate Mr. Madrid first, did not call other police officers that could go
24 there early. That wasn't exigent circumstances. For that reasons I still object to the pictures from
25 being introduced.

1 **Mr. Wilson:** And Your Honor, the fact that it was from a different day would go to the
2 weight not the admissibility. The, there was often inconsistent testimony. The officer clarified
3 and did not state that it didn't fairly and accurately depict how the dog, in fact, that was the one
4 thing he maintained was that it did fairly and accurately depict how the dog looked other than
5 being on the following day. As to exigent circumstances, exigent circumstances don't have a
6 particular amount of time that goes with that. The officer testified that he had other calls and as
7 soon as he did have time to go over to take the dog, animal control was not open on that day so
8 there was no other option for that. He did have other calls. It is reasonable, I believe, for the
9 court to infer that an animal control case, while important, and while it may have exigent
10 circumstances, may not be the most urgent call that the police department would have to respond
11 to. So for all those reasons we would ask that any inconsistencies go to the weight and not the
12 admissibility of the evidence.

13 **The Court:** I'm going to overrule the renewed objection foundation was laid as far as
14 admissibility reasonably depicts the animal. Notwithstanding the fact that it was the next day, the
15 officer did correct the testimony by indicating he misspoke, he did actually saw the animal twice.
16 So based on that I'm going to deny the request to suppress. Go ahead.

17 **Ms. Brannock:** Ok, so, my second,

18 **The Court:** If you could bring back the photos, please.

19 **Ms. Brannock:** May I approach?

20 **The Court:** Yes, they've already been admitted. Thank you.

21 **Mr. Wilson:** And Your Honor, at this time the Tribe rests.

22 **Ms. Brannock:** Your Honor, at this time I would like to make a motion for direct verdict.
23 If we look at the statute, Title 8 PYTC section 6, 1-60 (B), the purpose, which is the the statute
24 where Mr. Madrid is being charged of. It says the purpose of this subsection is to guarantee that
25 animals under human custody and control are housed in healthy conditions. First of all, human

1 control. The culture here in the Tribe is very different than outside in Pima County where there
2 are holes in the fence. I think the standard here is still beyond a reasonable doubt and just taking
3 pictures of the dog, not trying to locate any owners, scan for chip, even trying to find whether
4 there was in fact human control of the dog. I think that standard is not made because there are
5 holes, there are gaps, that the dog could have entered in and-

6 **Mr. Wilson:** And Your Honor, I'll object that these are facts not in evidence. This could
7 have been inquired into on cross examination. There was no testimony that there were in fact
8 gaps or holes in the fence or that there is a particular culture here for having dogs not under
9 human control.

10 **Ms. Brannock:** Your Honor, I believe he said he did not check and I think, because of
11 the standard being so high, beyond a reasonable doubt and knowing the culture of this
12 reservation, he should have checked for gaps and holes.

13 **The Court:** I'm going to sustain the objection. Let's stick with the facts in evidence.

14 **Ms. Brannock:** Ok.

15 **The Court:** Presented. Ok you may proceed.

16 **Ms. Brannock:** Thank you, Your Honor. So, also it was at night Mr. Madrid wasn't
17 there. We don't know if the dog came inside in the middle of the night and Mr. Madrid had no
18 knowledge of. We don't know if Mr. Madrid returned on the next day and saw if the dog was in
19 the yard. Nothing like that was ever inquired. As far as veterinary care, Officer Wells is not an
20 expert. He's not a vet. I understand that his testimony is, is as a lay witness but he, he didn't
21 know if the dog was receiving already treatment by somebody. It is clear in the picture that he
22 needed vet care but there was no inquiries there was already started of treatment. There is no, we
23 don't know if that was caused by an accident or actually ticks. There is no report. You know,
24 there, there - as I mentioned I think there was some discrepancy in testimony and I think there is
25

1 no substantial evidence to find that Mr. Madrid failed to provide veterinary care for a dog he
2 never even claimed was his. Thank you.

3 **Mr. Wilson:** And Your Honor, in response I would point out that in the statute the code
4 clearly provides an animal under care, custody or control, and the testimony from Officer Wells
5 was that he had seen dog on multiple occasions in the months prior in that yard, while the fence
6 had been closed, which would cause that dog to be under the control of the owner of that
7 property, in that fence. And it also provides that medi- that care and medical treatment for
8 debilitating injuries, parasites and diseases sufficient to maintain the animal in good health and
9 minimize suffering be provided. So the fact that the dog was in that in that condition, was not
10 being maintained in good health and to minimize suffering. And so for the standard of substantial
11 evidence, we would ask that the court find that substantial evidence has been presented in this
12 case, that the dog was, contained in that yard, that he was in fact the home owner, and that the
13 officer had seen that dog in the months prior in that same yard contained within that property.

14 **Ms. Brannock:** Your Honor, he didn't document that he had seen the dog before. If those
15 are injuries that resulted from neglect, it's not something that happened overnight that all of a
16 sudden now he sees an injury. Even though he said that he seen the dog there earlier we just
17 heard that he didn't even remember if he was called, which residence he was called in to in that
18 street. So how is he sure that he has seen consistently that dog in the same residence for 6 months
19 and now all of sudden, excuse me, those injuries just happened? I don't think there is sufficient
20 evidence in this case. Thank you.

21 **The Court:** Ok, and the statute provides that, it's a violation if one does not provide an
22 animal under care, control or custody, receiving medical care or treatment for debilitating
23 injuries, parasites, diseases sufficient to maintain the animal in good health and minimize
24 suffering. Based on the testimony provided by the officer as well as the photographs in the case,
25 open sores, scabs on the dog's, and on the second photograph there was actually along the face

1 and paws and then open sores on the feet, the Tribe has met its burden of going forward on this
2 matter. So, I'm going to deny the motion for directed verdict because there's sufficient evidence
3 to go forward to the trier of fact to make decision. So, the motion is denied.

4 **Ms. Brannock:** Thank you, Your Honor.

5 **The Court:** Ok, do you wish to call your witness?

6 **Ms. Brannock:** Yes, I am going to, defense calls Lilian Contreras.

7 **The Court:** And if you'll have a seat up here. And you may proceed.

8 **Ms. Brannock:** Thank you, Your Honor. Good morning Ms. Contreras. Could you
9 please state your name for the record?

10 **Ms. Lilian Contreras:** Lilian Contreras.

11 **Ms. Brannock:** Thank you. Could you please tell us what is your occupation?

12 **Ms. Lilian Contreras:** I am a legal administrative specialist.

13 **Ms. Brannock:** Where do you work?

14 **Ms. Lilian Contreras:** At the Public Defender's office of the Pascua Yaqui Tribe.

15 **Ms. Brannock:** Thank you. For how long?

16 **Ms. Lilian Contreras:** For two and a half years.

17 **Ms. Brannock:** Thank you. Are you familiar with Mr. Madrid's case?

18 **Ms. Lilian Contreras:** Yes.

19 **Ms. Brannock:** Yes. Were you asked to take photos in this case?

20 **Ms. Lilian Contreras:** Yes.

21 **Ms. Brannock:** When did you take the photos?

22 **Ms. Lilian Contreras:** November 15th.

23 **Ms. Brannock:** May I approach the witness, Your Honor?

24 **The Court:** Yes.

25

1 **Ms. Brannock:** I'll ask for you to take a look at all of these pictures please. Can you
2 please take a look?

3 **Ms. Lilian Contreras:** Ok.

4 **Ms. Brannock:** Do these pictures look like the pictures you took?

5 **Ms. Lilian Contreras:** Yes, they do.

6 **Ms. Brannock:** Ok. Are you aware that these pictures were not taken close to the time of the
7 alleged incident in this case correct?

8 **Ms. Lilian Contreras:** Correct.

9 **Ms. Brannock:** Are you aware if these pictures are accurate to how the property looks
10 now?

11 **Ms. Lilian Contreras:** Yes.

12 **Ms. Brannock:** Is it accurate?

13 **Ms. Lilian Contreras:** Yes, it's accurate.

14 **Ms. Brannock:** Thank you. I have no further questions, Your Honor.

15 **The Court:** Cross.

16 **Mr. Wilson:** Good morning Ms. Contreras.

17 **Ms. Lilian Contreras:** Good morning.

18 **Mr. Wilson:** You did not go to this house on May 14th of this year, did you?

19 **Ms. Lilian Contreras:** I did not.

20 **Mr. Wilson:** And you did not specifically observe the condition of the yard and fence on
21 May 14th of this year, did you?

22 **Ms. Lilian Contreras:** I did not.

23 **Mr. Wilson:** And so you don't know, you don't actually have direct knowledge of how it
24 looked back on May 14th?

25 **Ms. Lilian Contreras:** I don't.

1 **Mr. Wilson:** Ok. That's all that I have, Your Honor.

2 **Ms. Brannock:** I have no further questions for this witness, Your Honor.

3 **The Court:** Ok, you're excused. If you discuss your testimony with anyone, I mean, if
4 you leave, please don't discuss your testimony with anyone.

5 **Ms. Lilian Contreras:** Ok. Thank you.

6 **Ms. Brannock:** Next, Defense is going to call Belinda Makesroomforthem.

7 **The Court:** Ok... And if you can have a seat up here please.

8 **The Court:** You may proceed.

9 **Ms. Brannock:** Good morning.

10 **Ms. Makesroomforthem:** Good morning.

11
12 **Ms. Brannock:** Could you please state your name for the record.

13 **Ms. Makesroomforthem:** Belinda Makesroomforthem.

14 **Ms. Brannock:** May I call you Belinda for the purpose of this trial?

15 **Ms. Makesroomforthem:** Yes.

16 **Ms. Brannock:** Thank you. Where do you work?

17 **Ms. Makesroomforthem:** I work at McDonalds.

18 **Ms. Brannock:** At McDonalds. How long have you been working there?

19 **Ms. Makesroomforthem:** I just started there about um, two and a half weeks ago.

20 **Ms. Brannock:** Two and a half weeks ago, ok. Do you know why you're here today?

21 **Ms. Makesroomforthem:** Uh, no.

22 **Ms. Brannock:** No? Could you tell us why you're here today?

23 **Ms. Makesroomforthem:** I'm here for my friend Tony.

24 **Ms. Brannock:** Are you here to testify on his behalf?

25 **Ms. Makesroomforthem:** Yes.

1 **Ms. Brannock:** Thank you. Had anybody told you what to say?

2 **Ms. Makesroomforthem:** No.

3 **Ms. Brannock:** Has anybody made you any promises?

4 **Ms. Makesroomforthem:** No.

5 **Ms. Brannock:** Have you reviewed anything in preparation for this trial?

6 **Ms. Makesroomforthem:** No.

7 **Ms. Brannock:** So let's talk about your relationship with Mr. Madrid. How long do you

8 know Mr. Madrid?

9 **Ms. Makesroomforthem:** My whole life.

10 **Ms. Brannock:** Your whole life. Ok. Have you ever lived with him?

11 **Ms. Makesroomforthem:** Yes.

12 **Ms. Brannock:** Yeah. How long did you live with him?

13 **Ms. Makesroomforthem:** Almost about a year.

14 **Ms. Brannock:** Yeah. How long ago was that?

15 **Ms. Makesroomforthem:** Since I believe January. January February, around there.

16 **Ms. Brannock:** January of 2018?

17 **Ms. Makesroomforthem:** Yes.

18 **Ms. Brannock:** So you moved out of Mr. Madrid's house in January of 2018?

19 **Ms. Makesroomforthem:** uh huh. Yeah yes.

20 **Ms. Brannock:** Ok. Thank you. Where did you move, once you moved out of Mr.

21 Madrid's?

22 **Ms. Makesroomforthem:** To my mother's house across.

23 **Ms. Brannock:** Where is it?

24 **Ms. Makesroomforthem:** Right on 7650 S. Camino Huivism.

25 **Ms. Brannock:** So you're still on the same street as Mr. Madrid?

1 Ms. Makesroomforthem: Yes.

2 Ms. Brannock: Fair to say that it's fairly close to your residence?

3 Ms. Makesroomforthem: Yes.

4 Ms. Brannock: Ok. And are you guys are still friends?

5 Ms. Makesroomforthem: Yes.

6 Ms. Brannock: Do you visit him every once in a while?

7 Ms. Makesroomforthem: Yes, I do.

8 Ms. Brannock: Ok. Do you guys still hang out every once in a while?

9 Ms. Makesroomforthem: Yes, we do.

10 Ms. Brannock: Ok. So let's talk about the property. When you lived with Mr. Madrid,
11 were there any holes in the fence?

12 Ms. Makesroomforthem: Not really. Just little ones.

13 Ms. Brannock: Little holes?

14 Ms. Makesroomforthem: uh huh.

15 Ms. Brannock: How about the gaps between the gate?

16 Ms. Makesroomforthem: There was no

17 Ms. Brannock: No gap?

18 Ms. Makesroomforthem: No gap.

19 Ms. Brannock: Have you seen dogs coming inside and out through those holes?

20 Ms. Makesroomforthem: They've always have.

21 Ms. Brannock: They always have. Have you ever tried to cover the holes?

22 Ms. Makesroomforthem: Yes, we have.

23 Ms. Brannock: With what?

24 Ms. Makesroomforthem: Like boards.

25 Ms. Brannock: Boards. May I approach the witness, you Honor?

1 **The Court:** Yes.

2 **Ms. Brannock:** I'm showing what's, what will be marked as Defendant's exhibit A, B,
3 and C. Can you see these pictures here?

4 **Ms. Makesroomforthem:** uh huh.

5 **Ms. Brannock:** Are those the kind of wood boards you used to cover the holes in Mr.
6 Madrid's yard?

7 **Ms. Makesroomforthem:** Yeah.

8 **Ms. Brannock:** Your Honor, I move for the admission of Defense exhibit A through C.

9 **The Court:** Any objections?

10 **Mr. Wilson:** Your Honor, I don't believe adequate foundation has been laid. We don't
11 know if this fairly and accurately depicts how it looked on the day in question.

12 **The Court:** I'll sustain the objection as to foundation. You may proceed with laying the
13 foundation.

14 **Ms. Brannock:** Of laying foundation? Ok. So, in January, six months ago, six months,
15 I'm sorry let me get back. In January 2018 when you, you, you still resided at Mr. Madrid's
16 house, were those holes that I just showed you, covered with wood boards, present at that time?

17 **Ms. Makesroomforthem:** Yes.

18 **Ms. Brannock:** Ok. And could you please look at the date of the pictures that the
19 pictures were taken?

20 **Ms. Makesroomforthem:** Ok. 11-15.

21 **Ms. Brannock:** November 15, 2018?

22 **Ms. Makesroomforthem:** Uh huh.

23 **Ms. Brannock:** So the (inaudible at 43:45) the gates, the holes in the gates, when you
24 lived there, are the same holes in the gate as the pictures you are seeing right now?

25 **Ms. Makesroomforthem:** Mmm Hmm, yes.

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Ms. Brannock: Do you still walk by Mr. Madrid's house daily?

Ms. Makesroomforthem: Yes.

Ms. Brannock: Did you visit his house, by any chance around May 2018?

Ms. Makesroomforthem: Yes.

Ms. Brannock: Yes. Does the yard, around May 2018, look exactly like the pictures you are seeing yourself right now?

Ms. Makesroomforthem: Yes.

Ms. Brannock: Yes. Your Honor, I move again to admit the pictures based on foundation, right now.

Mr. Wilson: No objection.

The Court: Ok. We'll admit into evidence the Defendant's exhibit A, B and C.

Ms. Brannock: Thank you. I will just make a note that I did not write it yet on the back but I'll make sure that I do it [inaudible 44:365]. Oh, ok, so you mentioned that you have seen dogs coming in and out of the property for holes, also gaps in the gate, as well?

Ms. Makesroomforthem: Yes.

Ms. Brannock: Ok. And you mentioned that you have helped him to fix the fence. Is that right?

Ms. Makesroomforthem: Yes.

Ms. Brannock: Do you know if Mr. Madrid has any dogs?

Ms. Makesroomforthem: He has no dogs.

Ms. Brannock: Did he have a dog when you lived with him?

Ms. Makesroomforthem: No dog.

Ms. Brannock: How about in May 2018, did he have a dog?

Ms. Makesroomforthem: He's never had a dogs.

1 **Ms. Brannock:** He's never had a dog. Ok. And while you lived with him you witnessed
2 dogs and other animals coming inside his residence.

3 **Ms. Makesroomforthem:** Yes.

4 **Ms. Brannock:** Does Mr. Madrid keep his fence secure at all times?

5 **Ms. Makesroomforthem:** He closes his fence but there is like, when I was there people
6 are like, would go in and knock at the door (inaudible at 45:49) they would leave it open at
7 times.

8 **Ms. Brannock:** So they would leave the gate open?

9 **Ms. Makesroomforthem:** Yes.

10 **Ms. Brannock:** So, is it fair to say that often Mr. Madrid's gate was wide open?

11 **Mr. Wilson:** Objection. Leading.

12 **The Court:** Sustained.

13 **Ms. Brannock:** Ok. Do you often see the gate open?

14 **Ms. Makesroomforthem:** Sometimes, like some of his guests would go out, they would
15 leave it open.

16 **Ms. Brannock:** Do you know if dogs coming in and out of Mr. Madrid's residence, if
17 that was happening around May 2018, as well?

18 **Ms. Makesroomforthem:** They always-- I can't say the date but they always do, I mean
19 daily.

20 **Ms. Brannock:** Ok. May I have a moment, Your Honor?

21 **The Court:** Yes.

22 **Ms. Brannock:** So, I'm going to show you what's been marked as Defendant's exhibit
23 D. Can you take a look at this picture please?

24 **Ms. Makesroomforthem:** Yes.

25 **Ms. Brannock:** Is this Mr. Madrid's house, as to the best of your knowledge?

1 Ms. Makesroomforthem: Yes, it is.
2 Ms. Brannock: How do you see the gate?
3 Ms. Makesroomforthem: Open.
4 Ms. Brannock: Open.
5 Ms. Makesroomforthem: Unlatched.
6 Ms. Brannock: Yeah. Do you think a dog can walk inside from that gate?
7 Ms. Makesroomforthem: Yes, they can.
8 Ms. Brannock: Yeah. When you walked around by his house in May when you still
9 lived on the same street, did you used to see the gate open like this?
10 Ms. Makesroomforthem: Yes.
11 Ms. Brannock: I move to admit this, defendant's exhibit D.
12 Mr. Wilson: No objection.
13 The Court: Ok, we'll go ahead and admit into evidence defendant's exhibit D.
14 Ms. Brannock: I don't have any further questions for this witness, Your Honor.
15 The Court: Cross?
16 Mr. Wilson: Good morning.
17 Ms. Makesroomforthem: Good morning.
18 Mr. Wilson: And Belinda, you were not at his house on May 14th of 2018 were you?
19 Ms. Makesroomforthem: On May 14th? No.
20 Mr. Wilson: And you weren't living there on May 14th?
21 Ms. Makesroomforthem: No, no.
22 Mr. Wilson: And you did say that Mr. Madrid is your friend, correct?
23 Ms. Makesroomforthem: Yes.
24 Mr. Wilson: And so you wouldn't want him to be in trouble, correct?
25 Ms. Makesroomforthem: No.

1 **Mr. Wilson:** That's all I have.

2 **The Court:** Any redirect?

3 **Ms. Brannock:** Even though you wouldn't like to see Mr. Madrid in trouble, would you
4 be willing to lie on his behalf, on the stand, on the court while you're under oath?

5 **Ms. Makesroomforthem:** No.

6 **Ms. Brannock:** Ok. I have no further questions you Honor. Thank you.

7 **The Court:** You're excused. Thank you. And, any other witnesses?

8 **Ms. Brannock:** I'm going to call Officer Wells for rebuttal.

9 **Mr. Wilson:** And Your Honor, in terms of rebuttal, if she has additional questions, that's
10 fine.

11 **The Court:** You can take the stand please.

12 **Ms. Brannock:** Thank you. Officer Wells, you said you've seen this dog at the residence
13 for about six months, correct?

14 **Officer Wells:** Yes, I.

15 **Ms. Brannock:** Ok. Did you see the dog at the residence on May 13th?

16 **Officer Wells:** Don't know if I, don't remember if I was there on that date or not.

17 **Ms. Brannock:** How about May 12th?

18 **Officer Wells:** I don't remember the exact date. I know I've seen the dog because I've
19 been there on different calls and when I've been there I've seen that dog before. Uh, without
20 going back and looking through all the records I couldn't tell you what dates I actually saw him
21 on.

22 **Ms. Brannock:** So you have records of the days you saw the dog on but you did not
23 enter those in evidence?

24 **Officer Wells:** I uh, they're in the police reports, when I was there and I could, based on
25 those reports I could tell you what dates they were.

1 **Ms. Brannock:** Ok, but we don't have those reports, correct?

2 **Officer Wells:** Not at this time.

3 **Ms. Brannock:** You didn't disclose the reports.

4 **Mr. Wilson:** Objection. Relevance.

5 **Ms. Brannock:** He, Your Honor, he's saying that he has seen the dog there for over six
6 months and I don't have any documentation. He corrected his statement before that he was
7 mistaken. I'm just trying to assess if he was in fact sure that the dog was there for the last six
8 months.

9 **The Court:** I'll overrule the objection. I'll permit you some more leeway to ask him
10 questions about this past context.

11 **Ms. Brannock:** Ok. Thank you. So you also don't remember if you saw the dog on the
12 week before, right?

13 **Officer Wells:** I don't remember what days I saw the dog. Yes, I do not remember what
14 dates.

15 **Ms. Brannock:** So, is it fair to say that on May 14th was the first time you saw the, the
16 injuries on that dog?

17 **Officer Wells:** Correct.

18 **Ms. Brannock:** Ok. Based on your lay opinion, do you think those are the type of
19 injuries that happen overnight?

20 **Officer Wells:** I don't know. Based on my lay understanding, I don't know if he received
21 those injuries over night or over a period of time.

22 **Ms. Brannock:** Ok. And just - I believe you already answered this question but, you did
23 not check to see if the dog was already receiving veterinary care, correct?

24 **Officer Wells:** Correct.

25 **Ms. Brannock:** Ok. I have no further questions for this witness, Your Honor. Thank you.

1 **Mr. Wilson:** And officer you mentioned that, that you had not provided specific
2 documentation isn't it true that you were never requested to provide an interview to defense
3 counsel?

4 **Officer Wells:** Correct.

5 **Mr. Wilson:** That's all.

6 **Ms. Brannock:** Officer Wells, even though we never requested those reports, nowhere in
7 your report mentions that you had reports before. There was no -

8 **Mr. Wilson:** Objection. Outside the scope of cross.

9 **The Court:** I'll sustain the objection. Let's keep this within the questions that were
10 asked.

11 **Ms. Brannock:** I have no further questions, Your Honor.

12 **The Court:** Ok, you're excused. Thank you.

13 **Officer Wells:** Do you need these photos, Your Honor.

14 **The Court:** Oh, yes. Ok. Thank you. Thank you. Ok, I don't have defendant's exhibits
15 marked for purposes of identification, so I don't know which, if you can have those corrected.
16 You can come up and show the prosecutor also, the markings. I'd admitted into evidence,
17 defense exhibits A, B, and C, and then exhibit D, but I didn't realize that there was not marked,
18 for purposes of identification on the back of those.

19 **Ms. Brannock:** May I approach Your Honor?

20 **The Court:** Yes. Ok, thank you. Ok. No objections to the newly-

21 **Mr. Wilson:** No.

22 **The Court:** No, Ok, for now it is properly labeled for purposes of identification, defense
23 exhibits A, B and C, for what we've already admitted into evidence. So, A, B, and C, and D are
24 admitted.

25 **Ms. Brannock:** Defense rests, Your Honor.

1 **The Court:** Ok, let's go ahead and hear closing.

2 **Mr. Wilson:** Thank you, Your Honor. Although there was testimony presented that there
3 were some holes in the fence and sometimes the gate was open, it did not directly refute the
4 officer's testimony that on that day the gate was closed and secure, that he had previously seen
5 that dog there, and the dog was secured in the yard and in the condition, that was presented in the
6 photographs that were admitted. Given that, although the officer is not a veterinarian, he is not
7 required to avoid using common sense showing that a dog that's covered in scabs and wounds
8 would need additional veterinary care. And even if veterinary care had been provided, the code
9 requires that it be sufficient to maintain the animal in good health and minimize suffering, which
10 I think the evidence shows that that was not being provided in this case. The evidence also shows
11 that the dog was within the control of the homeowner because it was being contained inside that
12 fenced yard on that date. And the fact that other dogs could come and go, or even that dog, was
13 being, was being housed in that yard. And the testimony, as the court will obviously go with its
14 own recollection, I do recall, Ms. Makesroomforthem indicating that the holes were fairly small.
15 And I believe the court can refer to the photographs that this was a larger dog, which would
16 indicate that those holes were not sufficient for that dog to simply have come in only on that day.
17 And I think it is substantial that the officer has seen in the months prior, that same dog in that
18 yard and this was the time when he first noted these scabs and open sores all over its body. Based
19 on the, the Tribe is requesting that the court find that the Tribe has proven beyond a reasonable
20 doubt that the defendant did fail to provide veterinary care for that dog that was within his
21 control even if he didn't consider it to be his dog.

22 **Ms. Brannock:** Thank you, Your Honor. I'm going to work on this backwards. There
23 was no testify- testimony about the size of the dog and how big the hole needs to be for a dog to
24 come inside. There are pictures and there were testimony of people who actually know Mr.
25 Madrid for the whole life that his gate is often open. Even though officer Wells said that he had

1 seen the dog before in the last six months, I have no report of that, I have no information about
2 that. He was mistaken about the days he went there. He didn't check for holes. I think the
3 burden here is a little high for assumption of ownership. Because according to the code, if I'm
4 giving a treat to the dog I'm assuming ownership of the dog. I think there is a big, for the beyond
5 reasonable doubt standards, only pictures of the dog is not enough. To prove ownership, it would
6 have to make sure that the gate is always secured, that there was no other way where the dog
7 could enter the residence. First, Mr. Madrid wasn't there. Mr. Madrid wasn't there on May 15th.
8 We don't even know if he had knowledge that the dogs were there. Second of all, Mr. Wells
9 testified that there were three dogs on May 15th, as the picture states. In their report it does not
10 say that there were three dogs there. There was only this dog laying on the couch. The couch is
11 facing the residence. It's not facing the street. It is dark at night. There is- how did he observe
12 from the street, all the scabs? And he admits that- he admitted that it was dark outside. So right
13 now we do have testimony that there were holes in the fence, there were ga-, gaps, and the gate is
14 always open. It was night. Belinda testified that for knowing Mr. Madrid forever, he does not
15 own a dog, he never owned a dog. As the Tribe acknowledged, Mr. Wells is not a veterinarian,
16 he did not try to ask around if this dog was receiving treatment. These injuries do not happen
17 overnight. If he saw before and never documented, it's just a lot of doubts in this case. The-the-
18 the investigation is inconsistent. All those injuries, as you can see, they are not cured overnight.
19 If he is a lay witness, we all can testify that those are not injuries that are cured overnight with
20 only one medication. Also, there was a, if there was a exigent circumstances, Officer Wells went
21 there on May 14th, did not get the dog, only returned to the residence 18 hours later. He could
22 have asked for another colleague to go there and check the dog if that was an emergency. He
23 could have called animal control, as he mentioned that she wasn't there. She will go if it's
24 necessary. There was no scan for chip. There was no information if actually in fact there was an
25 owner in this case and who the owner would be. What we know is that dogs come inside and out

1 of the residence, [inaudible 58:48] dogs hop here, dogs are outside the streets here and
2 everybody knows. So, I ask the court to find that the Tribe failed to prove beyond a reasonable
3 doubt that the dog was Mr. Madrid's house, Mr. Madrid's dog and therefore he failed to provide
4 veterinary care. Thank you.

5 **Mr. Wilson:** Your Honor, I would point out that the code is-is fairly broad when it comes
6 to defining who an owner is and it can be anyone providing care, custody, or control in this case.
7 And, by controlling where the animal is, that person is considered an owner in the code and that
8 is a very broad standard of liability. In addition, it's also a broad standard of providing veterinary
9 care to maintain the animal in good health and minimize suffering. And as the defense counsel
10 has pointed out, these are not the types of injuries that would necessarily happen overnight
11 although there was no testimony for that, that goes to the issue as to whether the dog was
12 receiving treatment, that for injuries to progress to this point and to be allowed to get to that
13 point so, while Mr. Madrid does not consider himself to be an owner, the code is very broad with
14 regard to who an owner is. That may certainly go to mitigation if he is found guilty. But as far as
15 whether or not he meets the standard in the code, he was controlling where that dog was going
16 by securing him inside the fence.

17 **The Court:** Based on the testimony presented, Officer Wells indicated on May 14th 2018,
18 he was dispatched to the area of 7600 S. Camino Huivism, which is located on the Pascua Yaqui
19 reservation. He approached 7621 address. He saw three dogs in the yard. They were within a
20 metal chain-link fence, which was secured and the gate was secured along with the gate near the
21 carport. And he observed the oldest of the three dogs not moving but was lying on a couch. He
22 indicated that he had seen that dog in that yard before and upon closer look the dog had splotches
23 all over its chest, paws, and body, a loss of hair and he said a second time that he had been there
24 before, had seen those gates closed at prior times and he had been in contact with Antonio
25 Francis Madrid on prior occasions on separate calls. The court admitted the certificate of Indian

1 blood for Mr. Antonio Francis Madrid and then the photographs, exhibits 4- 3, 4, and 5 were
2 admitted into evidence. The photographs of the dog do indicate a, this is Tribe's exhibit 5,
3 indicated hair loss along the legs and paws, along the chest it appears to be an opened of sore
4 wounds, pinkish in looks like scab, scab and pinkish and then on the sores on the feet are open
5 sores, one looking bloody the other one looking pink and with scabs on the face is full of large
6 white pustules and then a raw abraded skin along with [inaudible at 1:02:13] looks like a cut on
7 the face as well. But in any event, it's all red scabbed-over and scarred. And on the second
8 photograph, which is exhibit 4 is a front view of the dog at the residence, 7621, and it also shows
9 further, the lack of hair, open scabs, open sores on the dog's face, along the cheeks, along the
10 chest, along the, all the legs seem to be missing all the hair and then the paws are-are appear to
11 be scraped bloody with open sores. Those were taken on 5/15/2018. And then the other photo,
12 which was taken on-at 5/15/2018, at 1552 seven minutes later, appears to be a separate place
13 with a metal floor or a table. The exhibit 3, shows the back of the house, the dog's drinking from
14 a water dish. There are two small dogs next to it, it appears to be an open can of dog food nearby
15 with a spatula and some empty cans near a couch right outside the back door of the residence.
16 And the officer indicated that he took photos on that same day but then he said he misspoke and
17 actually came back the next day, but did say, on the previous evening he saw scabs on the dogs
18 and then he went back to take the photographs, that he's not a veterinarian or a vet tech. But
19 nonetheless, he was responding to the nearby call but then he observed the dogs. The next day he
20 observed the dogs still inside Mr. Madrid's fence, under the carport and he could see the couch
21 from the street, along with the dog lying on it. And he indicated it was dark the first time,
22 however the second time he noted that the door was still or the gate was still closed, the fence
23 was still secured however, he felt that there were exigent circumstances to get to the dog, seeing
24 the injuries so, the officer unhooked the chain fence and then he came up to the dog. The dog
25 was then taken into custody and that's where he took an additional photograph. He indicated that

1 he had to wait 18 hours because he had other work to do and that when he finalized his work on
2 the next day, it was about 18 hours later, he decided to check on the animal (inaudible at 1:04:48)
3 the dog. He said the reason he hadn't checked sooner was that he had other work to do. The
4 Tribe argued that that may have been because of priorities the officer have rather than the
5 animals. But he also indicated that animal control was not there, that he did not see any tag on
6 the dog, so he would not call-up animal control to see if there is an identification for the owner
7 for the tag on the dog and he said they don't have a scanner in any event because the police
8 department doesn't have one, that apparently the animal control department had one at one time
9 but doesn't work, so the dog would not have been scanned. He did not talk to anyone about the
10 dog but the dog was secure in the yard, he had seen it there before and he didn't check for any
11 computer chip but rather he noted-noted that there was no tag on the dog. And he said he
12 previously seen the dog on prior occasions in that yard. Ms. Contreras indicated that she took
13 photos of November 15th of the dogs but did not actually see the dogs on May 14th or May 15th.
14 Belinda Makesroomforthem indicated that she is a friend of Mr. Madrid, that she's known him
15 all his life, that she lived with him for about a year, she said that there were always small holes in
16 the fence, that there isn't a gap in the gate but there is a small gap, enough for a dogs to come in
17 and out. She indicated that as far as she knows, he did not ever own a dog, that there have been-
18 she seen other dogs enter the yard but that Mr. Madrid has never owned a dog. And she also said
19 that Mr. Madrid ordinarily closes his fence but sometimes his guests may leave it open. And then
20 there was a photograph of Mr. Madrid's home. And Ms. Makesroomforthem indicated that she
21 was not living there on May 14th, with Mr. Madrid. And on rebuttal, Officer Wells indicated that
22 he may have had prior records, records of prior dates where he saw the animal before but he did
23 not keep such records, did not provide that in his report but that on May 14th, that was the first
24 time that he actually noted the injuries to the animal and that's when he decided to seize the
25 animal. And based on the evidence presented, the photographs indicating injury to the animal,

1 the issue of care control and custody has come up on numerous occasions in the past. I ruled in
2 times where they've said, "I was keeping the dogs for another person; it's my sister's dog; it's
3 my brother's dog; it's my grandmother's dog." Those issues have come up on numerous
4 occasions in the past. Consistent with those rulings, if there is any control of animal, and again
5 the statute reads, "under care, custody, or control" so, the control is that the dogs were inside that
6 gated secured area, it was at the residence of Mr. Madrid, so that the court does find that the
7 animal had fallen within the care custody and control of Mr. Madrid. The question then is, did
8 the person who's in care, custody, and control of the animal actually had the, the animal
9 provided with care and medical treatment for debilitating injuries, parasites, diseases, sufficient
10 to maintain he animal in good health and minimize suffering. The court does find that the Tribe
11 has proven beyond a reasonable doubt that Mr. Madrid failed to provide veterinarian care for the
12 dog, with scabs and open sores as evidence by the exhibits 3 and 4 showing open sores, open
13 wounds, which appears to be a mange. I'm not a veterinarian but I know what the mange looks
14 like when you have dogs that have a debride-debride skin, no hair on their paws or no hair on
15 their legs, open sores, open redness, indicating there is some sort of abrasion, some sort of severe
16 skin condition. And then the face, shown in the photograph 5, appears to be not only open sores
17 but open puss sores and appears that it's fresh scabs. And then the other photograph, page 4
18 indicates the scab and sores all along the dog's face on both the right cheek, left cheek, under the
19 eyes, along the nose, along the ridge, and near the nose. And then further, the close-up of the
20 photograph 5, shows some additional damage to the dog's left front face, which appears to be
21 scaly and scabbed. So the court does find that the Tribe has proven beyond a reasonable doubt
22 that Mr. Madrid is guilty of the offense of count 1, failure to provide veterinary care. And setting
23 this out for sentencing hearing?

24 **Ms. Brannock:** We can set it out, Your Honor.

25 **The Court:** Ok, and recommendations on conditions of release?

1 **Mr. Wilson:** Your Honor, the Tribe recommends that the current conditions remain. I
2 believe he is currently released on, I'm checking to see, I, what the, I believe he is currently
3 released on his own recognizance, ordered not to obtain any animals, obey all laws, and attend
4 all hearings. We would ask that those conditions remain.

5 **The Court:** Ok. Any response?

6 **Ms. Brannock:** No objection, Your Honor.

7 **The Court:** Ok, we'll set this matter out for a sentencing hearing.

8 **Clerk:** December 28, 2018 at 2pm.

9 **The Court:** Ok. Any presentence reports?

10 **Mr. Wilson:** We would request a presentence report, Your Honor.

11 **The Court:** Any presentence report. Ok, Mr. Madrid will be released on his own
12 recognizance, he must appear at all future hearings, obey all laws, and not obtain any new
13 animals. We'll see you back here December 28th at 2 and then the court will order a presentence
14 report for probation.

15 **Ms. Brannock:** Your, Your Honor, I'm sorry, it's just very new today, I have like some
16 medical issues that I may need to be at the doctor on that day. I'm not sure yet. Is it ok if we
17 schedule for the beginning of January?

18 **The Court:** Time-time waived?

19 **Ms. Brannock:** That's ok.

20 **Mr. Wilson:** Yeah, no objections from the Tribe.

21 **Ms. Brannock:** Thank you, Your Honor.

22 **The Court:** Ok. January.

23 **Clerk:** Hmm, let's see - January 4th at 10am.

24 **The Court:** Ok. January 4th at 10am.

25 **Ms. Brannock:** Thank you.

1 **The Court:** Ok. Thank you. Court's adjourned.

2

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(Off the record)

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[End 1:11:47]

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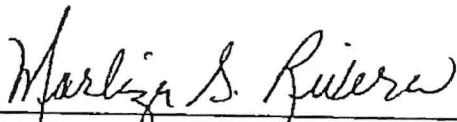
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CERTIFICATE

I, MARLIZA S. RIVERA, JD, University of Arizona, James E. Rogers College of Law LL.M candidate in the Indigenous Peoples Law and Policy Program, and Extern for the Office of the Public Defender at the Pascua Yaqui Nation, do hereby certify that this transcript of the proceedings was prepared by me, to the best of my skill and ability, and that the same was transcribed by me via computer-aided transcription, and that the forgoing pages of typewritten matter are a true, correct, and complete transcript of all the proceedings had, as set forth in the title page hereto.

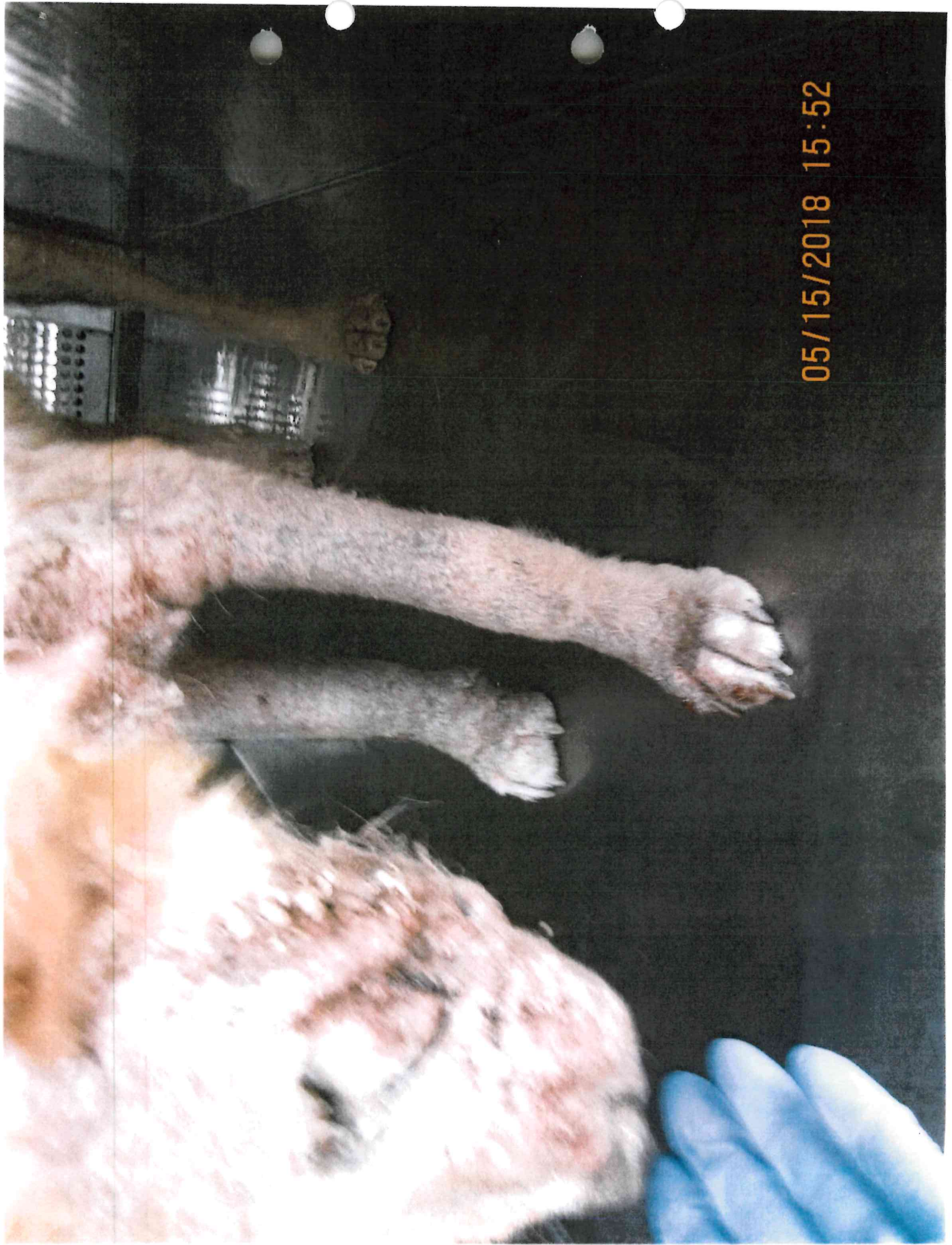
I FURTHER CERTIFY that this transcript of the proceedings was prepared from the video recording of the proceedings, provided by the Pascua Yaqui Tribal Court.

Signed in Tucson, Arizona, on the 18th day of March 2019.



Marliza S. Rivera, JD

Appellee's Exhibit D
(Copy of Prosecution Photo Exhibits, filed in *PYT*
***v. Madrid* AC-18-003)**



05/15/2018 15:52



05/15/2018 15:45



05/15/2018 15:45

Appellee's Exhibit E
**(Copy of Judgment, filed in *PYT v. Madrid* AC-
18-003)**

1 IN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION



3
4 PASCUA YAQUI TRIBE,) Case No. AC-18-003
PLAINTIFF,)
5 vs.) JUDGMENT
MADRID, ANTONIO F.)
6 DEFENDANT.)
7

8 The defendant, Antonio F, Madrid, appeared for a sentencing hearing on January 4,
9 2019, with his legal counsel, Glaucia Batista Brannock. Appearing for the Tribe was
Kendrick Wilson and Dominic Duran for probation.

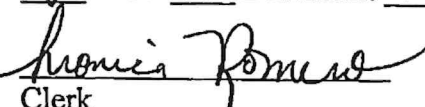
10 On December 12, 2018, the defendant was found guilty of Count One, Failure to
11 Provide Veterinary Care, and the court should adopt the Tribe's sentencing recommendations
12 that the defendant should have 10 days detention suspended for 6 months probation, and that
13 he be assessed a criminal fine of \$250.00, and \$100.00 court costs to be paid April 4, 2019.
14 He should not obtain any dogs or pets for one year, and he should provide proof of completion
of an Animal Cruelty Education course no later than April 4, 2019.

15 **IT IS ORDERED** that based on the defendant's conviction of Count One, Failure to
16 Provide Veterinary, Antonio F. Madrid shall be sentenced for Count One, as follows: 10 days
17 jail, suspended for 6 months supervised probation, report to probation within 48 hours, follow
18 all standard conditions of probation, pay probation fees monthly, such amount to be
19 determined by probation, pay a \$250.00 fine, to be paid by money order, or complete 50 hours
20 of community services, in lieu of fines, due April 4, 2019. He shall pay \$100.00 court costs,
21 by money order, or complete 20 hours of community services, in lieu of costs, no later than
April 4, 2019. He shall not obtain any dogs or pets for one year. He shall complete an Animal
Cruelty Education Class with the Humane Society of Southern Arizona, and he shall submit
proof of completion to his probation officer. The defendant shall contact Stephanie Gray,
(520) 312-3704, to arrange for the class.

22 SO ORDERED THIS 4th DAY OF JANUARY 2019

23
24 
Associate Judge, Pascua Yaqui Tribal Court


25 cc: Date 1/07/2019
26 Tribe Defendant Probation

27 
Clerk



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MICHIGAN
LIBRARY

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

Pascua Yaqui Tribe

Vs.

STANDARD CONDITIONS O


Defendant: Antonio I. Madrid

Docket No: AC-18

1. Obey all laws and court orders. Notify the probation officer within 24 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 re 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 jurisc
5. Not possess or control any firearm(s), ammunition and/or prohibited weapons. Shall report all and any types of weapons located at th officer.
6. To grant the probation officer safe access to your residence and property, to submit to search and seizure as directed by the probation
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 vic 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 secu probation officer.
9. Not possess or use marijuana, dangerous drugs, narcotics, or drug paraphernalia, except as prescribed for you by a physician or dentis Pascua Yaqui Tribe. Shall be subject to random urinalysis or oral fluid collection testing by the DT Lab Services or any certified lab f the probation officer or law enforcement.
10. Shall not indulge in the use of intoxicating liquor. Shall be subject to random breathalyzer testing as directed by the probation officer
11. I understand the probation officer will be preparing monthly reports as to my compliance with these conditions and these conditions a to both the tribal court and the prosecutor's office.
12. I understand that the probation officer can modify any condition of probation at any stage during the probation term.
13. I will provide a valid state or tribal I.D. within two weeks to the probation officer
14. I have personally read, understand, and agree to abide by all of the proceedings terms and conditions of standard probation as of today 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 cc of the above conditions while on probation may result in an unsatisfactory discharge from probation at the conclusion of my Court ord

Antonio I. Madrid
Defendant's signature

1-4-19
Date


[Signature]
Judge's signature

Appellee's Exhibit F
(Copy of PSR, filed in *PYT v. Madrid* AC-18-003)

PASCUA YAQUI TRIBAL COURT
OFFICE OF PROBATION AND PAROLE

PASCUA YAQUI TRIBAL COURT
OFFICE OF PROBATION AND PAROLE

2018 DEC 28 AM 10:43

DOCKET NO. _____

CLERK *W*

Pascua Yaqui Tribe,

) Docket No.: AC-18-003

Plaintiff,

)
) **PRE-SENTENCE INVESTIGATION**
) **REPORT**

vs.

MADRID, Antonio

Defendant

PERSONAL DATA

Name: **MADRID, Antonio**

D.O.B. **03/09/1955**

S.S.N. **XXX-XX-XXXX**

Gender: **Male**

A.K.A.: **None**

Eyes:

Hair:

Weight:

Birthplace:

Address: **7621 S Camino Huivisim**

City, State, Zip: **Tucson Az 85757**

Phone:

Tattoos/Scars:

1 Employer: **Unemployed**

2 Address:

3 City, State, Zip:

4 Occupation:

5 Marital Status: **Single**

6 Children:

7
8
9
10
11 **CRIMINAL HISTORY:**

<u>Case #</u>	<u>Offense</u>	<u>Disposition</u>
13 CR-91-219	Disorderly Conduct	Guilty time served
15 CR-91-221	Refusal to obey Lawful order	Guilty Fines paid
17 CR-93-120	Disorderly Conduct	Guilty Fines paid
19 CR-02-197	DC/DV- Family Violence	
20	Refusal to obey lawful order	Successful Probation
22 CR-03-216	DC/DV – Family Violence	Probation
23 CR-05-274	DC/DV – Family Violence	9 days detention
24	Threatening and intimidating	Unsuccessful probation

1	CR-08-028	Trespass	
2		Battery	Probation closed, Late filing
3			
4	CR-10-250	DV/DC – Family Violence	
5		DV/Threatening and intimidating	
6		Agg. Assault/DV	Unsuccessful Probation
7			
8	CR-12-154	Disorderly Conduct	Guilty – Time served
9			
10	CR-14-251	Liquor Violation	Guilty – Fines/CS
11			
12	CR-14-467	Disorderly Conduct	Probation Revoked
13			
14	CR-16-026	Threatening and Intimidating/DV	Guilty - Fine
15			
16	CR-18-049	Refusal to obey lawful order	Probation revoked
17	CR-18-232	Liquor Violation	Guilty – time served

21 **EDUCATION:**
 22 **Probation did not speak with the defendant after attempts to have Mr. Madrid come in**
 23 **for an interview. Probation has no information about the defendant's education.**
 24
 25

1 PROBATION HISTORY:

2 **Defendant has a history of failure on Probation. He was unsuccessfully discharged in CR-**
3 **10-250, revoked in CR-14-467 and CR-18-049.**

4
5 PRESENT SITUATION:

6 **On December the Pascua Yaqui Tribal Court found Mr. Madrid guilty of count – 1 Failure**
7 **to Provide Vetrinary care after a bench trial. Probation was then ordered to complete a**
8 **pre-sentence investigation. Mr. Madrid’s sentencing hearing is scheduled for January 4th,**
9 **2019.**

10
11
12 FINANCIAL STATEMENT:

13 **Mr. Madrid failed to come and speak with Probation in order to complete his interview for**
14 **the PSI, but according to the request for court appointed counsel signed by Mr. Madrid, he**
15 **brings home \$70.00 a week and is on food stamp benefits.**

16
17 BEHAVIORAL HEALTH SERVICES:

18 **Unknown at this time.**

19
20
21 DEFENDANT’S STATEMENT:

22 **No statement was made due to defendant failing to report to probation for his Pre-sentence**
23 **investigation interview.**

1 PROBATION OFFICER ASSESSMENT:

2 Mr. Madrid has a history of failure to comply with probation. Therefore, probation does
3 not feel that Mr. Madrid is not going to be a good candidate for probation. Most recently
4 on March 14th, 2018 Mr. Madrid's probation in CR-18-049 was revoked and he served 10
5 days in detention. While he was on probation he did accumulate new charges in CR-18-108
6 however, those charges were dismissed as part of an agreement to revoke probation.

7
8 SENTENCING CONSIDERATIONS:

9 Ct.1- Failure to Provide Veterinary Care

10 -Defendant to pay a fine of \$250.00 or complete and submit 50 hours of community service
11 to the Pascua Yaqui Tribal Court in lieu of the fine.


12 -Defendant pay a \$100.00 court cost or complete and submit 20 hours of community service
13 to the Pascua Yaqui Tribal Court in lieu of the court cost.

14 -Defendant not be allowed to acquire any new animals for a period of 1 year.

15 -Defendant to complete an Animal Cruelty Education Class with the Humane Society of
16 Southern Arizona and submit proof to the Pascua Yaqui Tribal Court. For the class,
17 defendant can call the Humane Society and speak with Stephanie Gray at (520) 312-3704
18 ext. 125.

19
20
21 Dated this 28th day of December 2018

22 Respectfully submitted,

23 

24 **Dominic M. Duran**
25 **Probation Officer**

Appellee's Exhibit G
(Copy of Defense Sentencing Memorandum, filed
in *PYT v. Madrid* AC-18-003)

2018 DEC 28 PM 3:35

LOCKED FILE



1 PASCUA YAQUI PUBLIC DEFENDER
2 Glucia Batista Brannock
3 4725 W. Calle Tetakusim, Bldg. B
4 Tucson, AZ 85757
5 (520) 883-5013
6 D.C. Bar No. 888314451
7 Glucia.brannock@pascuayaqui-nsn.gov

8 THE PASCUA YAQUI TRIBAL COURT

9 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

10 PASCUA YAQUI TRIBE,

11 Plaintiff,

12 vs.

13 MADRID, ANTONIO,

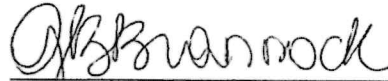
14 Defendant.

Case No.: AC-18-003

15 **DEFENDANT'S**
16 **SENTENCING MEMORANDUM**

17 Defendant, Antonio Madrid, through undersigned counsel, respectfully provides the Court
18 with the attached sentencing memorandum. Mr. Madrid respectfully requests this Court impose a
19 sentence sufficient but not greater than necessary to comply with the purposes of the Pascua Yaqui
20 Tribal Code and the Pascua Yaqui Constitution.

21 RESPECTFULLY SUBMITTED this 28th of December, 2018



22 Glucia Batista Brannock
23 Deputy Public Defender
24 Attorney for Antonio Madrid

1 MEMORANDUM AND POINTS OF AUTHORITY

2 **1. Introduction**

3 On January 4, 2018, Mr. Antonio Madrid will appear before this Court for sentencing,
4 having found guilty of count one, Failure to Provide Veterinarian Care pursuant to
5 PYTC § 6-1-60 (B)(4). Based on the circumstances of this case, his denial of ownership of the
6 animal in question, his age, his chronic back and knee pain, and strong ties to this community,
7 Mr. Madrid asks the Court to impose a fine of \$250.00, with the possibility of payment through 30
8 hours of community services, and an order that he not be allowed to acquire any pets for a period of
9 one year.

10 **2. Factors to Consider at Sentencing**

11 Known as the parsimony principle, 18 U.S.C. § 3553(a)'s first command is that a sentencing
12 court "shall impose a sufficient, but not greater than necessary to comply with the purposes set" in
13 the law. *See, e.g., United States v. Chavez*, 611 F.3d 1006, 1010 (9th Cir. 2010) (the parsimony clause "is a
14 guidepost, an overarching principle that directs judges in the appropriate exercise of their sentencing
15 discretion..."). "[S]entencing is an art, not to be performed as a mechanical process but as a
16 sensitive response to a particular person who has a particular personal history and has committed a
17 particular crime." *U.S. v. Harris*, 679 F.3d 1179, 1183 (9th Cir. 2012). As such, Mr. Madrid
18 respectfully requests this Court consider the following factors when deciding the appropriate
19 sentence in this case:

20 *a. Nature and circumstances of the offense, and the history and*
21 *characteristics of the defendant*

22 The instant offense is a non-violent offense. Mr. Madrid did not obstruct justice, there are no
23 victims of this offense, and he has complied with his conditions of release. Ownership of the dog was
24 presumed because the dog was found inside Mr. Madrid's property. Mr. Madrid firmly denied
25

1 ownership of any dog, and his position was supported through testimony of Ms. Belinda
2 Makesroomforthem, whom have known Mr. Madrid for all her life and had lived in the property
3 shortly before the incident in question. Mr. Madrid makes no additional statements as to his conduct
4 in this case as he may appeal his conviction.

5 Mr. Madrid was born and raised in this community, and he has no prior criminal convictions
6 or arrests related to the charges in this matter. He is a 63-year old enrolled member of the Pascua
7 Yaqui Tribe with strong ties to this community. Mar. Madrid also has chronic back and knee pain, and
8 struggles to stay sit or to carry heavy weights on a daily basis. In fact, it was evident how uncomfortable
9 he was sitting during trial. He is unemployed and lacks transportation, and thus his life revolves around
10 the reservation. Mr. Madrid is active as he can be in this community, as he likes to help an elderly man
11 named Pedro at the Pascua Yaqui Tribe Senior Center.

12 *b. Sentence must reflect the seriousness of the offense, promote respect*
13 *for the law, and provide just punishment for the offense.*

14 Stiffer sentences do not promote respect for the law and they are not just punishment for
15 non-violent offenses. Attorney General Eric Holder on April 5, 2013 at speech delivered at the 15th
16 Annual National Action Network Convention that stated as follows;

17 Too many people go to too many prisons for far too long for no
18 good law enforcement reason. It is time to ask ourselves some
19 fundamental questions about our criminal justice system. Statutes
20 passed by legislatures that mandate sentences, irrespective of the
21 unique facts of an individual case, too often bear no relation to the
22 conduct at issue, breed disrespect for the system, and are ultimately
23 counterproductive. It is time to examine our systems and determine
24 what truly works. We need to ensure that incarceration is used to
25 punish, to rehabilitate, and to deter — and not simply to warehouse
and forget.¹

¹ Available at: <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130404.html>.

1 In addition, in 2014, the National Research Council examined empirical studies and concluded
2 that because the marginal deterrent effect of long sentences, if any, is so small and so far outweighed
3 by the increased costs of incarceration or probation; long sentences are “not an effective deterrent.”²

4 General deterrence is a factor this Court should consider when rendering its judgment.
5 While the Pascua Yaqui Tribal Code does not direct the Court regarding sentencing,
6 Mr. Madrid faces up to one year of incarceration and up to a \$5000 fine.

7 The Pre-Sentence Report (PSR) recommended the payment of \$250 fine or 50 hours
8 of community services, \$100 court’s cost or 20 hours of community services, that Mr. Madrid
9 not be allowed to acquire any new animals for a period of 1 year, and to complete an Animal
10 Cruelty Education Class with the Humane Society of Southern Arizona. The PSR does not
11 recommend probation. However, due to the nature of the offense, the financial burden of the
12 recommendations, Mr. Madrid’s age and physical conditions, and the fact he has complied
13 with his conditions of release, such recommendations are too onerous.

14 As stated in the PSR, Mr. Madrid brings home \$70 a week and is on food stamps. The
15 Animal Cruelty class costs \$75 that cannot be paid through community services. (*See*
16 *Exhibit A*). Additionally, there is a cost with transportation to the Humane Society because
17 Mr. Madrid lacks transportation. Mr. Madrid does not object to not be allowed to acquire any
18 dogs for one year, but notes the animal cruelty class would be unnecessary if he is not allowed
19 to acquire any animals. Therefore, due to the financial burden and the fact Mr. Madrid will not
20 be able to acquire any pets for a year, Mr. Madrid respectfully objects to an order that he be
21 required to take the animal cruelty class he will not be able to afford.
22

23
24
25 ² National Research Council. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, DC: The National Academies Press, 2014. doi:10.17226/18613.

1 Although Mr. Madrid also lacks the financial means to afford a \$250 fine and \$100
2 court's cost, he can fulfill these requirements through community services. However, the hours
3 required are too much for a man of Mr. Madrid's age and physical conditions. Mr. Madrid is
4 limited in options for community services due to his chronic knee and back pain, and thus a
5 total of 70 hours of community services would set Mr. Madrid for failure. Additionally,
6 Mr. Madrid is indigent and a \$100 in court's cost is essentially a consequence on Mr. Madrid's
7 exercise of his fundamental rights. Therefore, Mr. Madrid respectfully objects to the
8 recommended court's cost and its community services hours. As such, Mr. Madrid respectfully
9 asks this Court consider a just punishment in this case, as being a \$250 fine or 30 hours of
10 community services and an order that he is not allowed to acquire any new animals for a period
11 of 1 year.

12 *c. Afford adequate deterrence to criminal conduct.*

13 Increased terms of incarceration do not deter criminal conduct: *See, U.S. v. Bannister*, 786
14 F.Supp.2d 617 (E.D.N.Y. 2011):

15 The increased prison population [in the United States of America] is
16 due in large part to longer sentences. For the same crimes, American
17 prisoners receive sentences twice as long as English prisoners, three
18 times as long as Canadian prisoners, four times as long as Dutch
19 prisoners, five to 10 times as long as French prisoners, and five times
as long as Swedish prisoners. Yet these countries' rates of violent
crime are lower than ours [...].

20 Just as substantial prison time is not necessary in this case to promote individual deterrence,
21 it is also not necessary for general deterrence. Empirical studies on deterrence conclude crime
22 prevention is more of a deterrent than imprisonment. In other words, there is little to no correlation
23 between the severity of punishment and deterrence, but there is a correlation between certainty of
24 being caught and deterrence. *See* David Nagin, *Deterrence in the Twenty-First Century*, The University of
25 Chicago Press, Crime and Justice Vol. 24 (2013), pp. 247-48. The U.S. Justice Department also

1 agrees that there is a lack of correlation between severity of punishment and detention based on its
2 own scientific studies, resulting in the issuance of "Five Things About Deterrence:" (1) the certainty
3 of being caught is a vastly more powerful deterrent than the punishment; (2) sending an offender to
4 prison is not a very effective way to deter crime; (3) police deter crime by increasing the perception
5 that criminals will be caught and punished; (4) increasing the severity of punishment does little to
6 deter crime; (5) there is no proof that the death penalty deters criminals. *See National Institute of Justice*
7 *Five Things About Deterrence* (U.S. Dept. of Justice Office of Justice Programs, July 2014).

8 In some cases "a sentence of imprisonment may work to promote not respect, but derision
9 of the law if the law is viewed as merely means to dispense harsh punishment without taking into
10 account the real conduct and circumstances involved in sentencing." *Gall v. United States*,
11 552 U.S. 38, 54 (2007). As more research is conducted, it becomes clearer that probability of arrest,
12 not length of sentence, is the actual deterrent.

13 Justice does not require a lengthy sentence for Mr. Madrid. He does not own any dogs, is
14 older and have chronic back and knee pain, he has been compliant with his conditions of release,
15 and has never committed an offense of this nature before. He also does not intend to acquire any
16 pets in the future.

17 ***d. Protect the public from further crimes.***

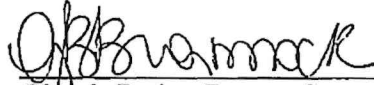
18 Mr. Madrid's desire to avoid any term of incarceration and live out the remainder of his life as
19 a free man will serve to protect the public from further crime. There is no reason to believe that
20 Mr. Madrid is a threat to the Pascua Yaqui community.

21 **3. Conclusion**

22 Based on the above, Mr. Madrid respectfully requests this Court impose a sentence of \$250.00
23 fine or 30 hours of community services in this case and orders that he is not allowed to own any pets
24 for a period of one year. Mr. Madrid objects to the imposition of any jail time or probation in this
25

1 matter, and he also objects that he be required to take the Animal Cruelty Class, as he may not be
2 financially able to afford the class.

3 RESPECTFULLY SUBMITTED this 28th day of December 2018.

4
5 
6 Glauca Batista Brannock
7 Deputy Public Defender
8 Attorney for Antonio Madrid

9 The original of foregoing was filed in Pascua Yaqui Tribal Court on December 28, 2018, and copy
10 of was delivered this same date to:

11 Pascua Yaqui Office of the Prosecutor
12 Kendrick Wilson
13 Deputy Prosecutor
14 7777 S. Camino Huivisim, Bldg. A
15 Tucson, AZ 85757

16 Dominic Duran, Pascua Yaqui Tribe Office of Probation
17 Conforming copy to Antonio Madrid, Defendant
18
19
20
21
22
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24
25

EXHIBIT A

Animal Cruelty Education Classes

The Humane Society of Southern Arizona's Education Department, in cooperation with the Animal Cruelty Taskforce of Southern Arizona (ACT), offers educational classes for both adults and juveniles who have been charged with animal neglect or abuse. The 1 1/2-hour classes are taught by professional public educators attached to ACT.

Adult Classes:

These classes can be used as part of a sentencing or plea bargain agreement. The class is open to any individual 18-years of age or older who has been charged for animal cruelty or neglect under city, county or state ordinances. Defendants can call the numbers below to arrange for their class session. The curriculum covers applicable laws that protect animals from harm and the legal responsibilities of pet owners; information on disease prevention; safety and care tips; animal overpopulation statistics and much more. Each participant will be provided with a classroom workbook which he/she can keep after the class is over. Every defendant who successfully completes the class will be provided with an official certificate of completion which can be turned into the court as proof of compliance.

ACE Class Schedule:

The Animal Cruelty Education class is held five times a year on Saturdays from 10:00 a.m. - 11:30 a.m. All participants must be registered in advance and payment in full received prior to class dates. Walk-ins are not welcome and participants who arrive more than 15 minutes late will not be able to attend. There are no refunds given for failure to appear. Participants are only able to cancel and reschedule once. You may register online at www.hssaz.org by clicking on the services link or calling the number listed below.

Cost: \$75 per person, payable in advance by credit card, cashier's check or money order. No refunds are given for unexcused absences or failure to complete the entirety of the class.

2018 Dates:

January 13, 2018 from 10:00am-11:30am
March 3, 2018 from 10:00am-11:30am
May 12, 2018 from 10:00am-11:30am
August 11, 2018 from 10:00am-11:30am
October 13, 2018 from 10:00am-11:30am
December 8, 2018 from 10:00am-11:30am

Registration Information:



Humane Society of Southern Arizona
Education Department
635 West Roger Rd. Tucson AZ 85705
Phone: (520) 327-6088, ext. 125, (Mon-Fri)
Email: dmiller@hssaz.org

www.hssaz.org



Appellee's Exhibit H1
(Copy of Audio from first part of sentencing, filed
in *PYT v. Madrid* AC-18-003)

Appellee's Exhibit H1 is a DVD-R disk and is in the file.

Appellee's Exhibit H2
(Copy of Audio from first part of sentencing, filed
in *PYT v. Madrid* AC-18-003)

Appellee's Exhibit H2 is a DVD-R disk and is in the file.

**IN THE PASCUA YAQUI COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA**

ANTONIO MADRID

Appellant

vs.

PASCUA YAQUI TRIBE,
OFFICE OF THE PROSECUTOR,

Appellee

APPELLATE CASE NO: CA-19-003

TRIBAL COURT CASE NO: AC-18-003

PETITIONER/APPELLANT'S OPENING BRIEF

Oscar J. Flores,
Chief Prosecutor
Coleen Thoene,
Deputy Prosecutor
Pascua Yaqui Office of the Prosecutor
7777 S. Camino Huivisim
Bldg. A, 2nd Floor
Tucson, AZ 85757
Telephone: (520) 876-6251
Oscar.J.Flores@pascuayaqui-nsn.gov
Coleen.Thoene@pascuayaqui-nsn.gov

Attorneys for the Pascua Yaqui Tribe

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....3

REQUEST FOR ORAL ARGUMENT5

STATEMENT OF JURISDICTION6

STANDARD OF REVIEW6

ISSUES PRESENTED FOR REVIEW8

STATEMENT OF THE CASE9

 I. FACTS AND PROCEEDINGS BELOW:.....9

 A.Facts elicited at trial and procedural history:.....9

 B.Summary of the Argument 16

LAW AND ARGUMENT 17

 I. Appellant’s Expansion of the Record to Include Items and Arguments not Included Raised with the Trial Court Contravenes Established Law Concerning the Appellate Court’s Role as a Court of Review..... 17

 II. The Tribe Did Not Violate its Disclosure Obligations Because the Evidence Now Sought by Appellant was Neither Material nor Exculpatory. 20

 A.Pascua Yaqui Disclosure Rules and Guidelines:..... 20

 B.Disclosure obligations under *Brady*, *Giglio*, and *Henthorn*: 21

 C.Officer Wells’ personnel file did not contain any exculpatory or material information disclosable under *Henthorn* or *Brady*: 23

 D.Failure to disclose Officer Wells’ personnel file did not prejudice Appellant, or otherwise undermine confidence in the trial verdict 25

 E. ...Officer Machado’s report did not contain materially exculpatory or impeachment evidence, and non-disclosure did not deprive Appellant of a fair trial. 28

 III. Sufficient Evidence was Introduced at Trial to Demonstrate that Appellant had Care, Custody, or Control of an Animal and Failed to Provide it with Adequate Care..... 29

 IV. The Trial Court Took Mitigation Evidence Presented by Appellant into Account when it Imposed Sentence and, Therefore, did Not Abuse its Discretion. 31

CONCLUSION AND REMEDY SOUGHT 36

CERTIFICATE OF SERVICE..... 37

TABLE OF AUTHORITIES

Authority	Page Number
Pascua Yaqui Cases	
<i>PYT v. Campoy</i> , CA-07-009, p.3 (PYT Ct. App., Jun. 17, 2011).....	18
<i>PYT v. Coleman</i> , CA-15-003 (PYT Ct. App. Nov. 17, 2015).	7, 18
<i>PYT v. Martinez</i> , CA-15-004.....	21
<i>PYT v. Soto</i> , CA-06-010 (PYT Ct. App. March 9, 2007).....	5, 6, 18
<i>PYT v. Stoof, ex. rel. Madrid</i> , CA 17-002 (PYT Ct. App. Dec. 2018).....	6
Pascua Yaqui Tribal Code	
Art. VIII, § 5, Pascua Yaqui Const.....	18
3 PYTC § 2-3-260	5
3 PYTC § 2-3-30, <i>et. seq.</i>	6
4 PYTC § 4-10.....	32
4 PYTC § 4-120.....	32
4 PYTC § 4-130.....	32
4 PYTC § 4-20.....	32
4 PYTC § 4-200.....	32
8 PYTC § 6-1-20	30
8 PYTC § 6-1-60	5, 6
Pascua Yaqui Rules	
3 PYT R. Evid 7	10
3 PYT R. Evid. 31(A).....	10
3 PYT R. Evid. Rule 6.....	10, 24
3 PYTC R. Evid., Rule 7	24
3 PYTC. R. Evid, Rule 31	25, 27
3 PYTC § 1-2-30	18
3 PYTC § 2-2-10, <i>et seq</i>	20
3 PYTC § 2-2-300	32
3 PYTC § 2-2-380	20, 21
3 PYTC § 2-2-390	21
3 PYTC § 2-2-410	21
3 PYTC § 2-2-420	21
3 PYTC § 2-2-450	32
3 PYTC § 2-2-480	19
3 PYTC § 2-3-110	5, 18
3 PYTC § 2-3-180	5
3 PYTC § 2-3-40(D).....	5
Federal Cases	
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963).....	5,8-10,14,16,19,21-24
<i>Delaware v. Van Arsdall</i> , 475 U.S. 673 (1986).....	25
<i>Gage v. Chappell</i> , 793 F.3d 1159, 1165 (9th Cir. 2015)	24

<i>Gall v. United States</i> , 552 U.S. 38 (2007).....	7, 31, 33
<i>Giglio v. United States</i> , 405 U.S. 150, 154 (1972).....	21
<i>Strickler v. Greene</i> , 527 U.S. 263, 282-81 (1999).....	22
<i>United States v. Amezcua-Vasquez</i> , 567 F.3d 1050 (9th Cir. 2009).....	31
<i>United States v. Bonanno</i> , 852 F.2d 434 (9 th Cir. 1988).....	25
<i>United States v. Booth</i> , 309 F.3d 566 (9th Cir. 2002).....	23
<i>United States v. Cadet</i> , 727 F.2d 1453 (9 th Cir. 1984).....	22
<i>United States v. Calise</i> , 996 F.2d 1019 (9 th Cir. 1993).....	23
<i>United States v. Douglass</i> , 780 F.2d 1472 (9th Cir. 1986).....	6
<i>United States v. Elias</i> , 921 F.2d 870, 874 (9 th Cir. 1990).....	18
<i>United States v. Espinoza-Valdez</i> , 889 F.3d 654, 657–58 (9th Cir. 2018).....	29
<i>United States v. Garcia</i> , 768 F.3d 822 (9 th Cir. 2014).....	29
<i>United States v. Grovo</i> , 826 F.3d 1207 (9 th Cir. 2016).....	29
<i>United States v. Henthorn</i> , 931 F.2d 29 (9th Cir. 1991).....	5,8-10,14,16,19,21-24
<i>United States v. Lang</i> , 149 F.3d 1044, (9th Cir.).....	6
<i>United States v. Nevils</i> , 598 F.3d 1158 (9 th Cir. 2010).....	29
<i>United States v. Carty</i> , 520 F.3d 984, 988 (9 th Cir. 2008).....	33

Federal Statutes

18 USCA § 3553.....	32
---------------------	----

Miscellaneous Authorities

<i>Lamone v. Navajo Nation</i> , 3 Nav. R. 87 (1982).....	18
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REQUEST FOR ORAL ARGUMENT

Appellant's opening brief raises a number of primary issues: 1) the extent of a prosecutor's duty to disclose materially exculpatory evidence pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), as opposed to its duty to disclose impeachment evidence under *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991), that is material and relevant only in certain cases based on their unique facts; 2) whether there was substantial evidence supporting his conviction for Failure to Provide Veterinary care pursuant to 8 PYTC § 6-1-60(B)(4); and, 3) whether the trial court abused its sentencing discretion in this case, when the record¹ clearly supports that the trial court considered the mitigating evidence submitted by Appellant and his counsel. Additionally, some of the arguments raised by Appellant attempt to expand the trial court record and, as a result, assumes that the Court of Appeals is both willing, and able, to convert its role as an arbiter of review into something akin to a secondary trial court.

Although the Pascua Yaqui Court of Appeals has previously addressed the prosecution's disclosure obligations, it has not addressed this question in light of *Henthorn* or how the obligation differs under *Brady*. Based on the Tribe's review, it does not appear that this Court has addressed the other issues raised by Appellant. Resolution of these issues will depend heavily upon this Court's interpretation of Tribal, and Federal law. Accordingly, the Tribe submits that setting the matter for oral argument is in the interests of justice. *See* 3 PYTC § 2-3-180; 3 PYTC § 2-3-260(C)(6) and (D).

¹ Appellant has a duty to file a transcript of any proceeding where "Appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence." 3 PYTC § 2-3-110(F)(2). "Transcript" means a reporter's transcript, a transcription of an electronic recording, a narrative statement pursuant to Rule 9(C), or an agreed statement pursuant to Rule 9(D)." 3 PYTC § 2-3-40(D). *See also* *PYT v. Soto*, CA-06-010, p.3-4 (PYT Ct. App. March 9, 2007) (noting that Appellant is required to file a transcript, partial transcript, or notice that no transcript will be prepared, but finding that Appellant in that case did not need to file a transcript because no hearing had been held regarding the issue on appeal).

STATEMENT OF JURISDICTION

A criminal defendant has a constitutional right to appeal his conviction following trial.

PYT v. Stoof, ex. rel. Madrid, CA 17-002, p.1 (PYT Ct. App. Dec. 2018); *see also generally* 3 PYTC § 2-3-30, *et. seq.* Appellant, who is an enrolled member of the Pascua Yaqui Tribe, was convicted following a bench trial of one count of Failure to Provide Veterinary Care, in violation of 8 PYTC § 6-1-60(B)(4), committed within the physical boundaries of the Reservation. Accordingly, this Court has jurisdiction over his Appeal.

STANDARD OF REVIEW

Pure questions of law are to be reviewed *de novo*. *See Soto*, CA-06-010 at p.8 (discussing whether the prosecution had an affirmative duty to provide the defendant with a pretrial disclosure statement outlining the witnesses and materials it intended to use at trial); *United States v. Lang*, 149 F.3d 1044, 1046–47 (9th Cir.), *amended by* 157 F.3d 1161 (9th Cir. 1998) (“A primary reason for showing no deference on pure legal questions is that appellate judges “are freer to concentrate on legal questions.”). When determining whether there was sufficient evidence to convict a defendant, “the standard of review is whether there is substantial evidence” supporting said conviction. *United States v. Douglass*, 780 F.2d 1472, 1476 (9th Cir. 1986). Specifically, the Court of Appeals “must determine whether a reasonable jury, after *viewing the evidence in the light most favorable to the government*, could have found the defendants guilty beyond a reasonable doubt of each essential element of the crime charged.” *Id.* (*emphasis*). Questions of fact are reviewed “under a deferential, clearly erroneous standard” in recognition that the trial court “is in a superior position to judge the accuracy of witnesses’ recollections and make credibility determinations in cases in which live testimony is presented.” *Lang*, 149 F.3d at 1046–47 (citations and quotations omitted). A court’s sentencing determinations are reviewed for abuse of discretion. *Gall v. United*

States, 552 U.S. 38, 51 (2007). A court “abuses its discretion when it makes an error of law in reaching a discretionary conclusion, or when the record, viewed in the light most favorable to upholding the trial court’s decision, is devoid of competent evidence to support the decision.” *PYT v. Coleman*, CA-15-003, p.2 (PYT Ct. App. Nov. 17, 2015).

ISSUES PRESENTED FOR REVIEW

1. Whether an appellate court is a court of review, meaning that it is limited to considering issues fleshed out in trial court record, or whether it is to be treated as a secondary trial court, allowing the parties, on appeal, to supplement the record with materials and information that the trial court was denied an opportunity to consider?
2. Whether the prosecution had an affirmative duty to disclose a copy of an animal control officer's report pursuant to *Brady* when that officer was a minor witness, the report contained no exculpatory information, and when the witness was listed as a potential defense witness prior to trial but not called?
3. Whether the prosecution unlawfully suppressed *Henthorn* material relating to Officer Wells when it reviewed the officer's file and did not find any material relating to his propensity for honesty, and when the information sought by Appellant did not constitute relevant or material impeachment evidence that would be admissible at trial?
4. Whether the trial court committed error in finding Appellant guilty of the charged offense when the evidence admitted at trial showed that the dog was under his care, custody, and control, and that it was in need of medical treatment?
5. Whether the trial court abused its discretion when sentencing Appellant, when the audio record of sentencing demonstrates that the court issued a mitigated sentence in light of Appellant's criminal history, and where the court indicated that it considered the mitigation arguments presented?

STATEMENT OF THE CASE

I. Facts and Proceedings Below²:

A. Facts elicited at trial and procedural history:

Appellant was charged with one count of Failure to Provide Veterinary Care, committed in violation of 8 PYTC § 6-1-60(B)(4). Exhibit A, p.1 (Animal Control Complaint, *PYT v. Madrid*, AC-18-003 (May 24, 2018)). The complaint filed against him stated the following:

On or about May 14, 2018 at approximately 9:45 p.m., at or near 7600 S. Camino Huivisim, [Appellant] failed to provide that an animal under his care, custody or control received care and medical treatment for debilitating injuries, parasites and diseases, sufficient to maintain the animal in good health and minimize suffering, to wit: failed to provide veterinary care for a dog with scabs and open sores.

Id. (alterations from original removed).

Appellant was summoned to appear at an initial hearing on June 14, 2018; however, the hearing was reset to July 18, 2018, because Appellant failed to appear for court. *See* Contempt Order and Order Setting Bench Trial, *PYT v. Madrid*, AC-18-003 (Aug. 1, 2018).

When he failed to appear for his July 18th, a warrant issued for his arrest. *Id.* Appellant was ultimately arrested on the warrant and arraigned on August 1, 2018, at which time, a bench trial was scheduled for September 17, 2018. *Id.* Trial was continued three times to allow the parties to pursue a nontribal disposition. *See* Order for Continuance, *PYT v. Madrid*, AC-18-003 (Sept. 14, 2018); Order for Continuance, *PYT v. Madrid*, AC-18-003 (October. 15, 2018); Order Re-Setting Trial or Alternatively, for Status Hearing, *PYT v. Madrid*, AC-18-003 (November 14, 2018).

On November 15, 2018, recently assigned counsel contacted the Tribe and requested it review Pascua Yaqui Police Department (PYPD) Officer Kevin Wells' personnel files for material disclosable under *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991), *Brady v. Maryland*, 373

² The Tribe notes that its recitation of facts encompasses approximately nine pages of text. However, given the number of issues raised by Appellant, and the fact that an understanding of those issues depend on an accurate summary of the trial court record, such a lengthy discussion of the record is necessary.

U.S. 83 (1963), *United States v. Giglio*, 92 S.Ct. 763 (1972), and related case law. *See* Appellant , Exhibit A. The Tribe reviewed the materials within its possession and, on November 20, 2019, responded with the following:

“Following receipt of your request for *Henthorn* and *Brady* material on PYPD Officer Kevin Wells, our office has reviewed his applicable personnel documents and history. Officer Wells’ only actions on this case involved writing a report and taking photographs. He had no contact with the Defendant in this case and did not seize the dog in question. As such, the only potential impeachment of Officer Wells’ testimony would be any material which would indicate a veracity to provide untruthful testimony. Upon review, no such material exists.”

Id.

No motions were filed by either party regarding Appellant’s pretrial request for *Henthorn* and *Brady* materials. Indeed, no other written motions regarding discovery or the admissibility of evidence were filed prior to the commencement of trial on December 12, 2018. Exhibit 2, p.1 (Judgment and Order Setting Sentencing Hearing, *PYT v. Madrid*, AC-18-003 (Dec. 12, 2018)). At trial, the Tribe only called one witness, Officer Wells. Appellant called two civilian witnesses, Belinda MakesRoomForThem, and Lilian Contreras, an employee with counsel’s office. *Id.* Appellant also recalled Officer Wells in rebuttal. The following testimony was introduced at trial:

Officer Wells, an eighteen-year veteran of PYPD, conducted the investigation at issue on May 14th and 15th, 2018. Exhibit C, p.4 (Transcript of Bench Trial, *PYT. v. Madrid*, AC-18-003 (prepared Mar. 18, 2019)). During the evening hours of May 14, Officer Wells was on duty and responded to the area of 7600 Camino Huivisim in response to a report of an unwanted person.³ *Id.* at 4-5, 11-12. Officer Wells was unable to recollect at trial whether the call directed him to report to Appellant’s residence, or another one located in the area. *Id.* at 12. Officer Wells was familiar with the area and, in particular, Appellant’s residence because he had been to the location

³ Information was not elicited by the prosecution during its direct examination of Officer Wells regarding the specifics of the unwanted person call, or specifics relating to the “numerous... different calls” that Officer Wells indicated he had investigated at the residence. Such evidence would have been irrelevant under 3 PYT R. Evid. Rule 6(c), unduly prejudicial under 3 PYT R. Evid 7, or otherwise inadmissible. *See* 3 PYT R. Evid. 31(A).

“numerous times... for different calls.” *Id.* at 5. He also had previous contact with the owner of the residence, Appellant. *Id.* at 6-7. At trial, Officer Wells indicated that Appellant’s yard was surrounded by a chain link fence and that, based on his experience, the gates to the yard and driveway were “always kept closed and secured,” but not locked. *Id.* at 5-6, 14, 15. Officer Wells also testified on cross that he “had never seen any gaps in the fence” when he was at the residence. *Id.* at 14.

Officer Wells knew of three dogs living at the residence, which he described as being “usually” active. *Id.* at 5. In particular, he stated the eldest dog — the subject of Appellant’s criminal charge — normally greeted visitors at the fence. *Id.* However, on May 14th, the dog was laying on a couch in the yard, unmoving. *Id.* The couch was located under a carport but was visible from the front gate of the residence. *Id.* at 13. The dog did not go to the fence to greet Officer Wells as it normally would have, and appeared to have “splotches all over... the front of its chest, head, paws, front paws, and along its body with hair loss.” *Id.* at 5. Officer Wells indicated that it was dark outside, although he was “not sure how dark it was.” *Id.* at 13. He also indicated that he did not have a camera with him at that time. *Id.* at 16. Officer Wells testified that — although he attempted, unsuccessfully, to contact Appellant at the residence — he was not able to do seize the dog on the 14th because he was handling a higher priority, unwanted person call, and was required to end his shift for the evening after completion of that investigation. *Id.* Nevertheless, the dog’s condition and behavior caused the officer enough concern that he returned to the residence the following day.

On May 15th, Officer Wells returned to Appellant’s house to check on the dog and to attempt to locate Appellant. *Id.* at 16.⁴ The three dogs were still present in the yard and the older

⁴ Officer Wells testified during direct examination that he was only at the residence on May 14. *Id.* at 10. However, on cross-examination, Officer Wells indicated that he had misspoken earlier in his testimony, and clarified that he returned

dog was, again, on the couch in the same area as the night before, but got up to drink water while the officer was there. *Id.* at 17-18. Officer Wells took photographs showing the dog's condition, which were admitted over objection at trial. *Id.* at 9-10; *see* Exhibit D, Copies of Prosecution Photos admitted at trial, ROA p. 33-35.⁵ When he was unable to locate the owner, and because the dog still appeared to need medical treatment based on his behavior and condition, he decided to seize and transport it for treatment. *Id.* at 16.

Appellant's counsel meticulously cross-examined Officer Wells at trial. *Id.* at 11-20. During cross, he indicated that he only read his report from this investigation to prepare for trial. *Id.* at 11. He admitted that he had not received veterinarian training, *Id.* at 11, and could not determine whether the dog's injuries were the result of an accident or neglect. *Id.* at 18. He also testified that, while he had "never seen any gaps in the fence" when he was previously at the residence, he could not "say if there [were] any holes under the fence" in May, 2018, *Id.* at 14-15. Officer Wells testified that, because the dog was inside a fenced, secured yard, he did not attempt to contact neighbors to find the legal owner of the dog when he was unable to locate Appellant. *Id.* at 19-20. He also admitted that the dog did not have a tag, *Id.* at 16, and that the police department did not have a chip-identification scanner. *Id.* at 19. Additionally, he stated that, while the animal control department "did have a scanner," it was broken and had "never been replaced." *Id.* at 19. When asked on cross whether the Pascua Yaqui Tribe's sole animal control officer, Officer Lily Machado, was working at the time of the investigation, Officer wells stated, "Animal control was not there that day, if I remember correctly. Because I can't remember... if that was a weekday or

to the residence the following day. *Id.* at 16-17. He also testified that, although the photos did not show the dog laying on the couch on May 15th, they clearly and accurately depicted the dog's condition on May 14th. This discrepancy was taken into consideration by the trial court when it rendered its verdict. *Id.* at 39

⁵ These photos were admitted as Tribe's exhibits Three, Four, and Five. Exhibit C at p.9. The ROA does not identify which exhibit tag each photo corresponds to. Accordingly, the Tribe will refer to them according to their page number within the attached exhibit, which mirrors the order in which the photos appear in the record. The trial court described the contents of the photographs prior to issuing its ruling, describing the dog's condition in detail. *Id.* at 33-35.

weekend....” *Id.* at 16. He further admitted that he did not document whether he attempted to contact animal control. *Id.* at 17.

Appellant called a total of three witnesses. Lillian Contreras testified that she visited Appellant’s residence on November 15th, 2018, six months after the incident, and took pictures of the yard and fence. *Id.* at 24. She admitted that she had no direct knowledge of how the fence and property appeared in May. *Id.* at 25. Belinda MakesRoomForThem, a friend and former cohabitant of Appellant, testified that the photos showed “just little holes” in the fence that had been covered with boards, *Id.* at 28-29, and that those same holes had been present when she moved out of Appellant’s residence in January, 2018, approximately four months before the incidence. *Id.* at 30. According to Ms. MakesRoomForThem, Appellant had never owned any dogs, but that dogs would sometimes come and go from his yard if someone left the gate open. *Id.* at 30-31.

During rebuttal questioning of Officer Wells, Appellant’s counsel asked if he had seen a dog in Appellant’s yard on specific dates prior to May 14, 2018. The following exchange occurred:

Officer Wells: I don’t remember the exact date. I know I’ve seen the dog because I’ve been there on different calls and when I’ve been there I’ve seen that dog before. Uh, without going back and looking through all the records I couldn’t tell you what dates I actually saw him on.

Appellant’s Counsel: So you have records of the days you saw the dog on but you did not enter those into evidence?

Officer Wells: I, uh, they’re in the police reports, when I was there and I could, based on those reports I could tell you what dates they were.

Id. at 33.

Officer Wells also testified that counsel had never requested that he submit to a pretrial interview, and Appellant’s counsel further noted during questioning that the defense had never requested copies of any unrelated reports prepared by Officer Wells. *Id.* at 35. No motions, oral or otherwise, were made regarding disclosure.

The trial court found Appellant guilty of the charged offense. *Id.* at 39-41. As part of its ruling, it took great pains to describe the condition of the dog as it was depicted in the admitted exhibits. *Id.* at 39. The court also stated,

“I’m not a veterinarian but I know what... mange looks like when you have dogs that have [debrided] skin, no hair on their paws or no hair on their legs, open sores, open redness, indicating there is some sort of abrasion, some sort of severe skin condition. And then the face, shown in photograph 5 appears to be not only open sores but open puss [*sic*] sores and appears that it’s fresh scabs. And then the other photograph, page 4, indicates the scab and sores all along the dog’s face on both the right cheek, left cheek, under the eyes, along the nose, along the ridge, and near the nose. And then further, the close-up of the photograph 5, shows some additional damage to the dog’s left front face, which appears to be scaly and scabbed.”
Id. at 41.

The court also indicated that the photos showed a can of dog food in the yard where the dog was found, as well as what appeared to be additional cans nearby. *Id.* at 39. The court further noted that Officer Wells corrected his testimony with regards to when he was at Appellant’s house, and had testified that he had no veterinary training. The court also noted that, under Pascua Yaqui law, actual ownership need not be proven, merely “care, custody and control.” *Id.* at 41.

On December 13, 2018, the day after trial, Appellant’s counsel contacted the assigned prosecutor and indicated that she had serious concerns about the previously denied “*Henthorn/Brady*” request in light of Officer Wells’ testimony at trial. *See* Appellant Exhibit C. In response, the prosecutor indicated that at the time of the response to the initial request, the prosecution “did not realize [Officer Wells] had seized the dog in question. Our office stands by our contention that nothing in his personnel records affects his propensity for truthfulness and therefore, nothing is discoverable.” *Id.*

Sentencing was held on January 4, 2019. Exhibit E, p.1 (Judgment, *PYT v. Madrid*, AC-18-003 (Jan. 4. 2019); *also* Exhibits H1 (Sentencing hearing, part 1); Exhibit H2 (Sentencing Hearing, part 2). Prior to sentencing, a presentence report (PSR) was prepared, *see* Exhibit F (Pre-Sentence Report, *PYT v. Madrid*, AC-18-003 (Dec. 28, 2019), and Appellant submitted a detailed sentencing

memorandum, *see* Exhibit G (Defendant’s Sentencing Memorandum, *PYT v. Madrid*, AC-18-003 (Dec. 28, 2019)). The trial court indicated receipt of the presentence report and Appellant’s memorandum. *See* Exhibit H2, at 02:12. Probation made recommendations consistent with those outlined in its report. *Id.* at 02:33. The prosecution, for the most part, concurred with the recommendations of the probation officer, but asked the court to also impose 10 days of jail to be suspended upon Appellant’s successful completion of probation. *Id.* at 03:52. The prosecution also noted that a similar sentence had been imposed in an unrelated animal offense case involving a different defendant, and that the sentence it was recommending was appropriate in light of that fact. *Id.* Appellant made recommendations consistent with those contained in his sentencing memorandum. *Id.* at 05:20. Appellant further indicated his willingness to serve a jail sentence of “one to two” days in lieu of probation and a fine. *Id.* at 07:42.

The court indicated that a sentence of probation was appropriate in light of the fact that Appellant had previously been able to complete probation. *Id.* at 07:59. The court sentenced Appellant to ten days jail, suspended upon his successful completion of six months of probation, and stated that probation fees would be determined based on Appellant’s income. *Id.* at 08:40. The court indicated that a \$250 fine was appropriate because it addressed “the issues of not caring for the animal,” *Id.* at 08:52, and further noted that Tribal law mandates the imposition of court costs. *Id.* at 09:05. It also ordered completion of an animal cruelty class, and a prohibition on obtaining animals for one year. *Id.* at 09:15. Finally, the court addressed Appellant’s community service concerns and indicated that there are types of community service that can be performed by individuals with physical issues, and that probation could assist him in finding suitable community service opportunities. *Id.* at 09:49.

Appellant filed a timely notice of appeal and motion to stay his sentence. Prior to filing his opening brief, Appellant submitted a letter to the prosecution requesting that that Officer Wells’

personnel records be reviewed “for any impeachment and exculpatory material,” including citizen complaints, incident reports, disciplinary actions, and internal affairs information. Appellant Exhibit D, p.2. Appellant also requested copies of “additional police reports made on the dog seized at Appellant’s property,” *Id.*, and a copy of the animal control officer’s work schedule for the month of May, 2018. *Id.* The Tribe responded that the Court of Appeals is limited to the record presented at the trial court, and that it was aware of no rule providing a mechanism for disclosure records post-conviction. Appellant Exhibit E, p. 1. The Tribe further noted that it has a continuing ethical duty to disclose clearly exculpatory material, even after conviction. *Id.* at 2. It indicated that Officer Wells’ file had been reviewed and found to contain no material exculpatory information. *Id.* The Tribe further stated that there were no other police reports prepared by Officer Wells regarding the investigation, but that it had located a report prepared by Animal Control Officer Lily Machado. In that report, the officer “documented having seen the dog at the kennel and transporting him to Pima Animal Care.” *Id.* The report did not contain any exculpatory information. *Id.*

B. Summary of the Argument

The Tribe is very aware of its Constitutional, statutory, and ethical obligations to ensure that exculpatory and material information is disclosed to a defendant. Appellant in this case asserts that the Tribe had an ethical duty to disclose *Henthorn* material from Officer Wells’ personnel file. However, the Tribe had no such duty because Officer Wells’ file contained no information relating to the officer’s propensity for honesty or dishonesty. At most, it included documentation that Officer Wells had been previously investigated regarding whether he had improperly used force. Such information would not have been relevant or admissible in this case — even for impeachment purposes — based on the nature of Appellant’s charge. Because it was immaterial to Appellant’s defense and otherwise inadmissible, the Tribe did not violate its ethical or disclosure obligations by

failing to disclose the information. Additionally, the Tribe did not violate *Brady* by failing to disclose a copy of Officer Machado's report, in which she documented taking the dog from a kennel located on the reservation to a shelter located off-reservation. The report was neither material nor exculpatory, and did not possess impeachment value. Additionally, and as with Appellant's first claim of error, the information would not have resulted in a reasonable probability of a different outcome at trial.

Appellant next argues that there was insufficient evidence supporting his conviction, largely based on what he perceives as insurmountable issues with Officer Wells' testimony. However, a review of the complete record shows there was ample evidence that the dog—which was located inside Appellant's fenced yard in an area with water and dog food—was under Appellant's custody and control. Finally, Appellant claims that the trial court abused its sentencing discretion by failing to consider mitigating evidence about Appellant's financial and physical status. This argument is belied by the record, which clearly shows the opposite.

Accordingly, and for the reasons outlined below, the Tribe respectfully requests that Appellant's claims be denied.

LAW AND ARGUMENT

I. Appellant's Expansion of the Record to Include Items and Arguments not Included Raised with the Trial Court Contravenes Established Law Concerning the Appellate Court's Role as a Court of Review.

Some of the arguments raised by Appellant in his opening brief — specifically those relating to alleged disclosure violations — rely on exhibits that are not a part of the trial court record. *See* Appellant Exhibits A-F. At least one of these exhibits, Exhibit F, is a motion that was filed in an unrelated case involving a different defendant and different charges. Such an approach ignores the

unique roles of appellate courts, and, in particular, attempts to convert the Pascua Yaqui Court of Appeals from an arbiter of review into something akin to a secondary trial court.

3 PYTC § 1-2-30 sets up the structure of the Pascua Yaqui Tribal Courts. It specifically establishes separate trial and appellate courts. *Id.* Art. VIII, § 5, Pascua Yaqui Const., specifically outlines the Appellate Court's responsibilities and power as a court of review. While the Court can order trial *de novo* in criminal cases, its primary duty is to review lower court proceedings for error. *Id.* Being a court of review, it is limited to the record created at the trial court level. The Pascua Yaqui Rules of Appellate Procedure expressly state that the record on appeal "shall be the original papers, exhibits and other objects filed with the trial court clerk, a reporter's transcript, transcription of an electronic recording or narrative or agreed statement, and copies of all entries." 3 PYTC § 2-3-110(A). "If a dispute arises as to whether the record discloses what actually occurred in the trial court, the difference shall be settled by the trial court, and the record made to conform to the truth." 3 PYTC § 2-3-110(I). "The trial court record is critical to the appellate process because the appellate court uses it to understand what occurred" before the trial court. *Soto*, CA-06-010, at p.5 (citing *Lamone v. Navajo Nation*, 3 Nav. R. 87 (1982)). "[A]n appellate court can only rule on issues in the record." *Id.* at 6 (*emphasis added*). Further, the Court of Appeals has the power to remand a case to flesh out the record regarding individual issues. *See e.g. PYT v. Coleman*, CA-15-003, p.1 (special action petition in which the Court of Appeals remanded two of the issues raised by the parties regarding disclosure and the admissibility of evidence to the trial court). Additionally, the Court has refused to consider evidence "that has not been submitted to and considered by the Tribal Court" in the past. *Id.* at 5 (citing *United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) (indicating that an appellant bears the burden of an incomplete factual record)); *also, PYT v. Campoy*, CA-07-009, p.3 (PYT Ct. App., Jun. 17, 2011) (finding that the prosecution erred in failing to file a formal disclosure pleading with the court, even though the prosecution indicated it had sent a letter to defense counsel, where there was no information in the record indicating the

defense had received the letter); *but also see Id.* at 4 (indicating that the sole appellate judge involved in the case checked unrelated case files from previous years).

Appellant requested a review of Officer Wells' file for *Brady/Henthorn* material prior to trial and was told that his file did not contain any information relating to his propensity for honesty or dishonesty, impeachment material, or exculpatory evidence. Appellant had an opportunity to file a motion with the trial court regarding the issue. According to the exhibits attached by Appellant, he chose not to raise the issue until after sentencing, despite contacting the Tribe immediately after trial, and despite the fact that sentencing was set three weeks later. Had the issue been raised in a timely fashion, it would have resulted in the parties submitting detailed arguments for the trial court's consideration, and may have resulted in additional witness testimony.

In this case, Appellant forces this Court and the Tribe into unique and almost untenable positions by virtue of his attempts to expand the record on appeal. Because this Court may only consider the record before it, Appellant forces this Court to either become a secondary trial court which may take testimony and exhibits, or to remand the case on those specific issues to allow Appellant a second chance to raise them with the trial court when, due to reasons of strategy or otherwise, it neglected to do so earlier.⁶ It also forces the Tribe, as Appellee, to respond to the extra-record arguments raised in Appellant's Opening brief. Such response, by necessity, forces the Tribe to refer to items or arguments also not presented to the trial court. In short, it results in this Court basing its review on a muddy, piecemeal record, which is inappropriate and inconsistent with the spirit of justice and Pascua Yaqui case law.⁷

⁶ The Tribe notes that Appellant has filed a motion to stay his appeal and have the case remanded to the trial court for review, specifically, of the alleged disclosure violations. That has not been ruled upon. It is the Tribe's position that this Court may rule on the record before it, and may, in its discretion, determine that a party has forfeited certain arguments not raised before the trial court. The Tribe also notes that it has informed Appellant's counsel that it will defer to this court on issues relating to any stay.

⁷ The Tribe, in this case, is following the strict language of Pascua Yaqui Appellate Procedure Rules, and related case law. The mere fact that the Tribe is doing so does not amount to the Tribe using such rules as both a sword and a shield regarding its disclosure obligations.

The Tribe does not concede that this Court has the ability to review materials or evidence not contained in the record. However, in the event that this Court allows expansion of the record, or determines that the record is sufficient to proceed with review, the Tribe will address Appellant's extra-record arguments below.

II. The Tribe Did Not Violate its Disclosure Obligations Because the Evidence Now Sought by Appellant was Neither Material nor Exculpatory.

Appellant asserts that the Tribe denied him his due process rights to a fair trial when it failed to disclose information relating to Officer Wells' personnel file or previous investigations, and of Animal Control Officer Machado's report. These arguments are mistaken, as the information regarding Officer Wells' file was not material, exculpatory, or admissible at trial. Additionally, while the Tribe did not discover a report from Officer Machado until after a notice of appeal had been filed, it did not contain any exculpatory or impeachment evidence.

A. Pascua Yaqui Disclosure Rules and Guidelines:

Criminal cases in the Pascua Yaqui Tribal Courts are governed by the Rules of Criminal Procedure. 3 PYTC § 2-2-10, *et seq.* The rules "are intended to provide for the just, speedy determination of" criminal proceedings, "construed to secure simplicity in procedure, fairness in administrations, and the elimination of unnecessary delay and expense." 3 PYTC § 2-2-10(A). Additionally, they are designed "to protect the fundamental rights of the individual while preserving the public welfare." *Id.*

These rules govern the parties' disclosure obligations in criminal cases. 3 PYTC § 2-2-380(A) requires a prosecutor to make initial disclosure of "material[s] and information" within his control, including the names, addresses and identity of witnesses other than victims, statements of a defendant or co-defendant, information relating to expert witnesses, information regarding prior convictions for any prosecution witness, and a list of "all papers, documents, photographs or tangible objects" the prosecution *will seek to introduce at trial*. Additionally, the prosecution must disclose any materials within its possession "*which tend to mitigate or negate the defendant's guilt*

as to the offense charged or which *would tend to reduce his...her punishment* therefore.” *Id.* (*emphasis added*). What falls within the prosecution’s possession “extends to material and information in the possession or control of members of his... staff and of any other persons who have participated in the investigation or evaluation of the case and who are under the prosecutor’s control.” 3 PYTC § 2-2-380(D). A defendant is similarly required to disclose to the prosecution the names and contact information of any potential defense witnesses, physical exhibits, and a list of defenses he might potentially introduce at trial. 3 PYTC § 2-2-390.

The Tribal Code contemplates situations in which items are not automatically discloseable pursuant to 3 PYTC § 2-2-380, and provides a mechanism for defense disclosure requests. 3 PYTC § 2-2-380(E) states. Additionally, both parties bear continuing duties to disclose information that falls within the scope of the Tribal Code. 3 PYTC § 2-2-410 states. Failure of either party to comply with its disclosure obligations can result in the imposition of sanctions. 3 PYTC § 2-2-420. Sanctions can include, but are not limited to, ordering disclosure, granting a continuance, contempt findings, preclusion of witnesses or evidence, or the declaration of a mistrial. *Id.*

B. Disclosure obligations under *Brady*, *Giglio*, and *Henthorn*:

Due process requires the prosecution to disclose *only* exculpatory evidence *that is material* to the issue of guilt or punishment. *See Brady*, 473 U.S. at 676-684 (regarding disclosure of a co-conspirator’s statement claiming responsibility for a homicide, and officer’s role in the statement’s suppression); *Giglio v. United States*, 405 U.S. 150, 154 (1972) (regarding disclosure of material impeachment evidence); *see also PYT v. Martinez*, CA-15-004, p.2-3 (discussing *Brady* obligation to disclose a victim’s felony priors for crimes of moral turpitude, but finding dismissal with prejudice to be an overly harsh remedy under the circumstances). Which means that the first question is whether *Brady* material actually exists. Only if a court determines that *Brady* material exists does it then move to an analysis of whether such evidence was material and, thus, should have been disclosed. *Id.* (*emphasis added*).

Materiality, in turn, depends on a deeper reading of *Brady*. “There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the [prosecution], either willfully or inadvertently; and prejudice must have ensued.” *Strickler v. Greene*, 527 U.S. 263, 282-81 (1999); also, *Martinez*, CA-15-004, at p.2-3. Evidence is material if it bears a “reasonable probability” of impacting a proceeding. *United States v. Bagley*, 473 U.S. 667, 683 (1985); *Kyles v. Whitley*, 514 U.S. 419, 444-444 (1995) (find a *Brady* violation based on failure to disclose flawed statements on eyewitnesses in a case that hinged upon eyewitness identification). “Reasonable probability,” in turn, exists “upon a showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine the verdict.” *Kyles*, 514 U.S. at 435. When there is a bona fide question about whether evidence is material under *Brady*, the United States Supreme Court has stated that the “prudent prosecutor” will “resolv[e] *doubtful* questions in favor of disclosure.” *Id.* at 439 (*emphasis added*). Nevertheless, the first issue that must be addressed in any *Brady* analysis is whether *Brady* material exists.

The Ninth Circuit has also addressed the review and disclosure of material contained in an officer’s personnel file within the context of *Brady* and *Giglio*. In *United States v. Henthorn*, 931 F.2d 29, 30 (9th Cir. 1991), the court ultimately ruled that when “confronted with a request by a defendant for the personnel files of testifying officers,” the prosecution ““must disclose information favorable to the defense *that meets the appropriate standard of materiality.*”” *Id.* at 30–31 (*quoting United States v. Cadet*, 727 F.2d 1453, 1467-68 (9th Cir. 1984) (*emphasis added*). While the prosecution has a duty to examine such files simply by virtue of a defendant’s demand, “the files need not be furnished to the defendant *or* the court *unless* they contain information that is or may be material to the defendant’s case.” *Id.* at 31. (*emphasis added*).

The defendant in *Henthorn* was charged with drug trafficking and racketeering offenses. *Id.* at 29. Before trial, the defendant moved for disclosure of the complete personnel files of any law enforcement witnesses the prosecution intended to call at trial “for evidence of perjurious conduct

or... dishonesty, in camera, to determine if those portions of the officers' personnel files ought to be made available to defense counsel for impeachment purposes." *Id.* The prosecution in that case *failed* to review the requested personnel files or submit them for *in camera* review. Instead, it argued on appeal that it had no duty to review said files absent a demonstration of materiality made on the part of the defense. *Id.* The Ninth Circuit Court of Appeals stated that the prosecution had an obligation to review the requested personnel files even if it ultimately determined that they contained no disclosable information.

Under the materiality requirements of *Brady*, information that is not material or exculpatory need not be disclosed, even under *Henthorn*, because it is not *Brady* evidence. *See e.g. United States v. Calise*, 996 F.2d 1019, 1021-22 (9th Cir. 1993) (finding that information in an officer's file that a magistrate had previously found his testimony to be "absolutely incredible" should have been disclosed as it suggested truthfulness issues); *United States v. Booth*, 309 F.3d 566, 574 (9th Cir. 2002) (no *Henthorn* violations when prosecution failed to review or disclose the personnel file of an agent uninvolved in the investigation).

C. Officer Wells' personnel file did not contain any exculpatory or material information disclosable under *Henthorn* or *Brady*:

Appellant asserts that Officer Wells' personnel files contain material that was disclosable under *Brady*, *Giglio*, and *Henthorn*, and that the evidence was material to determining his credibility at trial. This is simply not the case. The Tribe has reviewed the disciplinary materials provided by PYPD and has located no information, evidence, or allegations relating to Officer Wells' honesty. The only information contained in his file, based on review, relates to use of force investigations. Questions regarding use of force do not necessarily involve issues of honesty or dishonesty, but rather, lack of discretion in the field, whether it be in general or in the moment of a particular case. While it could be ample fodder for impeachment in cases where use of force or self-defense are at issue, it is entirely irrelevant to cases in which they are not.

Simply put, the information, despite Appellant's assertions to the contrary, was immaterial to Appellant's guilt or innocence. Appellant was charged with failing to provide an animal under his care or control with adequate veterinary care. Officer Wells did not have any contact with Appellant during the course of this investigation. Furthermore, while he testified as to the condition of the dog, photos of the dog's condition at the time of the investigation were admitted at trial. Whether he has been investigated for improper use of force in the past, absent any suggestions of dishonesty, has no bearing on his credibility in this particular case or whether the photos he took accurately depicted the dog's condition. Appellant argues that this evidence is material, because both parties discovered before trial that Officer Wells had seized the dog, a fact that was not included in his police report.⁸

Appellant also relies heavily on the fact that the Tribe filed a motion for the trial court to review Officer Wells' file in an unrelated case, *PYT v. Godoy*, CR-19-039, in which the defendant is also represented by the public defender. Opening Brief, p.14. That case is currently in pretrial status, and involve, among others, charges of assault on an officer. The defendant in that case indicated that he will raise a claim of self defense at trial. As a result, Officer Wells' history regarding use of force allegations is absolutely relevant and material to the defendant's ability to prepare his case. To suggest that that case is at all similar to the one before this Court is inaccurate.⁹

The Tribe further notes that evidence, even for impeachment, is not admissible at trial unless it is relevant. 3 PYTC R. Evid, 6(c). Evidence is relevant if it has "any tendency to make the

⁸ Insofar as Appellant suggests that "[t]he Tribe led counsel to believe Officer Wells' participation in this case did not involve seizing the dog up until the eve before Trial," Opening Brief at p.6, the Tribe strongly objects to such characterization. Counsel's own letter requesting post-trial disclosure of *Henthorn* material indicated that the information was "unknown to the Tribe and defense" until just before trial. Appellant, Exhibit D, p.2. (*emphasis added*). Appellant also incorrectly asserts that one of its letters, attached as Appellant's Exhibit B, "suggested" that its *Henthorn* analysis hinged upon whether Officer Wells had seized the dog. As demonstrated in Appellant's Exhibit E, that is simply not the case.

⁹ Additionally, even though Appellant failed to raise his claims of alleged *Brady* and *Henthorn* violations at trial despite, apparently, speculating that a violation occurred does not mean that he is entitled to expand the appellate record, for the reasons discussed *supra*. Failure to raise it at the trial court level also does not leave him without a remedy through federal *habeas* proceedings. See generally *Gage v. Chappell*, 793 F.3d 1159, 1165 (9th Cir. 2015) (noting that a defendant may seek *habeas* relief on the basis of ineffective assistance of counsel or *Brady*).

existence of any fact that is of consequence to the determination of the action” more or less probable “than it would be without the evidence. 3 PYTC R. Evid., Rule 6(a). Nevertheless, even relevant evidence may be “excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, ...[of] misleading the jury,” or when “it will unduly delay, waste time or be a needless presentation of cumulative evidence.” 3 PYTC R. Evid., Rule 7. Additionally, the trial court, acting as gatekeeper, has the obligation to ensure that “the interrogation and presentation” of evidence is “effective for the ascertainment of the truth,” and that it protects “witnesses from harassment and undue embarrassment.” 3 PYTC. R. Evid, Rule 31(a) (*emphasis added*). While a defendant has the right to attack a witness’ credibility during cross-examination, the “Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986); *see also United States v. Bonanno*, 852 F.2d 434, 439 (9th Cir. 1988) (court may properly limit cross examination to relevant evidence). Officer Wells’ personnel file and its contents were not relevant to any of the issues raised in Appellant’s case. There has never been an allegation that Officer Wells contacted Appellant during this investigation, much less that force was ever an issue in this case. Although Appellant implicitly suggests that an officer may be placed on trial for issues unrelated to his investigation in a particular case, the Tribal Rules of Evidence clearly demonstrate otherwise. Furthermore, Appellant’s repeated assertions that Officer Wells’ file may contain impeachment information amounts to “mere speculation.” Opening Brief, p.14-15.

D. Failure to disclose Officer Wells’ personnel file did not prejudice Appellant, or otherwise undermine confidence in the trial verdict

Appellant argues that the failure to disclose Officer Wells’ personnel file undermines confidence in his conviction. This argument is based on his perception that Officer Wells “presented misleading and nonfactual testimony.” *Id.* at p.16. He further suggests that the prosecution “introduced trial testimony that it knew or should have known was perjured.” *Id.*

(quoting *Kyles*, 514 U.S. at 433). As will be detailed more fully below, the record does not, in any way, support an assertion that Officer Wells lied when testifying in this case. The record, likewise, contains no evidence that the prosecution introduced perjured testimony.

Specifically, he takes issue with the fact that Officer Wells initially stated that he was only present at the house on May 14th, but then stated during cross-examination that he had made a mistake, and that he was also at the house on May 15th. See Exhibit C, at pp. 10, 16-17. This discrepancy, which was noted by the court, *Id.* at 39, is not an indication that the officer lied at trial. It indicates that he made a mistake, which Appellant was able to draw effective attention to during cross.

Appellant also believes that Officer Wells dishonestly indicated that he had seen the dog at his house on previous indications, in light of the fact that the Tribe only located one report from him relating to the investigation at issue. At trial, Officer Wells testified that he was familiar with Appellant's residence because he had been there numerous times on unrelated investigations. *Id.* at 5, 6-7. When trial counsel, who had not requested a pretrial interview of the witness, *Id.* at 35, asked Officer Wells what specific dates he was at the residence, he testified, "I don't remember the exact date. I know I've seen the dog because I've been there on different calls and when I've been there I've seen that dog before. Uh, without going back and looking through all the records I couldn't tell you what dates I actually saw him on." *Id.* at 33. He then indicated that the dates he was at the house would have been documented in police reports for those unrelated investigations. *Id.* Appellant claims that, because there were no other reports prepared in this specific case, that Officer Wells must have lied when he indicated that he had prepared reports in unrelated cases. This interpretation is flawed, and stretches credulity. It also assumes that officers, whenever they conduct residential investigations, document, as a matter of course, anything they witness — including numbers of pets — regardless of whether it pertains to the subject of the investigation they are handling. The fact that Appellant chooses his particular interpretation of Officer Wells' testimony does not mean that Officer Wells lied.

Appellant next asserts that Officer Wells lied when he indicated that he was not able to contact animal control the first evening he saw the dog, May 14th, and had to return the next day to obtain it. This argument is based on the Tribe notifying him after trial that Officer Machado had prepared a report on May 15th, in which she indicated she had seen the dog in a kennel, and had transported the dog to a shelter. Opening Brief Exhibit E. This argument ignores the record.¹⁰

Appellant also asserts that Officer Wells misled the court when he testified that Appellant's fence was "intact." Exhibit C, at p.18. Officer Wells had testified that he could not "say if there [were] any holes under the fence" in May, 2018, *Id.* at 14-15, and indicated that he had not looked for holes. He also testified that he had not remembered seeing any gaps in the fence when he was at the house previously. Appellant claims that the fact that pictures were taken of the fence's condition in November, 2018, coupled with the testimony of a former co-habitant who moved out of the house in January, *Id.* at 27, demonstrates that Officer Wells was lying. Similarly, Appellant asserts that Officer Wells lied when he testified that the gate to the residence had been closed when Officer Wells saw it on previous occasions, again, based on contradicting testimony and photographs introduced by witnesses not present during the original investigation. The fact that the testimony of witnesses who were not present during the investigation contradict Officer Wells' testimony does not mean that the officer was untruthful.

Finally, Appellant claims that Officer Wells improperly documented the investigation he conducted into one report, citing the fact that the photographs he took were taken in the afternoon — during daylight hours — and showed a time stamp that was earlier than the timestamp for his report. However, Officer Wells testified that he was at the house on the evening of May 14th, and it was dark outside. *Id.* at 13. He also testified that the time stamp shown in the photos was incorrect.

¹⁰ Appellant indicates that Officer Wells violated investigative protocols when he "ke[pt] a case outside his expertise" instead of turning the case immediately over to Animal Control. Opening Brief, at 17. The Tribe is unaware of any policy or protocol that prohibits sworn law enforcement officers from conducting investigations into whether criminal animal neglect statutes have been violated. Indeed, the Tribal Code holds the opposite. 8 PYTC § 6-1-10(D)(2) (indicating that any officer of the peace may enforce provisions of the animal code).

Id. at 10. This is simply not evidence of Officer Wells presenting “nonfactual testimony.” Nor is it evidence that Officer Wells conducted an improper investigation.

Although Appellant documents these perceived errors as proof that disclosure of Officer Wells personnel file would have allowed the court to find the testimony of witnesses who were not present at the time the dog was seized more credible, even a tortured reading of the record fails to support that contention. Instead, it was clear that the trial court noted potential discrepancies and issues in nearly each witness’ testimony, and took those into account when making its ultimate factual findings and pronouncement of guilt. Based on the totality of the circumstances, the Tribe’s failure to disclose Officer Wells’ personnel file did not, in any way, contribute to the court’s guilty verdict. As a result, Appellant’s claim should be denied.

E. Officer Machado’s report did not contain materially exculpatory or impeachment evidence, and non-disclosure did not deprive Appellant of a fair trial.

Appellant also takes issue with the fact that Officer Machado’s report was not discovered by either party until after trial. The Tribe acknowledges that, under disclosure law, it is deemed to be in constructive possession of any item that is in the possession or control of any law enforcement agency it works with. However, Officer Machado’s report did not contain any material or exculpatory information and, indeed, does not contradict Officer Wells’ testimony. Appellant’s interpretation of its potential usefulness is inaccurate in light of the record, as will be discussed below.

As noted, *supra*, Officer Wells was at Appellant’s residence the evening of May 14th, and eighteen hours later on May 15th. When queried about whether exigent circumstances warranted seizure of the dog, Appellant asked Officer Wells if he “had to wait” on May 14th, and asked him if he could have contacted Animal Control to collect the dog sooner. Exhibit C, at p.16. Officer Wells answered, “Animal control was not there that day, if I remember correctly.” *Id.* Appellant further assumes, without evidentiary support in the record, that “it is unreasonable to believe that Officer Wells took” the animal control officer’s vehicle “without [first] speaking” with that officer.

Opening Brief at 12. Based on a review of the trial record, it does not appear that any witness testified about the borrowing of a vehicle.

Appellant further asserts that, had it known of Officer Machado's involvement, he would have questioned her as to whether the off-reservation shelter the dog was eventually moved to was able to identify the dog's owner. However, given the fact that the law Appellant was convicted of violating, discussed *infra* does not require proof of ownership — merely care, custody or control — evidence of ownership would not negate Appellant's guilt, because the dog was sheltered within his yard and, thus, under his control. Appellant's argument that the report would have allowed her to question Officer Machado about whether her department's "chip scanner" was functional in May, 2018, fails for similar reasons.

Based on the totality of the circumstances, Officer Machado's report did not contain exculpatory or impeachment value, and its non-disclosure was not a violation. Furthermore, Appellant has not demonstrated that disclosure of the report would have resulted in a "reasonable probability" of a different outcome. Accordingly, Appellant's claims should be denied.

III. Sufficient Evidence was Introduced at Trial to Demonstrate that Appellant had Care, Custody, or Control of an Animal and Failed to Provide it with Adequate Care.

Appellant argues that there was insufficient evidence to support convicting him of failing to provide the dog with medical care. Opening Brief at 20. The sufficiency of the evidence supporting a conviction, "including questions of statutory interpretation, is reviewed *de novo*. *United States v. Grovo*, 826 F.3d 1207, 1213-14 (9th Cir. 2016) (*citing United States v. Garcia*, 768 F.3d 822, 827 (9th Cir. 2014)). As part of this process, the reviewing court must "view the evidence in the light most favorable to the prosecution and ask whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.*; *United States v. Nevils*, 598 F.3d 1158, 1163-64 (9th Cir. 2010) (*en banc*). The prosecution need not "rebut all reasonable interpretations of the evidence that would establish the defendant's innocence, or rule out every hypothesis except that of guilt beyond a reasonable doubt." *Nevils*, 598 F.3d at 1164. However,

“evidence is insufficient to support a verdict where mere speculation, rather than reasonable inference, supports the government's case, or where there is a total failure of proof of a requisite element.” *Id.* at 1167. For instance, in *United States v. Espinoza-Valdez*, 889 F.3d 654, 657–58 (9th Cir. 2018), the Ninth Circuit determined that there was insufficient evidence supporting the defendant’s conviction for drug conspiracy charges. Although the defendant had been seen near alleged co-conspirators and appeared to be acting as a lookout, no evidence—either in the form of overt acts or agreement—that the defendant was involved in the actual conspiracy had been introduced at trial. *Id.*

Under the Pascua Yaqui Tribal Code, defendants may be convicted of abusing or neglecting animals. 8 PYTC § 6-1-60. “‘Animal’ means any fowl, retil[e] [sic], amphibian or mammal, except for human beings.” 8 PYTC § 6-1-20(B). “‘Owner’ means any person owning, keeping, possessing, harboring, maintaining, having custody or otherwise having control of an animal....” 8 PYTC § 6-1-20(Q). The stated purpose of the neglect portion of the code “is to guarantee than animals under human custody or control are housed in healthy environments and are provided with proper food, water, shelter, medical care, exercise space and ventilation.” 8 PYTC § 6-1-60(B). It further provides that individuals must ensure “[t]hat the animal receives care and medical treatment for debilitating injuries, parasites and diseases, *sufficient to maintain the animal in good health and minimize suffering.*” 8 PYTC § 6-1-60(B)(4) (*emphasis added*).

Appellant argues that his conviction was improper because no expert veterinary testimony was introduced at trial regarding the dog’s condition, and Officer Wells was only able to provide lay testimony regarding his observations of the dog. Opening Brief at 21. He further asserts that, according to the testimony of Ms. MakesRoomForThem, Appellant did not own the dog found in his yard. Both claims of error fail. First, as the trial court noted twice at trial, 8 PYTC § 6-1-60(B)(4) does not require the prosecution prove that a defendant owned a particular animal. Instead, it only need prove that a defendant exercised care, custody, or control over an animal.

Exhibit C at p. 23-24, 40-41. Here, there was ample evidence demonstrating that Appellant exercised care, custody, or control over the dog. Officer Wells testified that he had seen the dog, as well as two others, in Appellant's yard in the past, and that the older dog was known to greet visitors at the fence. He also testified that the dog was inside Appellant's fenced yard. Finally, the court noted that it saw cans of dog food in the yard where the dogs were. Clearly, the dog was under Appellants care, custody, and control, regardless of his denial of ownership or lack of physical presence at the scene during the investigation.

Second, nothing in the Pascua Yaqui Tribal Code requires that medical testimony be introduced at trial in any case — much less those involving violations of the animal code — before guilt may be found. Here, the prosecution introduced photos showing the dogs condition. *See* Exhibit D. Those photos — which Appellant acknowledges in his opening brief “clear[ly] show that the dog “needed vet care,” Opening Brief at 21 — illustrated the condition of the dog. The trial court engaged in a lengthy description of the contents of the photographs, documenting individual injuries as well as what appeared to be pus, or infection. *Id.* at 38-41. Fact finders, be they judges or jurors, are not required to take leave of their common sense or reason when determining guilt, nor are officers prohibited from using their common sense when investigating a case involving a subject that they possess a lay level of knowledge about. Expert veterinary testimony was, therefore, not needed in this case based on the photographs documenting the dog's condition. Thus, Appellant's claim should be denied.

IV. The Trial Court Took Mitigation Evidence Presented by Appellant into Account when it Imposed Sentence and, Therefore, did Not Abuse its Discretion.

Appellant argues that the trial court in this case abused its discretion when it sentenced him because the sentence it imposed “was procedurally and substantively unreasonable.” Opening Brief, at p.22. For the reasons discussed below, Appellant is mistaken, and his claim should be denied, because the trial court considered all of the mitigating evidence submitted by Appellant. A

court's sentencing determinations are reviewed for abuse of discretion standard. *Gall*, 552 U.S. at 51 (2007); *United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1053 (9th Cir. 2009). “[A]ppellate review of sentencing decisions is limited to determining whether they are ‘reasonable.’” *Amezcua-Vasquez*, 567 F.3d at 1053 (quoting *Gall*, 552 U.S. 38). “Only a procedurally erroneous or substantively unreasonable sentence will be set aside.” *Id.* (citations, quotations, and alterations omitted).

Under the Pascua Yaqui Tribal Code, anyone convicted of the animal neglect may be sentenced to up to one-year imprisonment, ordered to pay up to a \$5,000 fine, or both. 4 PYTC § 4-20. A court may also suspend imposition of sentence and order a defendant to complete a period of probation and impose certain conditions as part of probation in an effort to rehabilitate the offender. 4 PYTC § 4-120; 4 PYTC § 4-130; 3 PYTC § 2-2-450(A). Additionally, any sentence imposed “shall include costs of court,” which, in the case of bench trials, amounts to \$100. 4 PYTC § 4-200 (*emphasis added*). The Pascua Yaqui Tribal Sentencing Code does not include any information regarding mandatory minimum sentences for criminal offenses. Nor does it detail the types of aggravating or mitigating factors that a court should consider when imposing sentence. Nevertheless, prior to imposing sentence in a particular case, the trial court “may” order that a pre-sentence investigation be prepared. 4 PYTC § 4-10; 3 PYTC § 2-2-450(C). Additionally, the parties are allowed to submit sentencing recommendations in writing, *see generally* 3 PYTC § 2-2-300, and to make oral arguments at the time of sentencing. “In determining the appropriate sentence, the judge may consider pre-sentence reports prepared by the parties, testimony of the victim, and any other factors which the judge deems relevant.” 3 PYTC § 2-2-450(C). In the event that the court imposes a fine, the court is further allowed to grant the defendant “a reasonable period of time to pay the entire sum or allow him... to make reasonable installment payments... until the entire sum is paid.” 3 PYTC § 2-2-450(D).

The Appellee has been unable to locate any Pascua Yaqui Appellate case law concerning a trial court's sentencing discretion. However, an examination of Federal case law demonstrates that

a trial court has substantial discretion in sentencing a defendant, based on the unique circumstances of a case. Sentencing under the Federal system is governed, in part, by 18 USCA § 3553. That statute requires a court to consider a number of factors, including “the nature and circumstances of the offense and the history and characteristics of the defendant,” as well as “the need for the sentence imposed” to “reflect the seriousness of the offense, to promote respect for the law” while “provid[ing] just punishment,” to deter criminal conduct, “protect the public from further crimes of the defendant,” and, finally, “to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” 18 USCA § 3553(A). Additionally, federal courts are required to also consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 USCA § 3553(A).

Under current federal caselaw, sentences are reviewed “under a deferential abuse-of-discretion standard,” regardless of whether they are imposed within, or deviates from, federal sentencing guidelines. *Unites States v. Carty*, 520 F.3d 984, 988 (9th Cir. 2008) (citing *Gall*, 552 U.S. 38). “The overarching statutory charge for a district court is to “impose a sentence sufficient, but not greater than necessary” to reflect the seriousness of the offense, promote respect for the law, and provide just punishment; to afford adequate deterrence; to protect the public; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment.” *Id.* at 991, quoting 18 U.S.C. § 3553(A) and (A)(2). While the parties may make sentencing recommendations, it is ultimately up to the court to “make an individualized determination based on the facts.” *Id.* at 991. Although sentences that fall within the federal guidelines are not “presume[ed]” reasonable, “a correctly calculated Guidelines sentence will normally not be found unreasonable on appeal.” *Id.* at 988. While federal courts are required to consider the factors outlined in 18 USCA § 3553(a), they are not required to “tick off each of the § 3553(a) factors to show that it has considered them. *Id.* at 992. Furthermore, judges are assumed to “know the law and understand their obligations” when it comes to imposing sentence. *Id.* at 992;

see also Walton v. Arizona, 497 U.S. 639, 653, 110 S.Ct. 3047, ____ (1990), *overruled on other grounds by Ring v. Arizona*, 536 U.S. 584 (2002).

In this case, Appellant asserts that the trial court “ignored all the mitigating factors in this case and ordered a sentence that would be nearly impossible for [him] to comply [with].” Opening Brief at p. 7. The Tribe notes that Appellant has failed to provide the Appellee or this Court with a copy of the record of sentencing, or a transcript of the sentencing proceedings, although it is Appellee’s understanding that Appellant has made requests for said record.

In this case, the trial court had the discretion to sentence Appellant to imprisonment for up to one year, to pay a fine of up to \$5000, to serve a period of probation with appropriate rehabilitative conditions, or a combination of all three. Prior to sentencing, the probation department conducted a presentence investigation, and ultimately submitted a presentence report to the court and parties. Exhibit F; Exhibit B, p.3. Appellant failed to participate in a presentence report interview. Exhibit F at p. 3,4. As a result, the presentence report did not contain mitigating information which could only come from Appellant, such as his educational background, or current medical condition. Nevertheless, the report noted that Appellant was unemployed, and that, when he submitted a request for court appointed counsel, he indicated that he was on food stamps and only earned \$70 per week. *Id.* at 3-4. The report also noted that Appellant had a lengthy criminal history in this jurisdiction of approximately thirteen cases involving both victim and non-victim crimes. *Id.* at 2-3. The report also indicated that Appellant had “a history of failing to comply with probation,” and would not be a good candidate for probation. *Id.* at 5. The report ultimately recommended that Appellant pay a \$250 fine, \$100 court cost, attend an animal cruelty class, and not acquire any animals for a period of one year. It also recommended that the fine and court costs be commuted to community service. *Id.*

Appellant also submitted a detailed sentencing motion to the court. Exhibit G. In it, she asked that Appellant be required only to pay a \$250 fine, or allowed to serve 30 hours of community service instead. *Id.* at p.1. Appellant argued the following mitigating factors: 1) the

offense involved “no [human] victims;” 2) Appellant denied ownership of the dog; 3) Appellant had lifelong ties to the community and tried to be active in it; 4) Appellant had “no prior criminal convictions or arrests” involving animal-related offenses; 5) Appellant was “unemployed and lack[ed] transportation; 6) Appellant suffered from “chronic back and knee pain; and, 7) Appellant “like[d] to help an elderly man... at the Pascua Yaqui Tribe Senior Center.” *Id.* at 2-3. Appellant further argued that his income would prevent him from attending a one-day animal cruelty class, and would make paying the fine and court costs too substantial a burden. Appellant similarly argued that requiring him to serve 70 hours of community service would be “too much” based on his age and medical condition. *Id.* at 5.¹¹

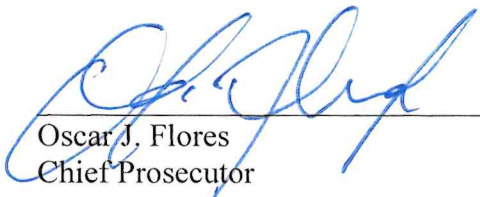
Listening to the audio file of the sentencing hearing makes it readily apparent that the court considered all of the evidence presented by Appellant in mitigation. *See generally* Exhibit H1 & H2. Appellant had a significant criminal history, including both failures and successes on probation, payment of fines, and jail sentences. The court also took the dog’s lack of care and resulting condition into account, and determined that a \$250 appropriately addressed those issues. It noted that it could not waive the court costs mandated by the Tribal Code, but that probation would determine an appropriate monthly probation fee based on Appellant’s income. Finally, it noted that there were types of community service which Appellant could perform even with his medical issues, and ordered that the probation department be allowed to find him a suitable type of community service in light of his situation. Contrary to Appellant’s arguments, there is no evidence that the trial court abused its discretion. Accordingly, Appellant’s claim should be denied.

¹¹ Appellant also asserted that Appellant had complied with his release conditions. *Id.* at p. 4. While this is, in its strictest reading, true, the argument ignored the fact that Appellant failed to appear for his initial hearing twice, and that a warrant for his arrest was issued as a result. Following his arrest on the warrant, he was compliant with his release conditions.


CONCLUSION AND REMEDY SOUGHT

The Tribe did not fail to disclose evidence under *Brady*, *Giglio* or *Henthorn*, and the evidence which Appellant seeks would not have created a reasonable probability of a different result. Appellant's conviction for animal neglect was supported by sufficient evidence. Finally, the trial court did not abuse its discretion when it sentenced Appellant. Based on the information discussed above, the Tribe respectfully requests that Appellant's claims be denied.

RESPECTFULLY submitted this 6th day of May, 2019.



Oscar J. Flores
Chief Prosecutor



Coleen Thoene
Deputy Prosecutor

CERTIFICATE OF SERVICE

I hereby certify that the Tribe's pleading was delivered this date to:

Benjamin Casey
Ben.Casey@pascuayaqui-nsn.gov
Clerk of the Court of Appeals
Pascua Yaqui Court of Appeals
7777 S. Camino Huivisim
Tucson, AZ 85757

And that one (1) copy of the Tribe's pleading was delivered, this date to:

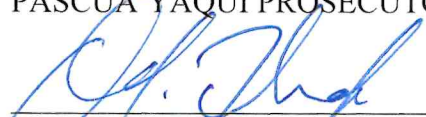
Glaucia Brannock
Glaucia.Brannock@pascuayaqui-nsn.gov
Pascua Yaqui Office of the Public Defender
7474 S. Camino de Oeste
Tucson, AZ 85757

And that one (1) copy of the Tribe's pleading was delivered this date to:


Associate Judge Melvin Stoof
Pascua Yaqui Tribal Court
7777 S. Camino Huivisim
Tucson, AZ 85757

Dated this 6 day of May, 2019.

PASCUA YAQUI PROSECUTOR



Oscar J. Flores
Chief Prosecutor



Coleen Thoene
Deputy Prosecutor

Sworn before me this 6 day of MAY, 2019



Notary Signature

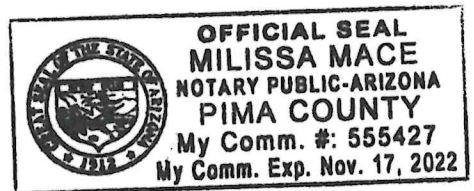


TABLE OF CONTENTS

I. TABLE OF CONTENTS.....ii

II. TABLE OF AUTHORITIES.....iii

III. STATEMENT OF THE CASE.....1

IV. JURISDICTION STATEMENT.....2

V. ISSUE PRESENTED ON REVIEW.....2

VI. RELEVANT FACTS.....3

VII. SUMMARY OF THE ARGUMENT.....6

VIII. ARGUMENT.....7

IX. CONCLUSION.....23

X. APPELLANT’S EXHIBIT A.....24

XI. APPELLANT’S EXHIBIT B.....26

XII. APPELLANT’S EXHIBIT C.....28

XIII. APPELLANT’S EXHIBIT D.....31

XIV. APPELLANT’S EXHIBIT E.....34

XV. APPELLANT’S EXHIBIT F.....38

XVI. CERTIFICATE OF COMPLIANCE.....41

XVII. CERTIFICATE OF SERVICE.....42

TABLE OF AUTHORITIES

A. Table of Cases

<i>Alleyne v. United States</i> , 570 U.S. 99 (2013).....	20
<i>Brady v. Maryland</i> , 373 U.S. 83, 83 S.Ct. 1149 (1963).....	2,3,9,10,11,14,15,16,18,19,20
<i>Canion v. Cole</i> , 210 Ariz. 598, 155 P.3d 1261 (2005).....	10
<i>Cone v. Beell</i> , 556 U.S. 449, 129 S.Ct. 1769 (2009).....	11
<i>Douglas v. Workman</i> , 560 F.3d 1156 (10 th Cir. 2009).....	10
<i>Giglio v. United States</i> , 405 U.S. 150, 92 S.Ct. 763 (1972).....	9,10,14,15,16,19
<i>Imbler v. Pachtman</i> , 424 U.S. 409, 96 S.Ct. 984 (1975).....	10
<i>Kyles v. Whitley</i> , 514 U.S. 419, 115 S.Ct. 1555 (1995).....	9,10,11,14,16,19
<i>Napue v. Illinois</i> , 360 U.S. 264, 79 S.Ct. 1173 (1959).....	19
<i>Pennsylvania v. Ritchie</i> , 480 U.S. 39, 107 S.Ct. 989 (1987).....	15
<i>PYT v. Soto</i> , CA-06-010.....	7
<i>PYT v. Campoy</i> , CA-07-009.....	7
<i>PYT v. Joel Martinez</i> , CA-15-004.....	9
<i>PYT v. Omar Godoy</i> , CR-19-039.....	14
<i>Strickler v. Greene</i> , 527 U.S. 263 (1999).....	9,15,16
<i>United States v. Agurs</i> , 427 U.S. 97, 96 S.Ct. 2392 (1976).....	9,11,18
<i>United States v. Bagley</i> , 473 U.S. 667, 105 S.Ct. 3375 (1985).....	10, 11,19
<i>United States v. Espinosa-Valdez</i> , 899 F.3d 654 (9th Cir. 2018).....	20
<i>United States v. Henthorn</i> , 931 F.2d 29 (9th Cir. 1991).....	15
<i>Youngblood v. West Virginia</i> , 547 U.S. 867, 126 S.Ct. 2188 (2006).....	10

B. Statutes

Pascua Yaqui

3 PYTC § 1-4-30.....	8
3 PYTC § 2-2-410.....	7
3 PYTC § 2-2-420.....	8
3 PYTC § 2-2-430.....	20
3 PYTC § 2-3-120.....	4
3 PYTC § 2-3-110 (A) (1).....	5
8 PYTC § 6-1-60 (B) (4).....	3

American Bar Association

Rule 3.3.....	9
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I. STATEMENT OF THE CASE

Appellant is Antonio Madrid (Mr. Madrid) and Appellee is the Pascua Yaqui Tribe Office of the Prosecutor (Tribe). The Pascua Yaqui Tribe Court held a bench trial on this matter on December 18, 2018. (Case Index #12, Case File p. 4-6).

On January 4, 2019, this Court sentenced Mr. Madrid to ordering, “10 days jail, suspended for [six] months supervised probation, report to probation within 48 hours, follow all standard conditions of probation, pay probation fees monthlu, such amount to be determined by probation, pay a \$250.00 fine, to be paid by money order, or complete 50 hours of community services in lieu of fines, due April 4, 2019. He shall pay \$100.00 court costs, by money order, or complete 20 hours of community services, in lieu of costs, no later than April 4, 2019. He shall not obtain any dogs or pets for one year. He shall complete an Animal Cruelty Education Class with the Humane Society of Southern Arizona, and he shall submit proof of completion to his probation officer.” Mr. Madrid filed a notice of appeal and a motion to stay the trial court case pending appeal four days later.

The case is stayed pending resolution of the issue now in front of the Pascua Yaqui Tribe Court of Appeals.

While this case was on direct appeal, Mr. Madrid became aware of relevant evidence never disclosed to defense. The suppressed evidence, that is still being suppressed by the Tribe, indicated that the Tribe’s only witness, Officer Wells, provided nonfactual testimony that precluded counsel from effectively cross-examine the Tribe’s witness.

On March 21, 2019, Mr. Madrid filed with the trial court a motion to lift the stay, to declare a mistrial/vacate the conviction due to disclosure violations and nonfactual testimony. The motion further requested the trial court to conduct an in camera review of Officer Wells personnel files if a new trial was to be ordered or direct appeal on the issue was taken.

Mr. Madrid also filed an emergency motion with the Pascua Yaqui Court of Appeals requesting to stay the appeal and remand the case to the trial court for the resolution of the issue.

On April 3, 2019, counsel and the Tribe were asked to try to agree on a resolution and draft an order for the Court of Appeals to consider. Because the Tribe indicated it would only be available to discuss the matter after Appellant's opening brief was due on April, 5, 2019, this appeal is being filed.

Mr. Madrid is appealing the Tribe's *Brady* violation in suppressing relevant evidence that would present this case in a different light than what was presented in trial, the insufficiency of the evidence to support a conviction, and the trial court's abuse of discretion at sentencing when it ignored all mitigating factors presented in this case.

I. JURISDICTIONAL STATEMENT

A. Tribe's Jurisdiction

The Pascua Yaqui Tribe Court had jurisdiction under 3 PYTC § 1-1-10 because the Tribe charged Mr. Madrid, an enrolled Indian, with an offense enumerated in the Tribe's Code. The charges allegedly occurred within the boundaries of the Pascua Yaqui Reservation. (*See* 3 PYTC § 1-1-10 (B); Case Index #66, Case File pp. 118-21).

B. Court of Appeals Jurisdiction

Pursuant to the Rules of Appellate Procedure, "[t]he Pascua Yaqui Tribe or prosecutor shall not appeal a judgment acquitting a defendant in a criminal case." 3 PYTC § 2-3-90(F). The plain language of the statute indicates that appeals in criminal matters by defendants is permitted.

II. ISSUES PRESENTED FOR REVIEW

Did the Pascua Yaqui Tribe Office of the Prosecutor violate Mr. Madrid fair trial rights when it suppressed and continued to suppress the report of Office Lily Machado written in this matter?

Did the Pascua Yaqui Tribe Office of the Prosecutor violate Mr. Madrid fair trial rights when it suppressed and it continued to suppress *Henthorn* materials on Officer Wells?

Did the Pascua Yaqui Tribal Court abuse its discretion in finding Mr. Madrid guilty when the evidence was insufficient to support conviction?

Did the Pascua Yaqui Tribal Court abuse its discretion in its sentencing when it ignored mitigating factors presented by counsel and probation officer?

III. RELEVANT FACTS

On May 24, 2018, the Pascua Yaqui Tribe (the Tribe) charged Antonio Madrid (Mr. Madrid) with one count of Failure to Provide Veterinarian Care pursuant to 8 PYTC § 6-1-60 (B)(4). The Tribe alleged in its complaint that Mr. Madrid “failed to provide veterinary care for a dog with scabs and open sores.”

On August 1, 2018, this Court scheduled a bench trial for September 17, 2018. The case was continued three times on September 14, October 15, and November 14, 2018. The bench trial eventually occurred on December 12, 2018.

On November 1, 2018, this case was reassigned to undersigned counsel.

On November 15, 2018, counsel emailed and mailed a letter to the Tribe requesting the Tribe *Brady* and *Henthorn* materials for Officer Wells, including incident reports. (*See* Appellant’s Exhibit A).

On November 20, 2018, the Tribe denied counsel's request stating, "Officer Wells only actions in this case involved writing a report and taking photographs. He had no contact with the Defendant in this case and *did not* seize the dog in question. As such, the only potential impeachment of Officer Wells' testimony would be any material which would indicate a veracity to provide untruthful testimony." (emphasis added) (*See* Appellant's Exhibit B). Counsel did not request an *in camera* review of the record because the Tribe led counsel to believe Officer Wells' participation in this case was limited to the report disclosed and the pictures taken.

On December 11, 2018, on the eve before trial, counsel the contacted prosecutor, Kendrick Wilson, to communicate about the witnesses each party intended to call at trial, and at that time, counsel was informed that Officer Wells actually seized the dog.

On December 12, 2018, Officer Wells' testimony was inconsistent and misleading. In light of Officer Wells' testimony, counsel contacted the Tribe a day after trial to try to resolve the issue. The Tribe was not open to talk about the issue and stood by its decision made on November 20, 2018, that no impeachment materials existed in Officer Wells' files. (*See* Appellant's Exhibit C). Counsel then contacted Pascua Yaqui Animal Control Officer, Ms. Lily Machado (Officer Machado) to check inconsistencies in Officer Wells' testimony in reference to Officer Machado. Counsel requested information on whether the chip scanner was ever broken and if Officer Machado was working on May 15, 2018. Officer Machado was resistant to speak with counsel and later in the day the Office of the Public Defender was informed by the Tribe that if counsel wanted to speak with Officer Machado it would have to make a request to the Tribe first.

On January 4, 2019, this Court sentenced Mr. Madrid. Counsel filed a notice of appeal and a motion to stay the trial court case pending appeal four days later.

On February 4, 2019, counsel received notice from the Pascua Yaqui Court of Appeals (COA) pursuant to 3 PYTC § 2-3-120 (a), indicating the COA received the record and it was complete. Due to delays in preparing the transcript, the COA extended the deadline for Mr. Madrid to file the opening brief to April 5, 2019.

Counsel continued to investigate, research and explore avenues to confirm whether Officer Wells introduced nonfactual testimony during the trial and whether the Tribe suppressed impeachment materials from Officer Wells' files. Because there was no way to confirm Officer Wells testimony, counsel once again requested the Tribe to disclose Officer Wells personnel files, including past police reports Officer Wells referred to in trial and a copy of Officer Machado's work schedule for May 2018. (*See* Appellant's Exhibit D).

On March 13, 2019, the Tribe once again denied counsel's request alleging that the "Pascua Yaqui Rules of Appellate Procedure limit the record on appeal to the original papers, exhibits and other objects filed within the trial court clerk, a reporter's transcript, transcription of an electronic recording or narrative or agreed statement, and copies of all entries." citing, 3 PYTC § 2-3-110 (A)(1) (internal quotations omitted); (*See* Appellant's Exhibit E). The Tribe also indicated Officer Wells' files have no impeaching evidence.

In its response, however, the Tribe indicated information that strongly suggests Officer Wells introduced nonfactual testimony not supported by any evidence disclosed in this matter. The Tribe also revealed the existence of a report made by Officer Lily Machado in this case from May 15, 2018, that was never disclosed to counsel. This report appears to contradict Officer Wells' testimony in trial.

The newly discovered evidence suppressed in this case, coupled with counsel's findings while investigating, made it harder to proceed with this case on appeal because any appeal filed based on the trial court's record is incomplete, misleading, and not in compliance with the

Pascua Yaqui Tribe disclosure rules. The Tribe continues to suppress the evidence, thus precluding counsel from supplementing the record on appeal due to newly discovered evidence.

On March 21, 2019, Mr. Madrid filed with the trial court a motion to lift the stay, to declare a mistrial/vacate the conviction due to disclosure violations and nonfactual testimony. He further requested to conduct an in camera review of Officer Wells personnel files if a new trial was to be ordered, or direct appeal on the issue was taken. As of the time of filing this brief, the trial court has not issued any orders in the matter. Mr. Madrid also filed an emergency motion with the Pascua Yaqui Court of Appeals requesting to stay the appeal and remand the case to the trial court for the resolution of the issue on the same day.

On April 3, 2019, counsel and the Tribe were asked to try to agree on a resolution and draft an order for the Court of Appeals to consider. Because the Tribe indicated it would only be available to discuss the matter after Appellant's opening brief was due on April, 5, 2019, this appeal is being filed.

IV. SUMMARY OF THE ARGUMENT

The Tribe violated and continues to violate clear established disclosure rules by suppressing the report made by Officer Lily Machado on this matter dated May 15, 2019. The Tribe is also violating the disclosure rules by failing to disclose Officer Wells personnel files or at the very least submitting it to the court for an *in camera* review despite counsel's continued request for the Tribe to do so.

The Tribe led counsel to believe Officer Wells' participation in this case did not involve seizing of the dog up until the eve before trial. When counsel made an oral motion to suppress the seizing of the dog without a warrant during trial, the Tribe objected to it due to its tardiness. The trial court denied counsel's motion because the case was open since May 2018 and the motion was late. Counsel neglected to indicate it had learned about the new information on the

eve before trial. Counsel had to re-strategize the questions and decide which witnesses to call with 17 hours left before the bench trial.

Officer Wells' testimony was inconsistent, misleading, and his demeanor changed during cross-examination. Officer Wells attempted to add new information never disclosed to Mr. Madrid and not supported by any disclosure or reports he had made on the matter. After Officer Wells' testimony, counsel attempted to verify the veracity of his testimony, and after several attempts, the Tribe informed counsel about the existence of a report made by Animal Control Officer, Lily Machado. The Tribe refuses to disclose the report, but the partial information provided to Mr. Madrid indicates Officer Wells provided nonfactual and misleading testimony. The suppression of this report prejudiced Mr. Madrid's cross-examination of Officer Wells.

Despite the Tribe's suppression of the evidence. The evidence presented was insufficient to support the verdict. Officer Wells testified as a lay witness and according to his own testimony, he could not testify as to whether there was a failure to provide veterinarian care. Therefore, the Tribe fell short of proving a critical element of its charge.

The trial court also abused its discretion when it ignored all the mitigating factors in this case and ordered a sentence that would be nearly impossible for Mr. Madrid to comply. Mr. Madrid is an elder member of this community, and lacks the financial means to pay the elevated fines and fees ordered. His age and chronic back and knee pain greatly affects his ability to perform long hours of community service.

V. ARGUMENT

A. The Tribe's failure to properly disclose relevant evidence violated Mr. Madrid fair trial rights and precluded him from effectively cross-examining the Tribe's only witness.

“[T]he standard of appellate review follows the *de novo* standard, which makes this Court the final arbiter on interpreting the relevant statutes and or rules. *PYT v. Soto*, CA-06-010. The question before the court is one of statutory interpretation which is a question of law and is reviewed *de novo*.” *PYT v. Campoy*, CA-07-009 (affirming trial court's dismissal with prejudice due to the Tribe's failure to properly disclose evidence). In *PYT v. Soto*, the Court of Appeals upheld a dismissal with prejudice for the Tribe's failure to comply with disclosure. In *PYT v. Campoy*, the Court of Appeals noted, “[t]he Tribe has been sanctioned before for . . . compliance issue, therefore it has notice of the Court's expectation of compliance with disclosure rules” *Campoy* at 7, 15-18.

Pursuant to 3 PYTC § 2-2-410, “if *at any time* after a disclosure has been made any party discovers additional information or material which would be subject to disclosure had it then been known, such party shall promptly notify all other parties of the existence of such additional material, and make an *appropriate disclosure*.” (emphasis added). Failure to comply with this rule, “the court may impose any sanction which it finds just under the circumstances, including, but not limited to: (A) ordering disclosure of the information not previously disclosed; (E) Declaring a mistrial when necessary to prevent a miscarriage of justice.” 3 PYTC § 2-2-420. There is no rule under PYT laws stating that the duty to disclose pauses during a direct appeal and resumes during post-conviction relief proceedings.

Nevertheless, according to 3 PYTC § 1-4-30, “[a]ny attorney practicing in the Pascua Yaqui Courts shall conform to the usual standards of conduct of the American Bar Association in the performance of their duties as an attorney.” The American Bar Association Rule 3.8(d)

reaffirms a prosecutor's duty to disclose being even broader than the constitutional due process obligation:

A prosecutor's ethical obligation, though derived from constitutional mandates, seeks to preserve public confidence in the prosecution function as well as to avoid constitutionally significant harm to the defendant. **Thus, Rule 3.8(d) requires disclosure of all information that may tend to negate the defendant's guilt, mitigate the offense, or reduce punishment.** (emphasis added).

“[A] practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.” *ABA Rule 3.3, Candor Toward the Tribunal*, Duration of Obligation, comment.

Although this Court does not need to follow state or federal precedent, this Court has followed federal precedent related to disclosure violations. *See* *PYT v. Joel Martinez*, CA-15-004 (2016) (holding the Tribe's responsible to disclose information favorable to defense). The Supreme Court of the United States has determined the due process rights to a fair trial mandates the prosecution to disclose information favorable to the defendant that is material to either guilt or punishment. *See* *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963); *United States v. Agurs*, 427 U.S. 97, 96 S. Ct. 2392 (1976). The law requires the prosecution to produce *Brady* and *Giglio* materials whether or not the defendant requests any such evidence. *Strickler v. Greene*, 527 U.S. 263, 280 (1999); *Agurs* at 107; *Giglio v. United States*, 405 U.S. 150, 154, 92 S. Ct. 763, 766, 31 L. Ed. 2d 104 (1972). The prosecutor must automatically produce impeachment material and “has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.” *Id.*; *Kyles v. Whitley*, 514 U.S. 419, 433,

115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995); *Youngblood v. West Virginia*, 547 U.S. 867, 126 S. Ct. 2188, 165 L. Ed. 2d 269 (2006).

Prejudice or materiality is an essential element of *Brady*. *Douglas v. Workman*, 560 F.3d 1156, 1173 (10th Cir. 2009). However, prejudice does not require the “evidence be sufficiently strong to ensure acquittal had it been presented at trial: the question is not whether the defendant would have more likely than not received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” *Id.*; *See also United States v. Bagley*, 473 U.S. 667, 678, 105 S. Ct. 3375, 3381, 87 L. Ed. 2d 481 (1985). A reasonable probability of a different result is accordingly, shown when the government’s evidentiary suppression undermines confidence in the outcome of the trial. *Kyles*, 514 U.S. 419 at 433 (quoting *Bagley* at 682). In other words, “[t]he reversal of a conviction is required upon a showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine the verdict.” *Kyles* at 435.

The prosecution’s *Brady/Giglio* obligation continues until all challenges to the conviction have been exhausted. *See Imbler v. Pachtman*, 424 U.S. 409, 427, n.25, 96 S. Ct. 984 (1975) (holding “after a conviction the prosecutor also is bound by the ethics of his office to inform the appropriate authority of after-acquired or other information that casts doubt upon the correctness of the conviction.”); *See also Canon v. Cole*, 210 Ariz. 598, 599, ¶ 8, 155 P.3d 1261, 1262 (2005) (“The Court of Appeals found, and the State acknowledges, an ethical and constitutional obligation to disclose clearly exculpatory material that comes to its attention after the sentencing has occurred, and we affirm the State does bear such a duty.”) (internal citation omitted).

Moreover, the United States Supreme Court has recognized, “the obligation to disclose evidence favorable to the defense may arise more broadly under a prosecutor’s ethical or

statutory obligations.” *Cone v. Bell*, 556 U.S. 449, 470, 129 S. Ct. 1769, 1783, 173 L. Ed. 2d 701 (2009); *See also Kyles*, 514 U.S. 419 at 437 (“[T]he rule in *Bagley* (and, hence in *Brady*) requires less of the prosecution than the ABA Standards for Criminal Justice”). Hence, the prudent prosecutor will err on the side of transparency, resolving doubtful questions in favor of disclosure. *See Kyles* at 439; citing *Agurs*, 427 U.S. 97 at 108.

a. The Tribe violated Mr. Madrid fair trial rights when it failed to disclose Officer Lily Machado’s report, thus violating Brady rules, Pascua Yaqui Tribe disclosure rules and appellate orders, and the American Bar Association guidelines for prosecutorial conduct.

Due process imposes an “inescapable” duty on the Tribe “to disclose known, favorable evidence rising to a material level of importance.” *Kyles*, 514 U.S. 419 at 438. Officer Machado’s report in this case is evidence rising to a material level of importance, as Mr. Madrid was never informed of Officer Machado’s involvement in this case and her testimony would have been relevant to defense.

The content of Officer Machado’s report suppressed by the Tribe is unknown to counsel. However, the Tribe in its March 13, 2019 letter indicates Officer Machado was on duty on May 15, 2018 — contrary to Officer Wells’ testimony — and that Officer Machado transported the dog to Pima Animal Care Center (PACC).

Had the Tribe disclosed Officer Machado’s May 15, 2018 report to counsel, Officer Wells would have been impeached during cross-examination and his credibility would have been effectively undermined. For example, Officer Wells testified that he called “animal [] security” and that animal control was not working on May 15, 2018. (Trial Transcript, p. 17, 6-7 and 25). Officer Machado was working on that day, as she wrote a report about the dog in question. Counsel could have cross-examined Officer Wells about taking the animal control’s vehicle to go to Mr. Madrid’s house to seize the dog, when Officer Machado was on duty. Officer Wells would have been cross-examined on whether he talked to Officer Machado about

the dog in question. It is unreasonable to believe that Officer Wells took another officer's vehicle without speaking with that officer when the officer in question is on duty. Instead, Officer Wells cut cross-examination short by testifying that Officer Machado was not at work, which based on the Tribe's own admissions, defense now knows is not true.

Additionally, Mr. Madrid would have called Officer Machado to impeach Officer Wells, but she also would be questioned about whether she followed up with Pima Animal Care Center (PACC) to see whether the dog had a chip and whether in fact there was a failure to provide the appropriate care.

Counsel would finally have asked Officer Machado about the chip scanning machine, to which Officer Wells testified was broken and never fixed, while failing to document such information in his report (Trial Transcript p. 19, 3-7). Since Officer Machado saw the dog in question, she may have scanned the dog. There is reason to believe the scanning machine was working, as counsel has requested Officer Machado to scan animals in the past and the scanner was working. This information would have been admitted through the testimony of Officer Machado.

The Court's credibility determinations are entitled to respect. However, the Pascua Yaqui Constitution requires a fair trial, and one essential element of fairness is the prosecution's obligation to turn over any evidence in the case. PYT Constitution, Article I – Bill of Rights, Section 1 (f); 3 PYTC § 2-2-380. The Tribe fell short of this obligation here. The failure to disclose evidence in a timely manner denied Mr. Madrid's due process rights, the right to a fair trial — including the right to effectively cross-examine the Tribe's witness — and a reliable sentencing determination. This error resulted in misleading presentation of evidence and impeded the Court's ability to fully and fairly assess the credibility of Officer Wells. The Tribe's

failure to disclose this report distorted the fact-finding process, forcing the Court to make its findings based on an unconstitutionally incomplete record.

The Court of Appeal in *Pascua Yaqui Tribe v. Joel Martinez*, CA-15-004 (2016) set out sanctions available for discovery violations:

If a party fails to comply with the discovery provisions, the court may impose any sanction with which it finds just under the circumstances, *including, but not limited to* “[o]rdering disclosure of the information not previously disclosed; granting a continuance; holding a witness, party, or counsel in contempt of court; precluding a party from calling a witness, ordering evidence, or raising a defense not disclosed; and declaring a mistrial when necessary to prevent a miscarriage of justice. *See* 3 PYTC § 2-2-410 (A-E)

In this case, the Tribe failed to disclose and still has not disclosed relevant evidence in Mr. Madrid’s case, despite requests from counsel for disclosure. Thus, it is a flagrant disregard of its obligation to disclose. This caused and it is still causing prejudice to Mr. Madrid. The Tribe did not comply with its duty under the law to disclose relevant evidence and Mr. Madrid was forced to defend himself at trial without crucial information he was legally entitled to have.

b. The Tribe suppressed evidence in Officer Wells’ personnel files, which would have been favorable to Mr. Madrid and extremely relevant to an effective cross-examination caused prejudice to Mr. Madrid.

On November 20, 2018, the Tribe misled counsel to believe Officer Wells’ only actions in this case involved writing a report and taking photographs. The Tribe also indicated there was no material documents that could undermine Officer Wells’ credibility because he had no contact with Mr. Madrid nor did he *seize* the dog in question. The Tribe’s letter suggested that had Officer Wells seized the dog, there could be material evidence relevant for Mr. Madrid’s case. (Appellant’s Exhibit B). Counsel failed to inform the Court that on the eve before trial the Tribe disclosed that Officer Wells actually seized the dog on May 15, 2018. However, counsel had about 17 hours to re-strategize for trial. This oversight was caused by the Tribe’s

failure to abide by its disclosure obligation in a timely manner. Nevertheless, counsel tried to talk to the Tribe about the November 20, 2018 letter a day after trial, but the Tribe was not willing to discuss the matter. Without enough information about Officer Wells' file at the time, counsel's suspicion were mere speculation.

Counsel became aware that Officer Wells' personnel files may have relevant information that was suppressed in this case through a motion made in a different case in which the Tribe acknowledges that there may be materials relevant to Officer Wells' excessive use of force. *See* *PYT v. Omar Godoy*, CR-19-039, Motion for Excision/Protective Order; Request for *In Camera* Review Personnel Document (Ofc. Wells), filed in PYT Court on March 5, 2019 (Appellant's Exhibit F). Failure to follow police protocols is impeachment evidence that undermines Officer Wells' credibility and is relevant to this case.

Where, as here, "the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within this general rule." *Giglio*, 405 U.S. 150 at 154. Under *Brady*, evidence "favorable to the accused" and/or "exculpatory" is defined broadly, and the prosecutor has the obligation to turn over many things that do not directly go towards a claim of innocence. *Id. Brady*, 373 U.S. 83. For example, due process requires disclosure of any evidence that provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the Tribe's witnesses, or to bolster the defense case against prosecutorial attacks. *See Kyles*, 514 U.S. 419 at 442. This includes loose police reports that show inconsistent behavior or statements by police, incompetence or failure to follow guidelines or protocols for investigation, and general sloppiness in investigating the crime or in failing to follow leads or investigate anything that would not help convict a defendant. *Id.* at 418.

“[T]he government has a duty to examine personnel files upon a defendant’s request for their production. Absent such examination, it cannot ordinarily determine whether it is obligated to turn over the files” *United States v. Henthorn*, 931 F.2d 29, 30-31 (9th Cir. 1991). Importantly, a criminal defendant is “entitled to have [a] file reviewed by the trial court to determine whether it contains information that probably would have changed the outcome of the trial.” *Pennsylvania v. Ritchie*, 480 U.S. 39, 58, 107 S. Ct. 989, 1002, 94 L. Ed. 2d 40 (1987) (emphasis added). Regardless of good or bad faith, a prosecutor’s failure to adhere to *Brady/Giglio* by willfully or inadvertently suppressing favorable evidence violates a defendant’s due process rights. *See Brady*, 373 U.S. 83 at 86-87; *see also Giglio*, 405 U.S. 150 at 155.

Despite the Tribe’s first refusal to disclose Officer Wells’ personnel files, his testimony at trial raised concerns about his diligence to follow his department’s protocols in investigating a case, writing reports, seeking evidence, and so forth. Because of Officer Wells’ testimony and counsel’s investigation after trial, counsel asked the Tribe for disclosure of Officer Wells’ personnel files again. However, the Tribe insisted in suppressing information in this case without transmitting the record for an *in camera* review by the court.

The three basic elements of a *Brady* violation are “(1) the information must be favorable to the accused; (2) the information must be suppressed—that is, not disclosed—by the government, either willfully or inadvertently; and (3) the information must be “material” to guilt or to punishment.” *Strickler* at 281.

In this case, the Tribe failed to produce and it insists not to produce important impeaching materials in Officer Wells’ files, despite its ethical obligation to do so and counsel’s requests for disclosure or *in camera* review of the file. Based on counsel’s investigation and the

Tribe's assertions, the evidence is favorable to defense for *Brady* purposes.¹ *Strickler* at 290. The second *Brady* element is met because there is an inadvertent failure on the part of the prosecutor to disclose in a timely manner, evidence favorable to Mr. Madrid. *Id.* at 281; *Giglio*, 405 U.S. 150 at 154. Lastly, the information is material to guilt or to punishment. Had the Tribe timely disclosed that Officer Wells seized the dog without a warrant from Mr. Madrid's house, counsel would have had enough time to prepare for this new evidence and would have filed a timely motion for *in camera* review with this Court and a motion to suppress the seizing of the dog without a warrant.

B. Officer Wells presented misleading and nonfactual testimony while testifying under oath, thus undermining the confidence of the verdict and violating Mr. Madrid's rights to a fair trial.

Situations in which *Brady* claims might arise despite defendant's failure to request favorable evidence is where "previously undisclosed evidence revealed that prosecution introduced trial testimony that it knew or should have known was perjured." *Kyles*, 514 U.S. 419 at 433. Officer Wells presented the Court nonfactual and misleading testimony, misleading the Court and counsel.

Officer Wells testified that he only went to Mr. Madrid's residence one day on May 14, 2018. When counsel objected to the discrepancy of Officer Wells' testimony and the pictures dated May 15, 2018, Officer Wells testified, "the time-stamp is incorrect on the photographs. I *never* went back a second day. I did everything on the same day without ever leaving the property." (Trial Transcript p. 10, 10-12). On cross-examination, Officer Wells changed his testimony, remembering he went to Mr. Madrid's home on the next day to seize the dog while ignoring his assertion that there was a problem with the camera. The Court accepted the

¹ Mr. Madrid is still unaware of the entire content on Officer Wells' files due to the Tribe's suppression of the evidence. However, he now knows there is a file and that despite request by counsel, the Tribe continues to suppress it.

explanation that Officer Wells misspoke as to this information; however, as discussed below, there was more misleading and nonfactual testimony, further undermining Officer Wells' credibility.

First, Officer Wells testified he had seen the dog in Mr. Madrid's property and that "without going back and looking through all the records I couldn't tell you what dates I actually saw him on." (Trial Transcript, p. 34, 8-11). Counsel requested those police reports from the Tribe, which in response the Tribe indicated to "have not located any additional reports prepared by Officer Wells in relation to this case." (Appellant's Exhibit E). Officer Wells led the Court and counsel to believe that he had other reports to show he has seen the dog in Mr. Madrid's residence when in fact he had not. His testimony was inflammatory and not supported by any evidence.

Next, as mentioned previously, Officer Wells testified he tried to contact Officer Machado and that she was not working on that day, and because he had other things to do, he was only able to return to Mr. Madrid's house 18 hours later to seize the dog. This statement is false. Despite the Tribe's suppression of Officer Machado's report, counsel now knows Officer Machado was in fact on duty and was directly involved in this case, contrary to Officer Wells' testimony. The reason why Officer Wells insisted in keeping a case outside his expertise is unknown, but knowing that Officer Machado was on duty and that animal cases are her expertise, Officer Wells' failure to follow protocols are even more evident now.

Further, Officer Wells testified that Mr. Madrid's fence was intact. (Trial Transcript p.18, 9). His testimony directly contradicts Ms. Belinda Makesroomforthem's testimony and Mr. Madrid's pictures admitted in trial. (Case Index #12, case file pp. 36-39). Ms. Makesroomforthem testified that there were holes in the fence, that dogs and other animals have always come inside the residence through the holes and that she had tried to cover them

with wood boards when she lived there back in January/February. (Trial Transcript p. 28, 12-25). The pictures, even though were taken in November 2018, clearly shows the wood boards Ms. Makesroomforthem testified to have used to cover the holes. The pictures clearly show the fence was not intact, as testified by Officer Wells.

Officer Wells also testified that Mr. Madrid's "gates are always kept closed, uh, even if uh, there's no one at the residence or even if there is someone at the residence. You always have to open the gate and walk to be able to get into the residence." (Trial Transcript p. 6, 14-16). This testimony was also misleading. Ms. Makesroomforthem testified that Mr. Madrid's gate sometimes open, and that happened in May 2018 as well. (Trial Transcript, p. 31, 13-25; p. 32, 1-10). It is true Officer Wells testified that the gate was closed on the days in question. However, he did not document the information with pictures, he only wrote a report as to one day he was at Mr. Madrid's house, and his testimony was inconsistent, casting doubt about the veracity of what he testified.

Last and perhaps worst of all, Officer Wells testified he combined the report from May 14 and May 15 into one report. (Trial Transcript p.17, 20). This testimony is false. Officer Wells wrote his narrative on May 15, 2018 at 3:00pm, however the pictures he took at Mr. Madrid's residence were taken on May 15, 2018 at 3:45pm. (Case Index #12 and 66, Case File pp. 33-35 and 119). Therefore, it is impossible that Officer Wells documented an investigation and his actions in the case of something that happened in the future. Officer Wells' investigation fell short of what he was required to do as a police officer. According to his own testimony, Officer Wells is required to write a report about all of his impressions and to take pictures to document his investigation (Trial Transcript p. 11, 9-14).

In *Brady* and *Agurs*, the prosecutor failed to disclose exculpatory evidence. In the present case, the Tribe failed to disclose potential exculpatory evidence by failing to disclose

Officer Machado's report and failing to disclose impeachment material. Impeachment evidence, as well as exculpatory evidence, falls within the *Brady* rule. *See Giglio*, 405 U.S. 150 at 154. Such evidence is "evidence favorable to an accused," so that if disclosed and used effectively, it may make the difference between conviction and acquittal. *Brady*, 373 U.S. 83 at 87; *See also Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177 (1959) ("The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend"). Therefore, a new trial is required if "the false testimony could... in any reasonable likelihood have affected the judgment of the jury..." *Bagley*, 473 U.S. 677 at 677 (citing *Giglio*, 405 U.S. 150 at 154 (internal citations omitted)). In this case, the trial court found Officer Wells' testimony credible, but with the new partial information received—despite Officer Wells' personnel files—it is reasonable to believe the suppressed evidence would have cast doubt as to Officer Wells' credibility.

Had Officer Wells been found incredible, the trial court would have given more weight to Belinda Makesroomforthem testimony. Her testimony was consistent, her demeanor did not change when cross-examined by the Tribe. Officer Wells provided misleading and contradicting testimony, not supported by his own evidence and his demeanor during cross-examination was completely different than his demeanor during direct. While on direct examination, however, Officer Wells only answered what he was asked while on cross-examination he constantly tried to add facts not added to his own report, answer questions he was not asked, and used an aggressive tone when questioned about his inability to follow the protocols and failure to document his own investigation.

The Tribe's disclosure obligation turns to the cumulative effect of all suppressed evidence favorable to the defense, not on the evidence considered item by item. *See Kyles*, 514

U.S. 419 (holding, “in determining whether evidence not disclosed by states was ‘material,’ in violation of *Brady*, cumulative effect of all suppressed evidence favorable to the defendant is considered, rather than considering each item of evidence individually”). The Tribe violated Mr. Madrid’s substantial due process rights to a fair, complete, and accurate presentation of the evidence. Officer Wells’ misleading and false presentation of the facts affected the Court’s chances of a fair verdict and/or punishment, and greatly reduced, if not eradicated, the chances of a not guilty verdict. Each misstatement and certainly all of them cumulatively, precluded Mr. Madrid from a complete defense with accurate versions of events. The Tribe violated and it continues to violate this Tribe’s disclosure rules by failing to disclose Officer Machado’s report in this case and by failing to at the very least submit Officer Wells’ personnel file for an *in camera* review.

C. The evidence was insufficient to prove Mr. Madrid failed to provide veterinarian care for the dog.

The Pascua Yaqui Tribe Rules of Criminal Proceedings and the Constitution of the United States require that each element of a crime be proved beyond a reasonable doubt. 3 PYTC § 2-2-430; *See also Alleyne v. United States*, 570 U.S. 99, 104 (2013). On a sufficiency of the evidence challenge, the Court reviews *de novo* whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *United States v. Espinosa-Valdez*, 899 F.3d 654, 656 (9th Cir. 2018). Here, Mr. Madrid was convicted of failure to provide veterinarian care. Under the statute, the essential element is that the animal **receives care and medical treatment** for debilitating injuries, parasites and diseases, sufficient to maintain the animal in good health and minimize suffering. The meaning of the statute is unambiguous. The Tribe is required to prove beyond a reasonable doubt that there was a failure to provide care and medical treatment.

After the Tribe's presentation of its case in chief, counsel moved for a directed verdict. (Trial Transcript, p. 21-22). Counsel argued — in part — “[a]s far as veterinary care, Officer Wells is not an expert. He is not a vet. I understand that his testimony is, is as a lay witness but he, he didn't know if the dog was receiving already treatment by somebody. It is clear in the picture that he needed vet care but there was no inquiries [if] there was already started of treatment. You know, there, there – as I mentioned I think there was some discrepancy in testimony and I think there is no substantial evidence to find that Mr. Madrid failed to provide veterinary[ian] care for a dog he never even claimed was his.” The trial court denied the motion.

Counsel called Officer Wells in her case in chief to follow up on statements made during Officer Wells' testimony to the prosecutor that he did not check to see if the dog was already receiving veterinarian care. (Trial Transcript, p. 34, 20-24). Officer Wells also testified that based on his lay opinion he did not know if the dog received the injuries over night or over time. *Id.* at 18-21.

Therefore, the Tribe fell short of proving beyond a reasonable doubt that Mr. Madrid failed to provide veterinarian care because despite disclosing Doctor Jennifer Wilcox D.V.M. as a witness, it failed to call her to testify. The Tribe also never disclosed a veterinarian report to Mr. Madrid to indicate what type of injuries the dog suffered and whether there was treatment already being provided, and Officer Wells is unqualified to testify as to whether there was a failure to provide treatment or if treatment was already in place.

Mr. Madrid denied the dog was his, and Ms. Makesroomforthem testimony that he has no dog supported his claim. However, Mr. Madrid could have started to take actions about the health of the dog once he noticed the dog in his residence, but Officer Wells never even bothered to talk to him, and Mr. Madrid does not know if Officer Machado tried to follow up with Mr. Madrid or with PACC, where the dog was transported by her.

D. The sentence was procedurally and substantively unreasonable.

Sentencing decisions are reviewed for abuse of discretion. *United States v. Carthy*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). The substantive reasonableness of a sentence is reviewed for abuse of discretion, even without an objection below. *United States v. Autery*, 555 F.3d 864, 871 (9th Cir. 2009).

The pre-sentence report did not recommend Mr. Madrid for probation because he has had a history of failing probation. The report also indicated Mr. Madrid,

“brings home \$70.00 a week and is on food stamps benefits.” Counsel indicated in Mr. Madrid’s sentencing memorandum, “he has no prior criminal convictions or arrests related to the charges in this matter. He is a 63-year old enrolled member of the Pascua Yaqui Tribe with strong ties with this community. [Mr.] Madrid also has chronic back and knee pain, and struggles to stay sit or to carry heavy weights on a daily basis. In fact, it was evident how uncomfortable he was sitting during trial. He is unemployed and lacks transportation, and his life revolves around the reservation. Mr. Madrid is active as he can be in this community as he likes to help an elderly man named Pedro at the Pascua Yaqui Tribe Senior Center.”

(Case Index #9, Case File p. 17, 5-11).

The trial court did not consider any of mitigating factors presented at sentencing, and ordered Mr. Madrid to pay a total of \$350 in fine and court costs, a \$75 animal class, plus monthly probation fees. (Case Index #7, Case File p. 13). The trial court gave Mr. Madrid three months to pay the \$350 or to perform a total of 70 hours community supervision. Mr. Madrid brings home in a period of three months approximately \$840, and thus the fine imposed was about 41% of Mr. Madrid’s income. It is true that the court allowed Mr. Madrid to perform 70 hours of community service, but he was ordered to finish it in three months. Giving Mr. Madrid’s chronic back and knee pain it is hard for Mr. Madrid to perform that much work and his options of service are limited. In addition, the trial court ordered Mr. Madrid to be on

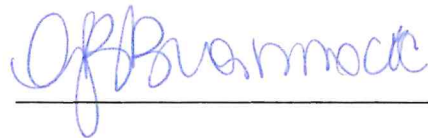
probation and be required to pay probation fees, despite probation officer recommending Mr. Madrid not being on probation.

E. CONCLUSION

For the foregoing reasons, Mr. Madrid respectfully asks this Court dismiss the case with prejudice due to the Tribe's disclosure violations, or to overturn Mr. Madrid's conviction and find there was insufficient evidence to convict Mr. Madrid. Alternatively, Mr. Madrid requests that a trial *de novo* be granted, so he is afforded the opportunity to have a fair trial where his constitutional rights are protected.

RESPECTFULLY SUBMITTED: April 5, 2019.

PASCUA YAQUI PUBLIC DEFENDER



Glauca Batista Brannock
Deputy Public Defender
Pascua Yaqui Public Defender
4725 W. Calle Tetakusim, Building B
Tucson, AZ 85757
(520) 883-5013

Attorney for Appellant Antonio Madrid

APPELLANT'S EXHIBIT A

November 15, 2018

VIA EMAIL AND OFFICE DELIVERY

Mr. Kendrick Wilson and Ms. Patricia Castro
Deputy Prosecutor and Lay Advocate for the Pascua Yaqui Tribe
7777 S. Camino Huivisim, 2nd Floor
Tucson, Arizona 85757

Re: Pascua Yaqui Tribe v. Antonio Madrid; AC-18-003 *Henthorn* and *Brady*
Request

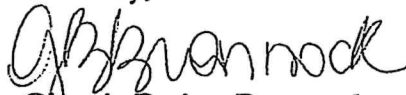
Dear Mr. Wilson and Ms. Castro,

I am officially writing to request that you conduct a review of the personnel files of Pascua Yaqui Tribal Officer Kevin Wells. Mr. Wells' name is listed on your Notice of Witness and Disclosure.

Accordingly, I ask that, pursuant to *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991); *United States v. Cadet*, 727 F.2d 1453 (9th Cir. 1984); *Brady v. Maryland*, 373 U.S. 83 (1963); and *United States v. Giglio*, 92 S. Ct. 763 (1972), you or a designated department official familiar with this case and the applicable law, review these law enforcement officers' personnel files for any impeachment material, including but not limited to: (1) citizen complaints; (2) incident reports; (3) disciplinary actions; and (4) related internal affairs information regarding prior conduct.

If the Tribe is unsure of the materiality of the information, the records can be submitted to the court for inspection in camera. If you have any questions or would like to discuss this matter, please do not hesitate to contact me. Thank you for your attention to this request.

Sincerely,



Glauca Batista Brannock
Deputy Public Defender

APPELLANT'S EXHIBIT B

PASCUA YAQUI TRIBE

OFFICE OF THE PROSECUTOR



November 20, 2018

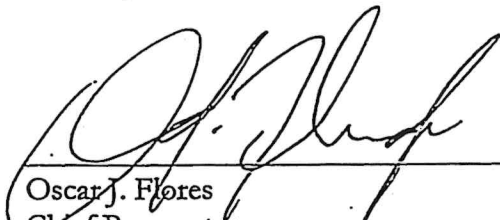
Glaucia Batista Brannock
Deputy Public Defender
Pascua Yaqui Office of the Public Defender
4725 W. Calle Tetakusim, Bldg. B
Tucson, Arizona 85757

RE: Pascua Yaqui Tribe v. Antonio Madrid AC-18-003

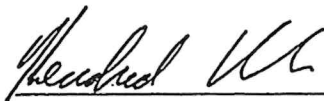
Dear Ms. Brannock,

Following receipt of your request for *Hentborn* and *Brady* material on PYPD Officer Kevin Wells, our office has reviewed his applicable personnel documents and history. Officer Wells' only actions on this case involved writing a report and taking photographs. He had no contact with the Defendant in this case and did not seize the dog in question. As such, the only potential impeachment of Officer Wells' testimony would be any material which would indicate a veracity to provide untruthful testimony. Upon review, no such material exists.

Sincerely,



Oscar J. Flores
Chief Prosecutor



Kendrick Wilson
Deputy Prosecutor

APPELLANT'S EXHIBIT C

Glaucia Brannock

From: Kendrick Wilson
Sent: Thursday, December 13, 2018 11:22 AM
To: Glaucia Brannock
Cc: Oscar J. Flores
Subject: RE: Madrid AC-18-003

At the time, we did not realize he had seized the dog in question. Our office stands by our contention that nothing in his personnel records affects his propensity for truthfulness and therefore, nothing is discoverable.

Kendrick Wilson

Deputy Prosecutor
Pascua Yaqui Office of the Prosecutor
7777 S. Camino Huivisim
Building A, 2nd Floor
Tucson, AZ 85757
Tel: (520) 879-6265
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PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS EMAIL.



From: Glaucia Brannock
Sent: Thursday, December 13, 2018 11:01 AM
To: Kendrick Wilson
Subject: Madrid AC-18-003

Hello Kendrick,

I hope you are well.

In light of Mr. Wells testimony yesterday, and the letter denying my *Henthorn/Brady* request on Wells stating, "he had no contact with the Defendant in this case and **did not seize the dog in question[,]**" I am seriously concerned. Do you want to talk about this issue, or should I file something with the Court?

Sincerely,

Glaucia Brannock

Deputy Public Defender
Pascua Yaqui Tribe
Office of the Public Defender
4725 W. Calle Tetakusim, Bldg. B
Tucson, AZ 85757
(520) 883-5023

APPELLANT'S EXHIBIT D

PASCUA YAQUI TRIBE

OFFICE OF THE PUBLIC DEFENDER



March 5, 2019

Coleen Thoene
Kendrick Wilson
7777 S. Camino Huivism, Bldg. A.
Tucson, AZ 85757

Re: *PYT v. Madrid, A.* CA-19-003. Request for Discovery for appeals purpose

Dear Ms. Thoene and Mr. Wilson,

Defendant, Antonio Madrid, through undersigned counsel and pursuant to Article 1, §§ 1(f) & (h) of the Pascua Yaqui Tribal Constitution, 3 PYT § 2-2-380, 25 U.S.C. § 1302(a)(8), 3 PYTC § 2-2-410 (continued obligation to disclose), *Pascua Yaqui Tribe v. Molina*, CCA-04-002 (2006), *Pascua Yaqui Tribe v. Soto*, CCA-06-010(2007); *Kyles v. Whitley*, 514 U.S. 419 (1995), *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991); *United States v. Cadet*, 727 F.2d 1453 (9th Cir. 1984); *Brady v. Maryland*, 373 U.S. 83 (1963); and *United States v. Giglio*, 92 S. Ct. 763 (1972), hereby requests that the Tribe disclose the discovery requested by March 15, 2019. If such items cannot or will not be produced by the aforementioned date, then I request that you contact me in writing to discuss the status of any undisclosed evidence and thereby comply with the local mandate that sincere efforts be made to satisfactorily resolve any discovery request.

Madrid, A. CA-19-003, Discovery Request – Dated March 5, 2019

1

PASCUA YAQUI TRIBE

OFFICE OF THE PUBLIC DEFENDER



This request includes, but is not limited to, the following:

1. In light of Mr. Wells' testimony at trial where he provided information unknown to the Tribe and defense, I am requesting for the second time, that you or a designated department official familiar with this case and the applicable law, review Ms. Wells law enforcement officers' personnel files for any impeachment and exculpatory material, including but not limited to: (a) citizen complaints; (b) incident reports; (c) disciplinary actions; and (d) related internal affairs information regarding prior conduct.
2. A copy of additional police reports made on the dog seized at Mr. Madrid's property, in which Mr. Wells referred at trial but never disclosed to the Tribe or defense.
3. A copy of Ms. Lily Machado's work schedule for the month of May 2018. Of particular importance, I would like to know whether Ms. Lily Machado worked on May 14 and 15, 2018.

The requested discovery in this case is necessary to effectively prepare for the appellate case and cannot be obtained without assistance from the Tribe.

Your cooperation in this matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Glauca Brannock". The signature is written in a cursive style and is located below the word "Sincerely,".

Glauca Brannock, Attorney for Antonio Madrid

APPELLANT'S EXHIBIT E

PASCUA YAQUI TRIBE

OFFICE OF THE PROSECUTOR



March 13, 2019

Glauca Batista Brannock
Deputy Public Defender
Pascua Yaqui Office of the Public Defender
4725 W. Calle Tetakusim, Bldg. B
Tucson, Arizona 85757

RE: Antonio Madrid, Appellant vs. Pascua Yaqui Tribe, Appellee CA-19-003

Dear Ms. Brannock,

We are in receipt of your March 5, 2019 request for disclosure of the following items: (1) a renewed request for review of Officer Wells' personnel and/or disciplinary files for any information subject to disclosure under *Brady v. Maryland*, 373 U.S. 83 (1963), *State v. Henthorn*, 931 F.2d 29 (9th Cir. 1991), or their progeny; (2) a copy of any additional police reports referenced to by Officer Wells during his testimony; and, (3) a copy of Animal Control Officer Lily Machado's work schedule for the month of May, 2018. For the reasons outlined below, we will not provide the information requested. However, if you feel that our office's reading of the relevant law and ethics rules is incorrect, we would be happy to discuss this matter with you further.

The Pascua Yaqui Rules of Appellate Procedure limit the record on appeal to the "original papers, exhibits and other objects filed with the trial court clerk, a reporter's transcript, transcription of an electronic recording or narrative or agreed statement, and copies of all entries." 3 PYTC § 2-3-110 (A)(1). Based on our research, neither Tribal, Federal, nor Arizona disclosure rules apply in the context of an appeal. It is also important to note that the local Rules of Appellate Procedure provides neither a mechanism nor procedure for the Court of Appeals to entertain a motion for disclosure

PASCUA YAQUI TRIBE

OFFICE OF THE PROSECUTOR



while a case is pending on appeal. The record in this case is closed and cannot be expanded at the appellate court level. Additionally, any items disclosed pursuant to your request, if they exist, would not be permissible for Court of Appeals to consider given the plain language of 3 PYTC § 2-3-110 (A)(1).

The Tribe recognizes that it has an ongoing duty “to disclose clearly exculpatory material that comes to its attention after” conviction. *Canion v. Cole*, 210 Ariz. 598, 599, 115 P.3d 1261, 1262 (2005); *see also Brady v. Maryland*, 373 U.S. at 87, 83 S.Ct. 1194 (setting forth requirement to disclose clearly exculpatory material). The items your office has requested, if they exist, do not appear to fall within this window. Additionally, and specifically with regards to post conviction relief (PCR) proceedings — which are distinct from direct appeals — case law has indicated that disclosure may be granted by the trial court reviewing the PCR upon a showing of good cause. The Tribal Code does not currently provide for PCR proceedings other than the federal habeas proceedings allowed under the Indian Civil Rights Act.

We note that, on November 20, 2018, our office sent you a letter indicating that Officer Wells file had been reviewed, and that there was no information in the file that was discloseable under *Brady* or *Hentborn*. We have not located any additional reports prepared by Officer Wells in relation to this case, but have located a copy of a report prepared by Officer Lily Machado on May 15, 2018. In it, she documented having seen the dog at the kennel and transporting him to Pima Animal Care Center. The report does not contain any exculpatory material and, if disclosed, may not be considered by the Court of Appeals. Absent a showing of good cause, or an order by a court with jurisdiction over disclosure matters in this unique context, we will not be obtaining or disclosing copies of Officer Machado’s work schedule for the reasons outlined above.

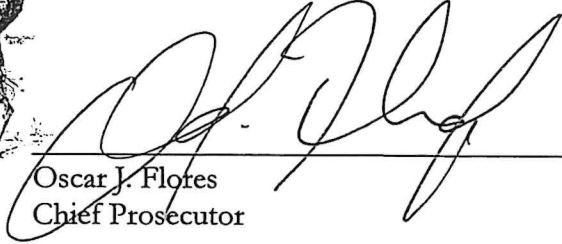
If you have any questions or concerns, or wish to discuss this matter with us further, please do not hesitate to call or email us.

PASCUA YAQUI TRIBE

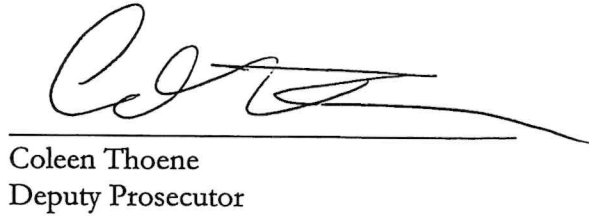
OFFICE OF THE PROSECUTOR



Sincerely,



Oscar J. Flores
Chief Prosecutor



Coleen Thoene
Deputy Prosecutor

APPELLANT'S EXHIBIT F

2019 MAR -5 PM 4:36

DOCKET NO.

[Handwritten signature]

Pascua Yaqui Tribe
Office of the Prosecutor
7777 S Camino Huivisim, Bldg. A, 2nd Fl.
Tucson, AZ 85757
(520) 879-6257 Telephone

Madelynn Franklin
Deputy Prosecutor

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA

PASCUA YAQUI TRIBE,

Plaintiff

v.

GODOY, OMAR

Defendant

Case No. CR-19-039

**Motion for Excision/Protective
Order; Request for *In Camera* Review
Personnel Documents (Ofc. Wells)**

COMES NOW the Pascua Yaqui Tribe and hereby submits the following request to the Court for *in camera* review of documents to determine relevance and materiality as to the impeachment.

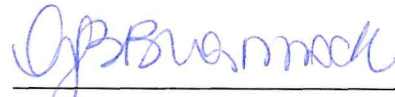
Pursuant to 3 PYTC § 2-2-400 the Tribe requests *in camera* review by the Court to determine the relevance/materiality of personnel information for impeachment of Officer Kevin Wells, and that the Court seal these documents in the record upon resolution of the case after trial.

As indicated in *United States v. Jennings*, 960 F.2d 1488 (9th Cir. 1992), the prosecutor does not have an obligation under *Brady*, *Bagley* or *Giglio* to personally review the personnel files of law enforcement agents. *U.S. v. Jennings*, 960 F.2d 1488, 1491 (9th Cir. 1992). Prosecution can submit such records to the Court for *in camera* review for any materials that have arguable exculpatory value. *Id.* at 1492. "Absent a violation of a recognized right under the Constitution, a statute, or a procedural rule, a...court is not entitled to exclude evidence as a sanction against government practices

CERTIFICATE OF COMPLIANCE

This brief complies with the provisions set forth in 3 PYTC Part II, Chapter 2-3.

PASCUA YAQUI PUBLIC DEFENDER



Glaucia Batista Brannock
Deputy Public Defender
Pascua Yaqui Public Defender
4725 W. Calle Tetakusim, Building B
Tucson, AZ 85757
(520) 883-5013

Attorney for Appellant Antonio Madrid

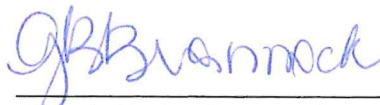
CERTIFICATE OF SERVICE

On April 5, 2019, the original and three copies of the *Appellant's Opening Brief* were filed and conforming copies were sent to the following:

Pascua Yaqui Office of the Prosecutor
Chief Prosecutor
Oscar J. Flores
7777 S. Camino Huivisim, Building A
Tucson, AZ 85757

Antonio Madrid, Appellant

PASCUA YAQUI PUBLIC DEFENDER



Glauca Batista Brannock
Deputy Public Defender
Pascua Yaqui Public Defender
4725 W. Calle Tetakusim, Building B
Tucson, AZ 85757
(520) 883-5013

Attorney for Appellant Antonio Madrid

1 PASCUA YAQUI PUBLIC DEFENDER
2 Glaucia Batista Brannock
3 4725 W. Calle Tetakusim, Bldg. B
4 Tucson, AZ 85757
5 (520) 883-5013
6 D.C. Bar No.: 888314451
7 glaucia.brannock@pascuayaqui-nsn.gov

8 IN THE PASCUA YAQUI TRIBAL COURT
9 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

8 PASCUA YAQUI TRIBE,
9 Plaintiff,
10 vs.
11 MADRID, ANTONIO,
12 Defendant.

) Case No.: CA-19-003

) **MOTION TO STAY APPEAL PENDING**
) **TRIAL COURT'S RESOLUTION OF**
) **DEFENDANT'S/APPELLANT'S MOTION**
) **TO MISTRIAL/VACATE CONVICTION OR**
) **ALTERNATIVELY TO GRANT A NEW**
) **TRIAL**
) **EMERGENCY MOTION**

13
14 Defendant, Antonio Madrid, through counsel, pursuant to 3 PYT § 2-2-300, respectfully moves this
15 Court to enter an order staying the appeal pending resolution of this matter with the trial court and to
16 remand the proceedings with that court. Mr. Madrid filed a motion to mistrial/vacate convictions or
17 alternatively to grant a new trial with the trial court on March 21, 2019.

18 This is an issue of first impression in the Pascua Yaqui Tribe. Under federal law, "the court may
19 vacate any judgment and grant a new trial if the interest of justice so requires. ... (1) Any motion for a new
20 trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilt.
21 If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands
22 the case." Fed. R. Crim. P. 33.

23
24 "Defendant who aspires to file motion for new trial based on newly discovered evidence while
25 conviction is pending on direct appeal is not obliged either to file motion for remand in Court of Appeals or
26 to seek any type of leave from it; rather, proper procedure is for defendant to file motion for new trial in
27 district court." *United States v. Graciani*, 61 F.3d 70 (1st Cir. 1995); *See also United States v. Mendoza*, 334 Fed.
28

1 Appx. 515 (3rd Cir. 2009) (“Issue of whether newly-discovered evidence warranted new trial was for district
2 court to decide in first instance, even if evidence was first disclosed while conviction was on appeal).

3
4 Moreover, federal courts have held that “[t]he only proper function of a court of appeals is to review
5 the decision below on the basis of the record that was before the district court.” *Fassett v. Delta Kappa*
6 *Epsilon*, 807 F.2d 1150, 1165 (3d Cir.1986) (citation omitted).

7 In this case, on March 13, 2019, defense counsel became aware of newly discovered evidence never
8 disclosed to defense counsel. The Tribe objected to the disclosure indicating the “Pascua Yaqui Rules of
9 Appellate Procedure limit the record on appeal to the original papers, exhibits and other objects filed within
10 the trial court clerk, a reporter’s transcript, transcription of an electronic recording or narrative or agreed
11 statement, and copies of all entries.” citing, 3 PYTC § 2-3-110 (A)(1) (internal quotations omitted).

12
13 The newly discovered evidence not disclosed to defense counsel, made it harder to proceed with
14 this case because any appeal filed based on the trial court’s record is incomplete, misleading, and not in
15 compliance with the Pascua Yaqui Tribe disclosure rules. According to 3 PYTC § 2-2-410, “if *at any time*
16 after a disclosure has been made any party discovers additional information or material which would be
17 subject to disclosure had it then been known, such party shall promptly notify all other parties of the
18 existence of such additional material, and make an *appropriate disclosure*.” (emphasis added). Failure to comply
19 with this rule, “the court may impose any sanction which it finds just under the circumstances, including,
20 but not limited to: (A) ordering disclosure of the information not previously disclosed; (E) Declaring a
21 mistrial when necessary to prevent a miscarriage of justice.” 3 PYTC § 2-2-420.

22
23
24 Even though the above mentioned federal precedents refer to a motion for new trial and defense
25 counsel is requesting a mistrial pursuant to PYTC rules, defense counsel is asking a new trial if a dismissal is
26 not granted. However, the federal remand of cases due to newly discovered evidence, so the record can be
27 supplemented for appeals purposes is analogous to the issue here. An appeal cannot be taken until the
28 record is supplemented and the Tribe discloses the evidence Mr. Madrid is entitled to have.

No. CA-19-003

Pascua Yaqui Tribe court of Appeals

Antonio Madrid, Appellant


vs.

Pascua Yaqui Tribe, Appellee

ORDER

Upon application from the Pascua Yaqui Office of the Public Defender, and for good cause shown, IT IS ORDERED that the deadline for Appellant to file its opening brief shall be extended for 30 days. Appellant shall file its opening brief no later than April 5, 2019.

SO ORDERED this 26th day of February 2019.



Hon. Robert Miller

Sent via electronic mail this 1st day of March, 2019, to:

Glaucia Batista Brannock
Pascua Yaqui Office of the Public Defender
Attorney for Appellant

Kendrick Wilson
Pascua Yaqui Office of the Prosecutor
Attorney for Appellee

PASCUA YAQUI PUBLIC DEFENDER
4725 W. Calle Tetakusim, Bldg. B
Tucson, AZ 85757
(520) 883-5013
Glaucia Batista Brannock
D.C. Bar No.: 888314451
glaucia.brannock@pascuayaqui-nsn.gov

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

MADRID, ANTONIO

Appellant,

vs.

PASCUA YAQUI TRIBE,

Defendant.

Case No.: CA-19-003

**MOTION TO EXTEND
TIME TO FILE APPELLANT'S
OPENING BRIEF**

UNOPPOSED

Appellant, Antonio Madrid, through undersigned counsel, respectfully requests for an extension of time to file Appellant's Opening Brief in this matter pursuant to 3 PYTC § 2-3-70 (B). ("The time for doing any act provided by these rules, ... may be shortened or extended upon ... written motion for good cause shown..."). This motion is based on the following:

Appellant filed a notice of appeal on January 8, 2019.

On February 4, 2019, Appellant received a notice issued pursuant to 3 PYTC § 2-3-120(a), indicating the Court of Appeals received the record and it was complete.

On February 19, 2019, Appellant discovered the record on appeal did not include a transcript of the trial, which is the subject of this appeal. Although a recording of the trial was submitted on appeal, counsel requested a transcript of the recording to facilitate referencing in his opening brief. The transcript will be prepared on short notice, however Appellant will have limited time to review the transcript and accurately cite in his brief.

1 Appellant's Opening Brief is currently due on March 6, 2019. Out of an abundance of caution,
2 Appellant respectfully requests for an extension of 30 days to file Appellant's Opening Brief. This motion is
3 made in good faith and not for the purpose of delay.
4

5 Undersigned counsel contacted Deputy Prosecutor, Coleen Thoene, and she does not oppose this
6 motion.

7
8 RESPECTFULLY SUBMITTED this 20th day of February 2019.

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12 _____
13 Glaucia Batista Brannock
14 Deputy Public Defender
15 Attorney for Antonio Madrid
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1 CERTIFICATE OF SERVICE

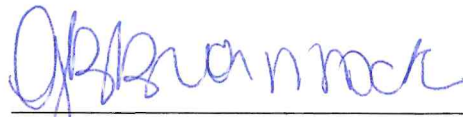
2 I hereby certify that the original and five copies of the Motion to Extend Time to File Appellant
3 Brief were delivered this date to:

4 Ben Casey
5 Pascua Yaqui Court of Appeals

6 Coleen Thoene
7 Deputy Prosecutor
8 Pascua Yaqui Office of the Prosecutor
9 7777 S. Camino Huivisim, Bldg. A
10 Tucson, AZ 85757

11 Conforming copy to Antonio Madrid, Appellant

12 DATED this 20th day of February, 2019.

13 

14

Glaucia Batista Brannock
15 Deputy Public Defender
16 Attorney for Antonio Madrid

1 PASCUA YAQUI PUBLIC DEFENDER
Glaucia Batista Brannock
2 4725 W. Calle Tetakusim, Bldg. B
Tucson, AZ 85757
3 (520) 883-5013
D.C. Bar No.: 888314451
4 glaucia.brannock@pascuayaqui-nsn.gov

5
6 THE PASCUA YAQUI TRIBAL COURT
7 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION
8

9 PASCUA YAQUI TRIBE,) Appellate Case No.:
)
10 Plaintiff,) Case No.: AC-18-003
)
11 vs.) **NOTICE OF APPEAL**
)
12 MADRID, ANTONIO,)
)
13 Defendant.)

14
15 Appellant/Defendant, Antonio Madrid, through counsel, pursuant to 3 PYTC § 2-3-90(A),
16 3 PYTC § 2-3-90(B) of the Pascua Yaqui Tribe Rules of Appellate Procedure, respectfully files a
17 Notice of Appeal in the Pascua Yaqui Tribe Appellate Court from the Order entered in this action
18 by the Pascua Yaqui Tribal Court on December, 12, 2018, and sentence entered on January 4, 2019.
19 The Appellant is appealing the Trial Court's judgment of guilt as well as its sentencing.

20 A copy of the bench trial minute and sentencing order is attached to this motion pursuant to
21 3 PYTC § 2-3-90 (A)(1).

22 RESPECTFULLY SUBMITTED this 8th day of January 2019.
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Glaucia Batista Brannock
Deputy Public Defender
Attorney for Antonio Madrid

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The original of foregoing was filed in Pascua Yaqui Tribal Court on January 8, 2019, and copy of was delivered this same date to:

Pascua Yaqui Office of the Prosecutor
7777 S. Camino Huivisim, Bldg. A
Tucson, AZ 85757

Ben Casey
Pascua Yaqui Tribe Court of Appeals

Conforming copy to Antonio Madrid, Appellant/Defendant

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION


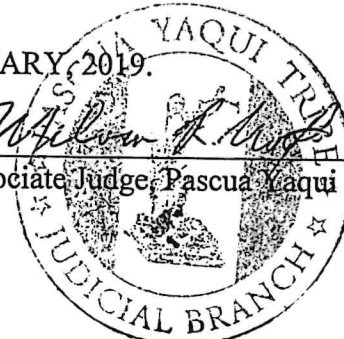
PASCUA YAQUI TRIBE,) Case No. AC-18-003
PLAINTIFF,)
vs.) JUDGMENT
MADRID, ANTONIO F.)
DEFENDANT.)
_____)

The defendant, Antonio F, Madrid, appeared for a sentencing hearing on January 4, 2019, with his legal counsel, Glaucia Batista Brannock. Appearing for the Tribe was Kendrick Wilson and Dominic Duran for probation.

On December 12, 2018, the defendant was found guilty of Count One, Failure to Provide Veterinary Care, and the court should adopt the Tribe's sentencing recommendations that the defendant should have 10 days detention suspended for 6 months probation, and that he be assessed a criminal fine of \$250.00, and \$100.00 court costs to be paid April 4, 2019. He should not obtain any dogs or pets for one year, and he should provide proof of completion of an Animal Cruelty Education course no later than April 4, 2019.

IT IS ORDERED that based on the defendant's conviction of Count One, Failure to Provide Veterinary, Antonio F. Madrid shall be sentenced for Count One, as follows: 10 days jail, suspended for 6 months supervised probation, report to probation within 48 hours, follow all standard conditions of probation, pay probation fees monthly, such amount to be determined by probation, pay a \$250.00 fine, to be paid by money order, or complete 50 hours of community services, in lieu of fines, due April 4, 2019. He shall pay \$100.00 court costs, by money order, or complete 20 hours of community services, in lieu of costs, no later than April 4, 2019. He shall not obtain any dogs or pets for one year. He shall complete an Animal Cruelty Education Class with the Humane Society of Southern Arizona, and he shall submit proof of completion to his probation officer. The defendant shall contact Stephanie Gray, (520) 312-3704, to arrange for the class.

SO ORDERED THIS 4th DAY OF JANUARY, 2019.


Associate Judge, Pascua Yaqui Tribal Court


cc: Date 1/07/2019
 Tribe Defendant Probation


Clerk

1 IN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3
4 PASCUA YAQUI TRIBE,)
5 PLAINTIFF,) CASE NO. AC-18-003
6 vs.) JUDGMENT AND
7 MADRID, ANTONIO) ORDER SETTING
8 DEFENDANT.) SENTENCING HEARING
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8 The defendant, Antonio Madrid, appeared for a bench trial, on December 12, 2018, and he was represented by legal counsel, Annmarie Valdivia. Appearing for the Tribe was Kendrick Wilson. Also appearing was Officer Kevin Wells, Belinda Makes Room for Them and Lilian Contreras.

11 The court held a trial, heard testimony, reviewed documentary evidence, and it finds the defendant guilty beyond a reasonable doubt to Count One, Failure to Provide Veterinary Care. The court denied the defendant's motion to suppress due to illegal seizure of the dog without a warrant, due to surprise and untimely motion, because the case has been pending since May 24, 2018.

15 The Tribe's Exhibit 2, a certificate of Indian blood and Pascua Yaqui Tribal Enrollment Program record, was admitted as an official record of the Tribe and as a self-proving public record under Pascua Yaqui Rule of Evidence, Public Records and F.R. Evid 803(8).

18 The court finds as follows: Based on the testimony of Officer Wells, in the evening of May 14, 2018, at the address of 7621 S. Camino Huivisim, within the reservation, at approximately 9:30 p.m., the defendant, Antonio Madrid, had control of 3 dogs in his yard which was secured by a fence and locked gates. Officer Wells observed an older dog sitting on a couch near a door to the home, and the dog appeared with red splotches over the dog's chest, face, paws and other parts of its body. There appeared to be loss of hair on the animal, and as the officer approached closer, he tried to contact the owner of the home, Antonio Madrid, without success.

24 The next day, officer Wells, returned to the 7621 S. Camino Huivisim address to check on the animal, and in the daylight he observed large scabs on the dog, the officer took photos of the animal. The officer unhooked the chain link fence, entered the yard, and seized the animal, due to the dog's poor condition, and took the dog to animal control. Animal control was not there to check on whether the animal had a chip, because the machine that reads such imbedded chips was broken and was not replaced. The dog had no tags, so there would not have been any way to determine ownership through tags. The officer explained that he had returned after 18 hours from his first view of the dog the previous day, because he has priority calls to cover.

1 The court denied the defendant's motion for directed verdict, because the Tribe met its
2 burden.

3 Defendant's witness, Lilian Contreras, showed photos she took of the home on
4 November 15, 2018, but she admitted that she did not see the dog or its condition on either
5 May 14, 2018 or May 15, 2018. Belinda Makes Room for Them testified that she has known
6 Mr. Madrid all of his life and that he has never owned any dogs. She stated that there are
7 holes in Mr. Madrid's fence and she has seen stray dogs wander into the yard through small
8 holes in the fence, or when a guest has left his gate open. She also stated that she did not see
9 the dog on May 14, 2018 or May 15, 2018.

10 Officer Wells indicated he had seen the dog several times in the past in the defendant's
11 yard, but he could not provide specific dates as to when he previously saw the dog in the
12 defendant's yard.

13 The court finds credible the testimony of the officer and Wells who was upset about
14 the dog's condition, took action necessary to ensure it was provided medical care, and took
15 photos to memorialize the dog's condition on May 15, 2018.

16 The court finds that the Tribe has proven beyond a reasonable doubt that the defendant
17 committed the offense of Count One, Failure to Provide Veterinary Care, based on the
18 testimony and observations of officer Wells and as supported by substantial evidence of the
19 dogs injuries, through the officer's photos taken the next day, showing the mange on the dog,
20 scabs, red sores on its face, ears, cheeks, chest, front legs and paws that went untreated,
21 resulting in pus filled sores on the dog. The court denies the defendant's motion to dismiss,
22 due to lack of ownership, because the statute holds accountable those individuals, whose
23 animal are under their care, custody or control. The three dogs and diseased dog seized by the
24 officer, were within the custody and control of the defendant, who had placed them into the
25 yard of Mr. Madrid, which is surrounded by a chain link fence and a locked gate.

26 The court should set the matter for a sentencing hearing and the court should grant the
27 Tribe's request to maintain the current release conditions until the defendant may appear for
28 sentencing hearing in this matter.

IT IS ORDERED that the defendant, Antonio Francisco Madrid, is found guilty
beyond a reasonable doubt, of Count One, Failure to Provide Veterinary Care.

The defendant shall be released on a \$100.00 bond, suspended, he shall appear at all
future hearings, and obey all laws.

IT IS FURTHER ORDERED that this matter shall be set for a sentencing
hearing on January 4, 2019 at 10:00 a.m..

THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

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IT IS FURTHER ORDERED that probation shall provide the court with its pre-sentence report, no later than December 31, 2018.

SO ORDERED THIS 12th DAY OF DECEMBER, 2018.


Associate Judge, Pawa Yaqui Tribal Court



The seal is circular with the text "PAWA YAQUI TRIBE" at the top and "JUDICIAL BRANCH" at the bottom. The center features a figure holding a bow and arrow, surrounded by a wreath and two stars.

cc: Date 12/14/18
 Tribe Defendant/Counsel Probation

Monica Romero
Clerk