

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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CLERK-SANTA FE

ANTHONY ACOSTA-VIGIL,

Plaintiff,

-vs-

No. CIV 09-929 BB/KBM

ANGELA DELORME-GAINES,
in her capacity as a
Tesuque Pueblo Tribal Court Judge,

RESPONDENT'S ANSWER AND ANSWER BRIEF

The Respondent, the Honorable Tesuque Tribal JUDGE ANGELA DELORME-GAINES hereby answers the petition and respectfully moves this Court to enter an order dismissing the petition.

Summary

The Petitioner has requested a habeas action challenging his incarceration in which he asserts that Judge Delorme-Gaines violated rights guaranteed him under the Indian Civil Rights Act. The Petitioner is in error. The tribal court properly asserted personal jurisdiction over the Petitioner, an enrolled member of a federally recognized tribe. The tribal court properly asserted subject matter jurisdiction over the alleged criminal acts committed within the boundaries of the Pueblo of Tesuque.

Additionally, the tribal code provides and enumerates an adequate remedy addressing the alleged violations of Indian civil rights—a court of appeals. However, the Petitioner has failed to avail himself of this remedy.

Under the exhaustion of tribal remedies doctrine, this court should dismiss the Petitioner's motion and allow the tribal court to consider the Petitioner's claims in this routine criminal case.

Jurisdiction of the Tribal Court

The Petitioner, by his own admission, is a member of a federally recognized Indian tribe. *See Petition* pg. 2 para. 6. The tribal court properly asserts personal jurisdiction over the Defendant under the Indian Pueblo Land Act Amendment, 2005 , PL 109-133.

The criminal offenses occurred within the exterior boundaries of the Pueblo of Tesuque, a federally recognized tribe within the state of New Mexico. Further, the Pueblo of Tesuque Tribal Court has been authorized by Congress to assert jurisdiction over the Defendant, a non-member Indian.

The Tribal Law and Order Code, section 1-2-2, grants the Tribal Court subject matter jurisdiction over the offenses of a criminal nature including but not limited to driving under the influence and driving with a suspended/revoked license.

Facts

On July 8th, 2009 the Defendant, Anthony Acosta-Vigil, an enrolled member of the Assiniboine/Sioux tribe was pulled over for driving with a burnt out tail light. After pulling the vehicle over, a Pueblo of Tesuque Officer requested a drivers license, insurance and registration. In response the Defendant admitted that his license was revoked due to a past DWI charge and handed the officer an ID card. After running a motor vehicles check it was confirmed that the Defendant's license was suspended and there was an active warrant in another county. After observing several alcoholic beverage containers, the officer administered field sobriety tests and charged the Defendant with a DWI and transported him to the tribal police department for booking and a blood analysis.

While in custody, a second officer recognized the Defendant as a Mr. Garcia who had an active warrant for absconding after being charged with speeding on December 11, 2008. The Defendant admitted to impersonating Mr. Garcia and revealed his true identity as Anthony Acosta-Vigil. Meanwhile, the true Mr. Garcia turned out to be an active duty servicemen stationed in Iraq. Mr. Garcia was picked up on the warrant incurred by the Defendant and thrown in the brig until the tribal police department reported the impersonation. Mr. Garcia also faces charges incurred by the Defendant in the Pueblo of Tesuque.

When arraigned, the Defendant was advised of his rights both verbally and in writing, acknowledged being advised and pled not guilty.

On August 11, 2009 a trial was held for the charges of 1) Speeding, 2) Unlawful use of a license, 3) Concealing Identity, and 4) Resisting, Evading or Obstructing an Officer cited by Officer Richard Trujillo. The Defendant who was advised of his rights both verbally and in writing and has signed a statement confirming, waived his right to legal counsel and pled not guilty to the charges. At trial, after being sworn in, he admitted to using Mr. Garcia's driver's license multiple times to avoid criminal charges and when asked the status of his own license, admitted that it was suspended. The Defendant was sentenced to 90 days in jail with 30 days suspended on condition that he not violate his probationary terms and obtain a valid driver's license. After serving his time, he was released on his own recognizance with another trial scheduled for September 14th 2009 for his other citation and ordered to attend AA meetings and get an IHS assessment for alcoholism.

On September 14th, 2009 the Defendant, who was previously arraigned and pled not guilty to the charges, arrived for court, was advised of his rights both verbally and in writing and was sworn in. After reviewing the blood alcohol results revealing a BAC level of .04%, half the legal limit, the DUI 2nd offense charge was dropped for insufficient evidence. Similarly, based the fact that the witness to the empty container charge was not present, the charge was dropped for insufficient evidence. However, as to the third charge of driving on a suspended license, the Defendant who was still unable to produce a valid license as previously ordered to, was found guilty after Judge Delorme-Gaines examined the evidence presented included but not limited to an official motor vehicle record, sworn statement of the officer, the fact that the defendant was already admittedly driving with a suspended license and court officials observing him driving to court knowing he is not licensed to do so. Therefore, the Defendant was sentenced to 20 days in jail at the Santa Fe Detention facility.

Mr. Acosta-Vigil did not appeal his conviction. An appellate court is available in the Pueblo of Tesuque. At the time that the Petitioner filed his petition he had yet to appeal. The Petitioner did not appeal thereafter.

On September 25, 2009, Petitioner filed his Petition for a writ of habeas corpus.

Petitioner's first and second claims state that there was no presentment of adverse evidence during the trial for lack of a witness, yet the Petitioner was confronted with the official statement of the citing officer, his current probationary terms requiring that he obtain a license and his own motor vehicle record and given an opportunity to respond. In doing so, he admitted that he still did not have a license and failed to comply with any of his outstanding probationary terms and so failed to produce one. After being advised of the importance of taking control of his life and the positive potential he has as a former firefighter, he was sentenced to 20 days in jail.

Petitioner's third claim is that the Petitioner is denied the assistance of counsel when appearing before the appellate court. The Petitioner has not filed an appeal and has yet to realize any harm from the appellate process. Therefore, the Respondent cannot address that which has never occurred.

Petitioner's fourth claim that a public file is not available is difficult to decipher. Although he claims "secreted judgment orders", his attorney has neither filed an entry of appearance nor presented a letter authorizing the release of information from the Defendant therefore revealing criminal records would violate the tribal code and court procedure. All of these records are available as the Defendant knows when he has previously requested copies of pleadings in his other case and received said documents.

RELEVANT LAW

25 U.S.C. § 1303 states: "The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe".

28 U.S.C. § 2254(b) requires "(1) an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that - (A) the applicant has exhausted the remedies available in the courts of the state; or (B) circumstances exist that render such process ineffective to protect the rights of the applicant."

28 U.S.C § 2254 states "An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented."

The Pueblo of Tesuque Law and Order Code not only establishes the criminal code of the Pueblo of Tesuque but also governs the manner in which the proceedings are conducted. The Pueblo of Tesuque Law and Order Code, Title VII, TRAFFIC CODE, § 8-1-4, states, "[T]he State of New Mexico Motor Vehicle Code, as it now or hereinafter exists, is hereby adopted by reference as the Pueblo of Tesuque Traffic Code to the extent such code is not inconsistent with Tribal Law..."

It is these provisions of the Law and Order Code that allow Petitioner to be charged as a defendant in the Pueblo of Tesuque Tribal Court with driving while his driver's license was suspended or revoked in violation of N.M.S.A. 1978, § 66-5-39.

Pueblo of Tesuque Resolution No. 2004-105-34 states, in pertinent part:

Homicide by Vehicle, Great Bodily Harm by Vehicle, Injury to Pregnant Women by Vehicle, Driving Under the Influence, Reckless Driving, **Driving While License Suspended or Revoked** or any other provision of the State of New Mexico Motor Vehicle Code requiring mandatory jail time... enrolled members of the Pueblo of Tesuque and non-member Indians committing any of the violations specified in the preceding paragraph... upon conviction in Pueblo of Tesuque tribal Court, may be imprisoned for a term not to exceed one year, a fine not exceed(ing) give thousand dollars, or both.
(Emphasis added.)

Order Code, Article 3, ESTABLISHMENT OF COURTS, § 1-3-3, states:

There is hereby established the Pueblo of Tesuque Court of Appeals, which , except as otherwise provided in this Title, shall be the final forum for reviewing decisions of the Tribal Court and such other lower courts that may be established by the Tribal Council from time to time. The Court of Appeals shall have jurisdiction to issue any order in aid of its jurisdiction and judgment as it deems necessary and proper, including orders to the Tribal Court and such other lower courts that may be established by the Trial Council from time to time...

ARGUMENT

Respondent answers Mr. Acosta-Vigil's petition that the Honorable Judge Delorme-Gaines is not the proper Respondent and the petition should be dismissed against her, that the Petitioner failed to

exhaust his procedural remedies available to him in Tribal Court, and that the Respondent did not act improperly in affording Petitioner due process of law and sentencing him in accordance with applicable law.

I. Respondent is not the Proper Party to 2254 or 1303 Actions.

A. Respondent is not the Custodian of the Prisoner.

Respondent asserts that once Petitioner was adjudicated by the Tribal Court as evidenced by the Judgment Order, Judge Delorme-Gaines is no longer the proper Respondent because she is no longer the Petitioner's immediate custodian. The "respondent in a habeas corpus action is the individual custodian of the prisoner". Poodry v. Tonawanda Band of Seneca Indians, 85 F.3d 874, 898 (2d Cir.), *cert. denied*, 519 U.S. 1041, 117 S.Ct. 610, 136 L.Ed.2d 535 (1996). The Respondent is not the requisite "individual custodian of the prisoner".

The proper respondent in a federal habeas corpus petition is the petitioner's "immediate custodian." ...A custodian "is the person having day-to-day control over the prisoner. That person is the only one who can produce 'the body' of the petitioner."

B. Petition for Writ of Habeas Corpus is Not Proper Suit Against a Court Official.

Respondent moves to dismiss the Petition under the reasoning of Poodry v. Tonawanda Band of Seneca Indians. The Second Circuit held, "Because a petition for writ of habeas corpus is not properly a suit against the sovereign, the Tonawanda Band is simply not a proper Respondent." *Id.* at 899. The Second Circuit reasoned that Congress, in passing 25, U.S.C. § 1303, did not do anything of greater significance than apply the same habeas contained in 28 U.S.C. § 2254 to tribal parties. *Id.*

The Second Circuit in Poodry, at 899, found:

An application for a writ of habeas corpus is never viewed as a suit against the sovereign, imply because the restraint for which review is sought, if indeed illegal, would be outside the power of an official acting in the sovereign's name. See Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 690, 69 S.Ct. 1457, 1461-62, 93 L.Ed. 1628 (1949) (noting that in actions for habeas corpus, "the conduct against which specific relief is sought is beyond the officer's powers and is, therefore, not the conduct of the sovereign"); Ex Parte Young, 209 U.S. 123, 167-68, 28 S.Ct 441 (1908) (noting that, in a

habeas action challenging custody as unconstitutional, "it has never been supposed that there was any suit against the State by reason of serving the writ upon one of the officers as the State in whose custody the person was found"); *see also United States ex re. Elliot v. Hendricks*, 213 F.2d 922 (3rd Cir.) (noting Blackstone's view that "the writ is not against the Crown"; "the king is at all times entitled to have an account why the liberty of any of his subjects is restrained" and "the extraordinary power of the crown is called to the party's assistance" (quoting 3 WILLIAM BLACKSTONE, COMMENTARIES 131, 132)), *cert. denied*, 348 U.S. 851, 75 S.Ct. 77, 99 L.Ed. 670 (1954).

Similarly, this Respondent does not have custody over the Petitioner. The warden or director of the Santa Fe Detention Center facility has the immediate custody over Petitioner and is the proper Respondent.

II. Petitioner Failed to Exhaust Procedural Remedies

It is well established that a federal court's review of federal habeas claims asserted by state prisoners is circumscribed by the treatment those claims received in state court. *Johnson v. Champion*, 288 F.3d 1215, 1223 (10th Cir. 2002).

The requirement that Petitioner exhaust procedural Tribal Court remedies is well established for a criminal defendant detained pursuant to an order from a tribal court of record which has an appellate court which can hear appeals in cases involving defendant's convictions. *Boozer v. Wilder*, 381 F.3d 931, 935 (9th Cir. 2007); *Quair v. Sisco*, 359 F.Supp.2d 948m 963 & 971-72 (E.D. Cal. 2004); *Azure-Lone Fight v. Cain*, 317 F.Supp.2d 1148, 1150-51 (D.N.D. 2004); *Lyda v. Tah-Bone*, 962 F.Supp. 1434, 1436 (D. Utah 1997); *McPhee v. Steckel*, 2008 WL 410650 (W.D.Wash. 2008).

The fact that the Tribal Court presided over by Judge Delorme-Gaines is a court of record supports that the exhausting of remedies doctrine must apply. *Contra Greywater v. Joshua*, 846 F.2d 486 (8th Cir. 1988).

The fact that the Tribal Court has an appellate court, of which Petitioner did not avail himself for a possible remedy, distinguishes the Tribal Court and this case from other Indian tribes and other cases without appellate courts. *See Quair v. Sisco*, 359 F.Supp. 2d at 972 (citing *Johnson v. Gila River Indian Community*, 174 F.3d 1032, 1036 (9th Cir. 1999)).

At no point and time has there been a waiver, implied or otherwise of the exhaustion requirement.

The Western District of Washington dismissed a § 1303 petition for writ of habeas corpus filed under very similar circumstances as this one in McPhee v. Steckel, 2008 WL 410650, at *2, (W.D. Wash. 2008), wherein it was “undisputed that the criminal trial and sentencing was either recently concluded or is ongoing, and more significantly, the claims raised in support of his federal petition have not been properly exhausted.” Petitioner herein filed his petition while sentencing was pending in the Tribal Court, and did not avail himself to the Court of Appeals.

The Northern District of North Dakota heavily relied upon the comity and self-government concerns and exhaustion of remedies doctrine in dismissing a petition originally filed as a 2254 action but treated as a 1303 action when petitioner failed to exhaust available tribal court remedies on direct appeal. Azure-Lone Fight v. Cain, 317 F.Supp.2d at 1150-51. The court recognized that application of the exhaustion doctrine to tribal remedies satisfies both the federal government and tribal government’s interests in tribal self-government. Id. at 1150 (citing Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9, 14 (1987); National Farmers Union Ins. Cos. V. Crow Tribe of Indians, 471 U.S. 845, 856, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985)).

“Tribal courts play a vital role in tribal self-government, and respect for that role requires, as a matter of comity, that examination of issues of tribal sovereignty and jurisdiction be conducted in the first instance by the tribal court itself.” Azure-Lone Fight v. Cain, 317 F.Supp.2d at 1150 (quoting Reservation Tel. Co-op v. Affiliated Tribes, 76 F.3d 181, 184 (8th Cir 1996)). A “federal court should not entertain a challenge to the jurisdiction of a tribal court until after a petitioner has exhausted the remedies available in tribal court.” Azure-Lone Fight v. Cain, 317 F.Supp.2d at 1150 (citing National Farmers Union Ins. Cos. V. Crow Tribe of Indians, 471 U.S. at 856).

The United States District Court for the District of Utah has also held, relying on National Farmers Union Ins. Cos. v. Crow Tribe of Indians, 471 U.S. at 856, that petitioners must exhaust their available tribal court remedies, including direct appeal, before the federal court can entertain any claims. Lyda v. Tah-Bone, 962 F.Supp. 1434, 1435 (D. Utah 1997). Utah District Judge Benson held that exhaustion of remedies requires, “whenever an Indian tribal court has apparent jurisdiction to proceed, as

it does in this case, ...habeas corpus relief under 25 U.S.C. § 1303 first requires exhaustion of tribal remedies." Id. at 1436. Because Petitioner did not avail himself of a direct appeal to the Pueblo of Tesuque Court of Appeals from Judge Delorme-Gaines' orders when the Pueblo of Tesuque Court of Appeals would have had jurisdiction, Petitioner was required to exhaust those remedies. Id.

The Ninth Circuit in Boozer v. Wilder, 381 F.3d at 935, found that exhaustion of remedies is required for a § 1303 action, relying on the National Farmers Union Ins. Cos. V. Crow Tribe of Indians concerns and comity concerns: "A federal court must give the tribal court a full opportunity to determine its own jurisdiction, which includes exhausting opportunities for appellate review in tribal courts." No possible exceptions to the exhaustion of remedies doctrine apply in this case.

The Tenth Circuit held in Dry Creek Lodge, Inc. v. Arapahoe and Shoshone Tribes, 623 F.2d 682, 685 (10th Cir. 1980), *cert denied*, 449 U.S. 1118, 101 S.Ct. 931, 66L.Ed.2d 847 (1981), that federal courts may adjudicate certain civil actions where there was no tribal court remedy. A tribal appellate court was available for Petitioner to seek a remedy.

Any lack of similarly explicit exhaustion language in 25 U.S.C. § 1301, et seq., contained in 28 U.S.C. 2254, as grounds to argue exhaustion is not required for habeas actions under provisions of the Indian Civil Rights Act [which] evidences a very strong policy favoring exhaustion of all tribal remedies before federal courts get involved in tribal disputes and we conclude there is not reason to set aside the exhaustion doctrine when petitions for habeas corpus are filed. This Court holds explicitly that tribal remedies must be exhausted before petitioning in federal court for a writ of habeas corpus." Wounded Knee v. Andera, 416 F.Supp. 1236, 1238 (D.S.D. 1976).

Tribal remedies must be exhausted before petitioning in federal court for a writ of habeas corpus. Wounded Knee v. Andera, 416 F.Supp. at 1238. The Andera Court heavily relied on Eighth Circuit case law establishing the exhaustion of tribal court remedies under the Indian Civil Rights Act as a concurrent, concomitant aspect of Indian sovereignty and respectful federal comity concerns. O'Neal v. Cheyenne River Sioux Tribe, 482 F.2d 1140 (8th Cir. 1973); Janis v. Wilson, 521 F.2d 724, 726-727 (8th Cir. 1975). The O'Neal decision led to the decision in United States ex rel. Cobell v. Cobell, 503 F.2d 790, 793 (9th

Cir. 1974), which "stands for the proposition that exhaustion is normally required in habeas corpus proceedings in tribal court." Wounded Knee v. Andera, 416 F.Supp. at 1239; *see* Selam v. Warm Springs Tribal Correctional Facility, 134 F.3d 948, 953-54 (9th Cir. 1998).

Respondents are aware that the decision in Wounded Knee v. Andera, and others such as Quair v. Sisco, 359 F.Supp. 2d 948, 963 (E.D. Cal. 2004) have not only found that exhaustion is required but that are exceptions to the exhaustion doctrine. However, none of the exceptions apply.

Petitioner has not argued or provided this Court with any reason to excuse the requirement of exhaustion. The Tribal Court is a court of record, and thus there are tapes which are ordinarily transcribed, for purposes on appeal. Respondent maintains that the process for appellate procedure as contained in the attached Resolution not only provide the Petitioner with a remedy in theory but also a remedy in fact. The United States Court of Appeals for the Tenth Circuit has already recognized the existence and functionality of the Pueblo of Tesuque Court of Appeals in Walton v. Tesuque Pueblo, 443 F.3d 1274, 1277 (10th Cir.), *cert. denied*, 127 S.Ct. 587, 166 L.Ed.2d 430 (2006). The Walton Court did not have to discuss exhaustion because the 25 U.S.C. § 1303 petitioner had appealed to the Pueblo of Tesuque's Court of Appeals. Id.

CONCLUSION

WHEREFORE, the Respondent, Judge Delorme-Gaines respectfully requests this Court enter an order dismissing the petition because the Respondent herein is not the proper party, Petitioner failed exhaust his procedural Tribal Court remedies.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Judge Angela T. Delorme-Gaines
NM License No. 24883
Pueblo of Tesuque
Santa Fe, NM 87506
(505) 989-4969

Executed on the 28th of September, 2009.

IN THE PUEBLO OF TESUQUE TRIBAL COURT

PUEBLO OF TESUQUE, **FILED ON** Case No. **CR-09-189**
Plaintiff, JUL 10 2009 Citation No. **010007600 9**

VS.

Anthony Lee ACOSTA-VIGIL,

DOB: 4/5/1985

Defendant.

soc: 451-73-4602

BEVERLY KENNEDY
COURT ADMINISTRATOR
TESUQUE PUEBLO
OFFICE OF THE TRIBAL COURT

**WAIVER OF COUNSEL
FOR ARRAIGNMENT AND ENTRY OF PLEA**

I UNDERSTAND THAT I AM CHARGED WITH THE FOLLOWING OFFENSES:

**3 COUNTS: 1) DUI 2ND OFFENSE 2)66-5-39 DRIVING ON SUSPENDED/REVOKED WITH 122G ARREST
CLAUSE 3) 66-8-138 OPEN CONTAINER**

WHICH (IS) (ARE) IN VIOLATION OF THE LAW AND ORDER CODE FOR THE PUEBLO OF TESUQUE. I UNDERSTAND THAT IF I AM FOUND GUILTY I CAN BE GIVEN A SEVERE PUNISHMENT, INCLUDING IMPRISONMENT BY ORDER OF THE TRIBAL COURT OF TESUQUE PUEBLO, FINES, AND COURT COSTS.

THE PRESIDING JUDGE HAS ADVISED ME OF THE CHARGES THAT ARE PENDING AGAINST ME AND THE POSSIBLE CONSEQUENCES, PENALTIES AND COSTS.

I UNDERSTAND THAT THROUGH THE CRIMINAL PROVISIONS OF THE INDIAN CIVIL RIGHTS ACT, I HAVE A RIGHT TO BE REPRESENTED BY A LAWYER, AT MY OWN EXPENSE, AT ALL STAGES OF THE CRIMINAL CASE - BEFORE TRIAL, AT TRIAL AND AT PROCEEDINGS TO DETERMINE WHAT SENTENCE SHOULD BE IMPOSED IF I AM FOUND GUILTY.

I HAVE READ AND FULLY UNDERSTAND ALL THE ABOVE AND HEREBY GIVE UP MY RIGHT TO A LAWYER FOR PURPOSES OF THIS ARRAIGNMENT AND ENTRY OF A PLEA REGARDING THIS CASE.

**DO NOT SIGN THIS FORM IF YOU WANT AN ATTORNEY FOR THIS ARRAIGNMENT.
DO NOT SIGN THIS FORM UNLESS YOU HAVE READ THE ABOVE AND FULLY UNDERSTAND IT.**

DEFENDANT

07/10/09

DATE

THE COURT IS SATISFIED THAT THE DEFENDANT FULLY UNDERSTANDS BY SIGNING THIS FORM THE DEFENDANT HAS KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY WAIVED THE RIGHT TO COUNSEL FOR PURPOSES OF THIS ARRAIGNMENT AND ENTRY OF PLEA.

TRIBAL COURT JUDGE

July 10, 2009

DATE

IN THE PUEBLO OF TESUQUE TRIBAL COURT

PUEBLO OF TESUQUE

Petitioner,

Case No. **CR-09-189**

Citation No. **0100076009**

VS.

Anthony Lee ACOSTA-VIGIL

DOB: 4/5/1985

Defendant.

soc: 451-73-4602

FILED ON

JUL 10 2009

BEVERLY KENNEDY
COURT ADMINISTRATOR
TESUQUE PUEBLO
OFFICE OF THE TRIBAL COURT

ACKNOWLEDGEMENT OF RIGHTS AT ARRAIGNMENT

COUNT I I AM CHARGED WITH VIOLATING:

**SECTION 66-8-102 PERSONS UNDER INFLUENCE OF INTOXICATING LIQUOR OR DRUGS 2ND OFFENSE;
AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PENALTY.**

- A. IT IS UNLAWFUL FOR ANY PERSON WHO IS UNDER THE INFLUENCE OF INTOXICATING LIQUOR TO DRIVE ANY VEHICLE WITHIN THIS STATE.
- B. IT IS UNLAWFUL FOR ANY PERSON WHO IS UNDER THE INFLUENCE OF ANY DRUG TO A DEGREE THAT RENDERS HIM INCAPABLE OF SAFELY DRIVING A VEHICLE TO DRIVE ANY VEHICLE WITHIN THIS STATE.
- C. IT IS UNLAWFUL FOR ANY PERSON WHO HAS AN ALCOHOL CONCENTRATION OF EIGHT ONE-HUNDREDTHS OR MORE IN HIS BLOOD OR BREATH TO DRIVE ANY VEHICLE WITHIN THIS STATE.
- D. AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS CONSISTS OF A PERSON WHO:
- (1) HAS AN ALCOHOL CONCENTRATION OF SIXTEEN ONE-HUNDREDTHS OR MORE IN HIS BLOOD OR BREATH WHILE DRIVING ANY VEHICLE WITHIN THIS STATE;
 - (2) HAS CAUSED BODILY INJURY TO A HUMAN BEING AS A RESULT OF THE UNLAWFUL OPERATION OF A MOTOR VEHICLE WHILE DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; OR
 - (3) REFUSED TO SUBMIT TO CHEMICAL TESTING, AS PROVIDED FOR IN THE IMPLIED CONSENT ACT [66-8-105 TO 66-8-112 NMSA 1978]. AND IN THE JUDGMENT OF THE COURT, BASED UPON EVIDENCE OF INTOXICATION PRESENTED TO THE COURT, WAS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

ANY INDIVIDUAL CONVICTED OF VIOLATING THIS SECTION MAY BE IMPRISONED FOR A TERM NOT TO EXCEED ONE (1) YEAR, FINED UP TO FIVE THOUSAND DOLLARS (\$5,000.00), OR BOTH AND COURT COSTS.

I HEREBY PLEA: _____ GUILTY *Ac* NOT GUILTY _____ No CONTEST

COUNT II I AM CHARGED WITH VIOLATING:

SECTION 66-5-39 DRIVING WHILE LICENSED SUSPENDED OR REVOKED; PROVIDING PENALTIES.

A. ANY PERSON WHO DRIVES A MOTOR VEHICLE ON ANY PUBLIC HIGHWAY OF THIS STATE AT A TIME WHEN HIS PRIVILEGE TO DO SO IS SUSPENDED OR REVOKED AND WHO KNOWS OR SHOULD HAVE KNOWN THAT HIS LICENSE WAS SUSPENDED OR REVOKED IS GUILTY OF A MISDEMEANOR AND SHALL BE CHARGED WITH A VIOLATION OF THIS SECTION.

WITH SECTION 66-8-122G- IMMEDIATE APPEARANCE BEFORE MAGISTRATE

WHENEVER ANY PERSON IS ARRESTED FOR ANY VIOLATION OF THE MOTOR VEHICLE CODE [ARTICLES 1 TO 8 OF CHAPTER 66, EXCEPT 6607-102.2] OR OTHER LAW RELATING TO MOTOR VEHICLES PUNISHABLE AS A MISDEMEANOR, HE SHALL BE IMMEDIATELY TAKEN BEFORE AN AVAILABLE MAGISTRATE WHO HAS JURISDICTION OF THE OFFENSE WHEN THE:

(G) PERSON IS CHARGED WITH DRIVING WHEN HIS PRIVILEGE TO DO SO WAS SUSPENDED OR REVOKED PURSUANT TO SECTION 66-8-111 OR PURSUANT TO A CONVICTION FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

UPON CONVICTION, THE PERSON SHALL BE PUNISHED BY IMPRISONMENT FOR NOT LESS THAN FOUR DAYS OR MORE THAN THREE HUNDRED SIXTY-FOUR DAYS, AND THERE MAY IMPOSED IN ADDITION A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS (\$1,000.00), PLUS TWENTY - FIVE (\$25.00) DOLLAR COURT COST AND ANY OTHER FEES THAT MAY BE IMPOSED BY THE COURT.

I HEREBY PLEA: _____ GUILTY  NOT GUILTY _____ No CONTEST

COUNT III I AM CHARGED WITH VIOLATING:

SECTION 66-8-138 CONSUMPTION OR POSSESSION OF ALCOHOLIC BEVERAGE IN OPEN CONTAINERS IN A MOTOR VEHICLE PROHIBITED; EXCEPTIONS.

- A. NO PERSON SHALL KNOWINGLY DRINK ANY ALCOHOLIC BEVERAGE WHILE IN A MOTOR VEHICLE UPON ANY PUBLIC HIGHWAY WITHIN THIS STATE.
- B. NO PERSON SHALL KNOWINGLY HAVE IN HIS POSSESSION ON HIS PERSON, WHILE IN A MOTOR VEHICLE UPON ANY PUBLIC HIGHWAY WITHIN THIS STATE, ANY BOTTLE, CAN OR OTHER RECEPTACLE CONTAINING ANY ALCOHOLIC BEVERAGE WHICH HAS BEEN OPENED OR HAD ITS SEAL BROKEN OR THE CONTENTS OF WHICH HAVE BEEN PARTIALLY REMOVED.
- C. IT IS UNLAWFUL FOR THE REGISTERED OWNER OF ANY MOTOR VEHICLE, TO KNOWINGLY KEEP OR ALLOW TO BE KEPT IN A MOTOR VEHICLE, WHEN THE VEHICLE IS UPON ANY PUBLIC HIGHWAY WITHIN THIS STATE, ANY BOTTLE, CAN OR OTHER RECEPTACLE CONTAINING ANY ALCOHOLIC BEVERAGE WHICH HAS BEEN OPENED OR HAD ITS SEAL BROKEN OR THE CONTENTS OF WHICH HAVE BEEN PARTIALLY REMOVED.

WHOEVER IS GUILTY OF A FIRST VIOLATION IS FINED SEVENTY FIVE DOLLARS (\$75.00) AND FOR SECOND OR SUBSEQUENT VIOLATION IS GUILTY OF A MISDEMEANOR AND SHALL BE SENTENCED TO NINETY (90) DAYS IN JAIL, AND A THREE HUNDRED DOLLAR (\$300.00) FINE, PLUS TWENTY FIVE DOLLAR (\$25.00) COURT COST.

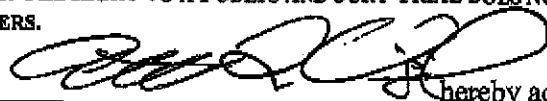
I HEREBY PLEA: _____ GUILTY  NOT GUILTY _____ No CONTEST

1. I HAVE THE FOLLOWING RIGHTS:

- a. THE RIGHT TO REMAIN SILENT THUS, PRESERVING THE PRIVILEGE AGAINST SELF-INCRIMINATION.
- b. THE RIGHT TO OBTAIN AND CONSULT WITH LEGAL COUNSEL AND BE REPRESENTED BY SUCH LEGAL COUNSEL AT MY OWN EXPENSE. I UNDERSTAND THAT THE PUEBLO OF TESUQUE IS UNDER NO OBLIGATION TO PROVIDE ME WITH LEGAL COUNSEL.
- c. THE RIGHT TO A SPEEDY TRIAL.
- d. THE RIGHT TO BE TRIED BY A JURY OF NO LESS THAN SIX (6) MEMBERS, IF I SO CHOOSE.

2. UPON THE ENTRY OF A NOT GUILTY PLEA I HAVE THE FOLLOWING RIGHTS:

- a. THE RIGHT TO BE RELEASED ON BAIL OR UNDER CONDITIONS OF RELEASE AS DETERMINED BY THE COURT.
 - b. THE RIGHT TO A SPEEDY AND PUBLIC TRIAL.
 - c. THE RIGHT TO REQUEST A TRIAL BY JURY OF ONE'S PEERS, OF NO LESS THAN 6 MEMBERS. SUCH REQUEST MUST BE MADE NO LATER THAN 7 DAYS AFTER ARRAIGNMENT.
 - d. THE RIGHT TO TESTIFY AT TRIAL BUT CAN REMAIN SILENT UNDER PRIVILEGE AGAINST SELF-INCRIMINATION.
 - e. THE RIGHTS TO CONFRONT THE ACCUSER AND CROSS-EXAMINE EVIDENCE AND WITNESSES AGAINST ME.
 - f. THE RIGHTS TO PRESENT EVIDENCE AND SUBPOENA WITNESS ON MY BEHALF.
 - g. THE RIGHT TO REMAIN INNOCENT UNLESS PROVEN GUILTY BEYOND A REASONABLE DOUBT.
 - h. THE RIGHT TO FILE AN APPEAL PURSUANT TO APPELLATE PROCEDURES, IF FOUND GUILTY AT TRIAL.
- NOTE: THE RIGHT TO A PUBLIC AND JURY TRIAL DOES NOT APPLY TO TRAFFIC CASES OR JUVENILE CRIMINAL MATTERS.

I  hereby acknowledge that I have had read and explained
Signature of Accused

to me the following matters on 07/10/09 and I fully understand them
451-73-4602
(SSN/Tribal Id, No) Date

The above Plea(s) were entered and accepted on July 10, 2009

 Judge.

Bail Bond set at \$ 6,075.00

Release Order _____ Appearance Bond Posted _____

TESUQUE PUEBLO
Route 42, Box 360-T
Santa Fe, New Mexico 87506
505-989-4969 Fax 505-989-5037



Case No. 2009220
File No. _____
Date Filed _____

IN THE TESUQUE PUEBLO TRIBAL COURT

PUEBLO OF TESUQUE
Plaintiff,

Vs.

Acosta-Vigil, Anthony
Defendant,

DOB 04/05/1985 SSN 451-73-4602

Address Lot A 04 Camino Los Ranchos,, Chimayo NM 87522

Criminal Complaint

Crime: Open Container of an alcoholic Beverage (1st Offense)
(common name of Offenses(s))

The complainant swears that on or about the 8th day of July 2009, at or
near US 84/285 NORTH BOUND 175 MM within the exterior boundaries of the Pueblo of Tesuque, the
(location)
above name Defendant did,

Open Container of an alcoholic beverage (1st Offense – Drinking)
Did knowingly drink an alcoholic beverage while in a motor vehicle upon a public highway within the state,
contrary to NMSA 1978, 66-08-138(A)

In violation of the laws of the Pueblo of Tesuque, 66-08-138(A)
(state statute or section of code)

[Signature]
Signature of complainant

07/08/2009
Date

OFFICE OF THE GOVERNOR
(505) 983-2667

CR-09-189
FILED ON
8:42 AM
JUL - 9 2009
[Signature]
BEVERLY KENNEDY
COURT ADMINISTRATOR
TESUQUE PUEBLO
OFFICE OF THE TRIBAL COURT
323

ABSTRACT OF RECORD

COURT DOCKET NO.	
HEARING DATE	COUNSEL REQUESTED
	COUNSEL WAIVED
COUNSEL NAME	
ADDRESS	
CITY STATE ZIP CODE	
PLEA OF DEFENDANT <input type="checkbox"/> NOLO <input type="checkbox"/> GUILTY <input type="checkbox"/> NOT GUILTY	
COURT FINDING: <input type="checkbox"/> GUILTY <input type="checkbox"/> NOT GUILTY <input type="checkbox"/> DISMISSED	
<input type="checkbox"/> NOLLE PROSEQUI	
SENTENCE OF COURT:	
<input type="checkbox"/> FINE \$	SUSPENDED AMT. \$ (IF ANY)
<input type="checkbox"/> JAIL DAYS	SUSPENDED DAYS (IF ANY)
LAB FEES \$	BOND FORFEIT \$
	COSTS \$
REMARKS	
<input type="checkbox"/> DWM SCHOOL	
THIS IS A CORRECT ABSTRACT OF COURT ACTION FOR DEFENDANT AND OFFENSE SHOWN.	
SIGNATURE OF MAGISTRATE OR JUDGE	
PRINTED NAME OF MAGISTRATE OR JUDGE	
NAME OF COURT	DATE
ADDRESS	POST OFFICE
DISTRIBUTION	
THIS COPY TO BE RETAINED BY THE COURT	
COURT COPY	



STATE OF NEW MEXICO
COUNTY OF: SANTA FE
CITY OF: TESUQUE

Micro Film Number JT WRITE, STAPLE OR PUNCH ABOVE THIS LINE

DWI CITATION

COUNTY CODE: 01

MVD-10811
REV. 11/05

NAME ACOSTA-VIGIL		ANOTHONY	
ADDRESS			
LOT A 04 CAMINO LOS RANCHOS			
CITY	STATE	ZIP CODE	
CHIMAYO	NM	87522	
DRIVER LICENSE NUMBER	STATE	EXPIRES	CLASS
500954080	NM	05/05/2010	D
DATE OF BIRTH	AGE	SEX	HEIGHT
04/05/1985	24	M	5' 10"
WT	SOCIAL SECURITY NUMBER		
140	451-73-4602		
COLOR	YEAR	MAKE	MODEL
GLD	2000	CHEV	04
TYPE	STATE	LICENSE PLATE NUMBER	
PA	NM	HZJ670	
TRAFFIC	WEATHER	ROAD	LIGHT
HV	CL	D	LT
CMV	HZ MT	PASSENGER (16 OR MORE)	DOT NUMBER
NO			
THE ABOVE NAMED DEFENDANT IS CHARGED WITH VIOLATING :			
<input checked="" type="checkbox"/> 68-8-102 NMSA 1978 <input type="checkbox"/> STATUTE OR ORDINANCE and SECTION :			
COMMON NAME OF OFFENSE <i>Driving Under the Influence of Intoxicating Liquor or Drug</i>			
ON 07/08/2009	AT 19:50	HRS	US 84/285 NORTH BOUND
LOCATION			
MILEPOST OR NEAREST INTERSECTION: 176 MILE POST			
DISTRICT : 01			
ESSENTIAL FACTS :			
DRIVER STOPPED FOR BURNT OUT TAIL LAMP. DETECTED AN ODOR OF AN ALCOHOLIC BEVERAGE ON HIS BREATH. PENDING BLOOD RESULTS.			
PRINTED OFFICER'S NAME		BLOOD ALCOHOL CONCENTRATION	
BROWN, WAYLON		BLOOD DRAW	
OFFICER'S SIGNATURE		I.D.NO	SHIFT
		1307	GRAVEY
		CURRENT DATE	
		07/08/2009	
		<input checked="" type="checkbox"/> MAGISTRATE <input type="checkbox"/> MUNICIPAL	
		<input type="checkbox"/> METROPOLITAN <input type="checkbox"/> OTHER :	
YOU ARE TO APPEAR IN			
SANTA FE MAGISTRATE			
ADDRESS: 2056 GALISTEO STREET		Santa Fe	
ON OR BEFORE AT			

CE-09-189
FILED ON
8:42 am
JUL - 9 2009
BEVERLY KENNEDY
COURT ADMINISTRATOR
TESUQUE PUEBLO
OFFICE OF THE TRIBAL COURT
123

TESUQUE PUEBLO

Route 42, Box 360-T
Santa Fe, New Mexico 87506
505-989-4969 Fax-505-989-5037



Duplicate filed

IN THE TESUQUE TRIBAL COURT

No. _____

PUEBLO OF TESUQUE

Tesuque Tribal Police Dept. Case # 2009220

Vs.

Anthony Acosta-Vigil

Defendant(s)

STATEMENT OF PROBABLE CAUSE

The above defendant has been arrested without a warrant for the following reasons (Set forth a plain, concise, and definitive statement of facts establishing probable cause).

On July 6, 2009, I Officer Waylon Brown with the Tesuque Police Department in full uniform displaying my Badge of Office #1307 within the exterior boundaries of the Tesuque Pueblo Reservation located in Santa Fe County within the State of New Mexico was working a saturation patrol on US Highway 84/285 when I observed a gold in color Chevy pick up truck bearing NM HZJ670 with a burnt out tail lamp in the outside lane traveling northbound. I activated my emergency equipment and initiated a traffic stop with the said vehicle at the 175 exit ramp. I made a driver side approach and made contact with a male driver later identified as Anthony Acosta-Vigil (DOB 04/05/85). After identifying myself and the reason for the traffic stop, I asked Mr. Acosta-Vigil for his drivers license, proof of insurance and registration. He immediately informed me that his license was revoked due to a past DWI arrest and gave me an identification card. I called his ID information into Tesuque Police dispatch and was advised that his license was Suspended/Revoked pursuant to Section 86-8-122G and the arrest clause. A warrant was also in service for him out of Rio Arriba County. At that time, I placed Mr. Acosta-Vigil under arrest. While questioning Mr. Acosta-Vigil, I detected an odor of an alcoholic beverage on his breath. He admitted that he drank a beer an hour before the stop. Several open containers were found in the vehicle in the form of a half pint of Peppermint Schnapps and two 12 ounce cans of Paps Blue Ribbon beer. Mr. Acosta-Vigil agreed to take a series of standard field sobriety tests and was also charged with DWI. Mr. Acosta-Vigil was also read the New Mexico Implied Consent Advisory and was transported to the Tesuque Police Department for booking procedures. Officer Joe Vigil transported Mr. Acosta-Vigil to St. Vincent's Hospital for a blood draw and then to the Santa Fe Adult Detention Center for incarceration without incident.

(Continued on next sheet if necessary) I do solemnly declare and affirm under the penalty of perjury that the matter and facts set forth in this statement are true to the best of my knowledge, information and belief.

07/08/2009

DATE

[Signature]

ARRESTING OFFICER

(This form is to be used if the defendant was arrested without a warrant and complaint or citation. Any attachments to the complaint do not make a written showing of probable cause.)

AUG-20-2009 15:22

Administration

P.001



Corrections Department Adult Detention Facility

Facsimile Transmittal

Santa Fe County Adult Detention Facility

4312 NM Hwy 14
Santa Fe, New Mexico 87505

Phone: (505) 428-3840
Fax: (505) 428-3835

To: Tesuque Tribal Court Fax: 505 989 5037

Attention:

From: Albert Riboni, Classification Date: August 20, 2009

Re: On CR-09-189 Pages: 2

CC: _____ Fax: _____

Comments:

Urgent

For Review

Please Comment

x Please Reply

AUG-20-2009 16:23

Administration

P.002

CR-09-189

Tesuque Tribal Court

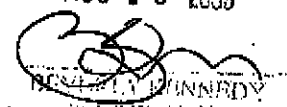
VS

Anthony Lee Acosta Vigil

Duplicate

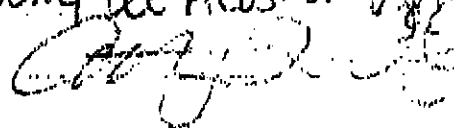
FILED ON

3:21
AUG 20 2009


DEPUTY ATTORNEY GENERAL
ADMINISTRATOR
Tribal Court

To whom it may concern,

I have obtained Hems 1-3 from my motion of discovery. I will view Hems 4-7 at my trial on the 24th of Aug. I do not wish to postpone my trial to obtain any further information.

Thank You
Anthony Lee Acosta Vigil


NI DWI Offense/Incident

COPY

SUMMARY							
COUNTY SANTA FE				CITY TESUQUE			
DWI CITATION NUMBER 010007600		INC/CAD		CASE # 2009220		STOP DATE 07/08/2009	
ARREST/BOOKING # 2009220		ARREST DATE 07/08/2009		ARREST TIME 07:59 PM		ARREST LOCATION US 84/285 NB 175 EXIT	
DEFENDANT: LAST NAME ACOSTA-VIGIL			FIRST NAME ANTHONY			MIDDLE NAME SUFFIX	
ADDRESS LOT A 04 CAMINO LOS RANCHOS,				CITY CHIMAYO		STATE NM	
GENDER MALE		RACE I - AMERICAN INDIAN/ALASK		DATE OF BIRTH 04/05/1985		AGE 24	
DL # 500984080		DL STATE NM					

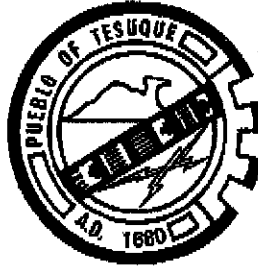
VEHICLE							
VEHICLE MAKE CHEVROLET - CHEV				YEAR 2000		MODEL PASSENGER	
LICENSE PLATE NUM HZJ670		STATE NM		VIN 2GCEC19T1Y1345862		VEHICLE COLOR GOLD - GLD	
IMPOUNDED YES							
<input checked="" type="radio"/> TOWED		<input type="radio"/> LEFT SCENE		FROM US 84/285 NORTH BOUND 175 EXIT			
TOWED BY TOTAL SECURE				TURNED OVER TO TOTAL SECURE		UCR #	
ESSENTIAL FACTS DRIVER STOPPED FOR BURNT OUT TAIL LAMP DURING SATURATION PATROL. WAS ARREST FOR DRIVING WHILE SUSPENDED/REVOKED PURSUANT TO THE ARREST CLAUSE, DWI AND A LOCAL WARRANT.							187
VEHICLE IN MOTION							
VEHICLE IN MOTION YES		VEH IN PHYSICAL CONTROL		TIME 19:29		OBSERVED BY OFFICER WAYLON BROWN	
VISUAL CUES OTHER							
VISUAL CUES OBSERVED OBSERVED GOLD CHEVY PICK UP TRAVELING NORTH BOUND ON 84/285 WITH BURNT OUT TAIL LAMPS WHILE WORKING A SATURATION PATROL.							120
STOPPING SEQUENCE SLOW RESPONSE							
STOPPING SEQUENCE DETAILS AFTER NOTICING MY EMERGENCY EQUIPMENT, DRIVER WAS SLOW TO STOP.							83

SIGHT BLOODSHOT, WATERY EYES		FACIAL COMPLEXION FLUSHED	
ALCOHOLIC BEVERAGE ODOR YES	COVER UP ODOR NONE	UNUSUAL ODORS NO	MARIJUANA ODOR NO
OTHER ODORS NONE			
ODOR DETAILS DETECTED A STRONG ODOR OF ALCOHOL ON DRIVERS BREATH			62
SPEECH GOOD		DIALOGUE INCONSISTENT RESPONSES	
STATEMENTS MADE BY DRIVER			0
BRUISES, BUMPS, SCRATCHES NO	UNUSUAL ACTIONS DURING TEST		BALANCE GOOD
DRUGS OR MEDS USED UNKNOWN. SUSPECT WAS TAKEN IN FOR BLOOD WITHDRAWAL.			51
ALCOHOL USE ADMITTED YES	TYPE BEER	AMOUNT 1 BEER	
PLACE UNKNOWN		TIME FROM 19:00	TIME TO 19:00
DRUG USE ADMITTED	TYPE	AMOUNT	
PLACE		TIME FROM	TIME TO
COMING FROM WORK		GOING TO PLACE OF RESIDENCE	
DRIVER'S STATEMENT OF MEDICAL CONDITIONS/INJURIES NONE			4
DRIVER'S EXIT SEQUENCE OTHER (NARRATIVE)			
EXIT SEQUENCE DETAILS DRIVER EXITED THE VEHICLE WITH NO VISABLE PROBLEMS.			61
PRE-ARREST SCREENING			
SURFACE FLAT	LIGHT CONDITIONS LIGHT	WEATHER CONDITIONS CLEAR	OVER 65 NO
OVER WEIGHT NO			
LINE/GUIDE (WAT)			
SHOES REMOVED NO	TYPE OF FOOTWEAR TENNIS SHOES	PHYSICAL IMPAIRMENTS NONE	
INSTRUCTIONS EXPLAINED AND DEMONSTRATED YES	LANGUAGE INTERPRETED IN PLAIN ENGLISH	INTERPRETED BY N/A	
HORIZONTAL GAZE NYSTAGMUS			
SUBJECT WEARS GLASSES NO	WERE GLASSES REMOVED YES	WEARING CONTACTS NO	RESTING NYSTAGMUS YES
EYE DOES NOT PURSUE SMOOTHLY:		LEFT EYE YES	RIGHT EYE YES
DISTINCT AND SUSTAINED NYSTAGMUS AT MAXIMUM DEVIATION:		LEFT EYE NO	RIGHT EYE NO
DISTINCT NYSTAGMUS ONSET BEFORE 45 DEGREES:		LEFT EYE YES	RIGHT EYE YES
TOTAL NUMBER OF CLUES, NYSTAGMUS: 2		TOTAL NUMBER OF CLUES, NYSTAGMUS: NO	
HGN DETAILS OBSERVED SOME RESTING NYSTAGMUS			31

CANNOT MAINTAIN BALANCE		YF	NUMBER OF TIMES	Y	STARTS TOO SOON	NT	NUMBER OF TIMES	Y
WALK AND TURN: WALKING STAGE			1st NINE STEPS			2nd NINE STEPS		
STOPS WALKING:			9			9		
MISSES HEEL-TO-TOE:			9			9		
STEPS OFF LINE:			9			9		
RAISES ARMS:			9			9		
ACTUAL STEPS TAKEN:						9		
IMPROPER TURN:								
TOTAL CLUES		0	CANNOT DO TEST		YES			
WALKING STAGE DETAILS SUSPECT SHOWED NO CLUES AND PERFORMED THE TEST WELL.								52
ONE-LEG STAND								
WHICH LEG DID SUBJECT RAISE?			SWAYS WHILE BALANCING			USES ARMS TO BALANCE		
HOPPING		PUTS FOOT DOWN		TOTAL NUMBER OF CLUES				
LEG STAND DETAILS								0
ALTERNATIVE SOBRIETY TESTS								
QUESTION ANSWER								0
ABC's								0
FINGER COUNT								0
COUNTING BACKWARDS								0
FINGER TO NOSE DIAGRAM				FINGER TO NOSE TEST				0
OTHER TESTS								
OTHER TESTS DETAILS								0
PRELIMINARY BREATH TEST								
WAS A PBT GIVEN:		YES	RESULTS OF PBT:		.05	TIME OF PBT OR REFUSAL:		07:58 PM

OTHER EVIDENCE DETAILS		VIDEO: NO		AUDIO: NO	
STRONG ODOR OF ALCOHOL ON DRIVERS BREATH AND OTHER OPEN CONTAINERS WERE FOUND IN THE VEHICLE IN THE FORM OF ONE HALF PINT OF PEPPERMINT SCHNAPPS, ONE CAN OF BUSH BEER AND ONE CAN OF PAPS BLUE RIBBON BEER.					204
ALCOHOLIC BEVERAGES CONTAINERS					
DETAILS ONE OPENED HALF PINT BOTTLE OF PEPPERMINT SCHNAPPS, ONE CAN OF PAPS BLUE RIBBON BEER AND ONE CAN OF BUSH BEER WERE FOUND IN THE VEHICLE.					136
DRUG SUBSTANCES FOUND					
DETAILS NONE					4
ADMINISTRATIVE WARNINGS (MIRANDA RIGHTS) GIVEN					
BY OFFICER		DATE	TIME	LOCATION	
CHEMICAL TESTS / OTHER					
20 MINUTE DEPRIVATION:	FROM DATE	FROM TIME	TO DATE	TO TIME	CHECKED INSIDE OF MOUTH
TEST LOCATION				BREATH	BREATH RESULT
BLOOD YES	BLOOD TECH NAME		DRE CASE	DRE MAN #	REFUSED
DESCRIPTION DRIVER ONLY HAD A STRONG ODOR OF ALCOHOL ON HIS BREATH AND THE MAIN REASON SUSPECT WAS TAKEN FOR BLOOD WITHDRAWAL.					114
CHEMICAL TEST:	DATE	TIME	LOCATION		
ADMINISTERED BY		SLD CERT #	INSTRUMENT SERIAL #	INDEPENDENT TEST REQUESTED	
INDEPENDENT TEST:	DATE	TIME	PLACE	ADMINISTERED BY	
NOTICE OF REVOCATION ISSUED YES	PRIOR CONVECTIONS YES	CRIMINAL COMPLAINT SERVED YES	LOCATION WHERE SERVED TESUQUE POLICE DEPARTMENT		
OTHER STRONG ODOR OF ALCOHOL ON DRIVERS BREATH AND OTHER OPEN CONTAINERS WERE FOUND IN THE VEHICLE IN THE FORM OF ONE HALF PINT OF PEPPERMINT SCHNAPPS, ONE CAN OF BUSH BEER AND ONE CAN OF PAPS BLUE RIBBON BEER.					0
CONCLUSION					
ARRESTING / REPORTING OFFICER BROWN, WAYLON		BADGE # 1307	SIGNATURE:		
ASSISTING OFFICER PROCESSOR PETER CHAVEZ		BADGE # 1309			
SUPERVISOR SERGEANT STEVE ENCINO		BADGE # 1303	01-19-09		

PUEBLO OF TESUQUE
ROUTE 42, BOX 360-T
SANTA FE, NM 87506



TRIBAL COURT
PHONE: (505) 989-4969
FAX: (505) 989-5037

FILED ON

IN THE PUEBLO OF TESUQUE TRIBAL COURT

AUG 21 2009

PUEBLO OF TESUQUE,
Plaintiff,

vs.

Anthony ACOSTA-VIGIL,
Defendant.

Case No. CR-09-189

**ORDER GRANTING
MOTION FOR DISCOVERY AND
MOTION FOR CONTINUANCE**


BEVERLY KENNEDY
COURT ADMINISTRATOR
TESUQUE PUEBLO
OFFICE OF THE TRIBAL COURT

On August 18, 2009, Defendant filed a Motion for Discovery in this matter. The Motion requested copies of the Criminal Complaint, Police Report (Defendant's sister received on 8/20/09), BAC from Breathalyzer (information listed on Police Report), Lab results from blood test, Certification of BAC reader, Last service dates and times of BAC Reader, and all recordings, documents, notes, interviews and statements. With regard to Defendant's request for copies of the criminal complaint and blood test results, the Court is attaching copies to this Order. With regard to his request for reports prepared by officer Waylon Brown related to the prosecution of this matter, the Court believes he is entitled to such documentation to aid in the preparation of his defense.

On August 20, 2009, this Court received a Motion to Continue from officer Waylon Brown of the Taos Pueblo, which is a timely request and shall be granted as a second and final continuance. Therefore, based on the foregoing and with good cause now appearing;

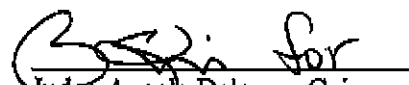
IT IS HEREBY ORDERED that Plaintiff shall provide to Defendant a letter of the last service dates and times of BAC Reader and Certification of Reader if available, copies of any police reports, witness statements, photos and other relevant paper documents that were made for, or prepared in relation to, the prosecution of this matter.

IT IS ALSO ORDERED that in light of receiving the Blood Test Results showing a .04% alcohol concentration sample, the Defendant, upon completion of his sentence on September 7th, 2009, in case no. CR-09-190, shall be released on a Signature Bond to appear at Trial in this matter.

IT IS FURTHER ORDERED that Plaintiff shall provide Defendant with the information he is directed to produce on or before September 9th, 2009, in care of his sister Antoinette Vigil 1921 Avenida Canada, Espanola, NM 87532, phone number 665-1986. She can pick up documents.

IT IS FURTHER ORDERED that said trial is continued to September 14th, 2009, at 10am.

SO ORDERED this 21st day of August, 2009.


Judge Angela Delorme-Gaines
Pueblo of Tesuque Tribal Court

I certify that on 8-21-09 a true copy of the foregoing was served to Defendant at SFADF (with copies of Criminal Complaint) and delivered to officer Waylon Brown c/o TPD.

By: 