NO. 08-20-00180-CR

IN THE COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS

THE STATE OF TEXAS **APPELLANT**

v.

RAMON P. ASTORGA **APPELLEE**

THE STATE'S BRIEF

ON APPEAL FROM CAUSE NUMBER 20190D06768
IN THE 243RD JUDICIAL DISTRICT COURT
OF EL PASO COUNTY, TEXAS

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DISTRICT ATTORNEY
34th JUDICIAL DISTRICT

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TRIAL COURT: 243rd Judicial District Court, Selena N. Solis, presiding

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STATEMENT OF THE CASE

The State charged Appellant, Ramon P. Astorga (hereinafter Astorga), by indictment with a single count of manufacture or delivery of a controlled substance in penalty group 1 in an amount greater than 4 grams but less than 200 grams. (CR 7).[1] The indictment further alleged that Astorga had previously been finally convicted of the felony offense of distribution of a controlled substance in Dona Ana County, New Mexico. (CR 7).

On January 31, 2020, Astorga filed a pre-trial motion to suppress evidence, arguing that Pueblo Tribal Police Department (PTPD) officers illegally detained and searched him, and that the narcotics evidence seized during the search of his person should therefore be suppressed. (CR 22–26). On March 11, 2020, the trial court held a hearing on Astorga's motion. *See generally* (RR2). Both parties submitted post-hearing briefing on Astorga's motion. (CR 40–55). The State also filed a post-hearing motion to supplement the reporter's record with exhibits that were referenced, but not admitted, during the hearing, and the trial court granted the

[1] Throughout this Brief, references to the record will be made as follows: references to the clerk's record will be made as "CR" and page number, references to the supplemental clerk's record will be made as "SCR" and volume and page number, references to the reporter's record will be made as "RR" and volume and page number, and references to exhibits will be made as either "SX" or "DX" and exhibit number.

motion. (CR 34–36, 56). The trial court granted Astorga's motion to suppress by written order and entered associated findings of fact and conclusions of law. (CR 57, 61–68). The State timely filed its notice of appeal of the trial court's order. (CR 69–70).

THE STATE'S POINTS OF ERRORS

Point of Error One: **The trial court erred by concluding that PTPD officers illegally detained or arrested Astorga after the officers discovered a methamphetamine pipe in his vehicle because: (1) tribal police officers are allowed to assist outside law-enforcement agencies with the enforcement of state law; and (2) Astorga's detention was reasonable under the Fourth Amendment.**

Point of Error Two: **The trial court erred by concluding that PTPD officers illegally searched Astorga's person during his detention at PTPD headquarters because the search was reasonable under the Fourth Amendment.**

STATEMENT OF FACTS

I. Officer Alarcon's testimony.

At the hearing on Astorga's pre-trial motion to suppress, the State called Officer Julian Alarcon of PTPD to testify. (RR2 10–11). Officer Alarcon testified that he had been an officer with PTPD for 8 years. (RR2 25). Prior to becoming an officer, Officer Alarcon had received 4 months of training at the Federal Law Enforcement Training Center in Artesia, New Mexico, which allowed him to work on any Indian reservation with that type of certification. (RR2 11). Among other things, Officer Alarcon received training on the Ysleta Del Sur Pueblo (YDSP) government's Peace Code (the Peace Code) and associated traffic laws. (RR2 11; SX2-B).[2] Officer Alarcon testified that PTPD officers are authorized by the Bureau of Indian Affairs (BIA) through their Special Law Enforcement Certification (SLEC) cards to conduct traffic stops on property not belonging to the Tigua Indian Reservation (the Reservation). (RR2 16–17, 46). Officer Alarcon stated that Public Law 280 vests PTPD officers with concurrent jurisdiction with the State of Texas, which allows PTPD officers to enforce the Reservation's Traffic Code and Peace Code laws on property adjacent to the Reservation if the violation occurred on

[2] During the hearing, the State offered a copy of the YDSP Traffic Code (the Traffic Code) associated with the YDSP government, which the trial court admitted. (RR2 12; SX1).

Reservation property. (RR2 17).[3] Officer Alarcon also stated that Public Law 280 allows PTPD officers to request assistance from outside law-enforcement agencies, such as the El Paso Police Department (EPPD), and then turn over any further investigation and disposition of a case originating on Reservation property to those agencies. (RR2 17–18). Officer Alarcon stated that the ability of tribal officers to carry out this type of investigation is not dependent on whether a detained suspect is a member or non-member of an Indian tribe. (RR2 18).

On January 30, 2019, Officer Alarcon was on routine traffic patrol when he observed an orange Chevrolet driving in one of the parking lots of the Speaking Rock Entertainment Center, which is on the Reservation's property. (RR2 14–15, 18–19; SX2-A at 3). Officer Alarcon observed the driver of the Chevrolet fail to use his turn signal as he was exiting the parking lot and entering Socorro Road, which is a traffic violation under section 6.8.150 of the Traffic Code. (RR2 19–20; SX1 at 31). Officer Alarcon initiated a traffic stop of the Chevrolet using the emergency lights on his vehicle. (RR2 15). The driver continued to travel onto Zaragoza Street,

[3] Public Law 83-280, otherwise known as "Public Law 280," shifted federal jurisdiction over offenses involving Indians in Indian nations to six states and gave other states an option to assume such jurisdiction. *See* Alberto R. Gonzales, Regina B. Schofield, & Glenn R. Schimitt, *Public Law 280 and Law Enforcement in Indian Country—Research Priorities*, U.S. DEPARTMENT OF JUSTICE at ii. (Dec. 2005), https://www.ncjrs.gov/pdffiles1/nij/209839.pdf.

and he eventually stopped his vehicle in an area not belonging to the Reservation. (RR2 16).

Officer Alarcon and his partner, Officer Villar, made contact with the driver, later identified as Astorga. (RR2 21).[4] Officer Villar observed two open alcoholic-beverage containers in plain sight inside the passenger compartment of the vehicle, which constitutes a violation under section 6.8.220 of the Traffic Code. (RR2 21–22; SX1 at 33). Because Officer Alarcon believed that he had probable cause to investigate the open-container violation, and the BIA Handbook authorizes officers to conduct an investigation of an offense if probable cause exists, Officer Alarcon asked Astorga to exit the vehicle to continue the investigation. (RR2 21–22). Astorga exited the vehicle, and Sergeant Perez of PTPD conducted a pat-down of Astorga's person for a "safety check." (RR2 23). When Officer Villar went inside the vehicle to retrieve the open containers, he informed Officer Alarcon that he had found a "white clear glass pipe" on the floorboard near the passenger seat, which Officer Alarcon believed through his training and experience to be a methamphetamine pipe. (RR2 23–25). Possession of this type of drug paraphernalia is a violation of section 4.7.20(B)(5) of the Peace Code. (RR2 23; SX2-B at 31). The officers then searched Astorga's person, handcuffed him, and read him the *Miranda* warnings prior to

[4] In Officer Alarcon's report, his partner's last name is written as "Villar," and not "Villa" as written in the transcript of the hearing on the motion to suppress.

transporting him to PTPD headquarters. (RR2 23–24, 26, 54).[5][6] The officers also arrested the passenger in Astorga's vehicle pursuant to an outstanding criminal warrant. (RR2 24).

PTPD officers transported Astorga and the passenger to PTPD headquarters, which was only two to three minutes away. (RR2 26). There, the officers searched Astorga a second time to ensure that he did not have sharp items, a belt, shoelaces, or other contraband before placing him into a cell; this type of booking search is standard PTPD policy. (RR2 26–27). The officers did not find anything of note on Astorga's person during this search. (RR2 27). After the officers conducted this search, Officer Villar spoke with the passenger, who informed him that Astorga was concealing narcotics in his groin area. (RR2 27). Using this information, the officers asked Astorga to remove his pants. (RR2 28–29). Astorga removed his pants, and officers observed an unusual bulge in Astorga's groin area. (RR2 29). When the officers inquired about the nature of the bulge, Astorga claimed that a hernia had caused the bulge in his underwear. (RR2 29). Officers ordered Astorga remove his underwear, and Astorga complied. (RR2 29). Near Astorga's genitals, officers found

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[5] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

[6] Although Officer Alarcon initially characterized this search of Astorga's person at the scene of the traffic stop as a "search incident to arrest," he later clarified that Astorga was not under arrest at the time; instead, PTPD officers only "detained" Astorga until the arrival of the EPPD officers. (RR2 23, 47).

a clear plastic baggie containing multiple smaller baggies inside. (RR2 27–30). The baggies contained a crystal-like substance, and when the officers tested the substance, it tested positive for methamphetamine. (RR2 28–30). The PTPD officers subsequently turned Astorga and the seized narcotics over to EPPD officers when they arrived at PTPD headquarters. (RR2 30). The EPPD officers placed Astorga under arrest, transported him to the county jail and booked him there, and took the methamphetamine found on his person into evidence. (SX2-C at 4–5).

On cross-examination, Officer Alarcon stated that all of the Traffic Code provisions, including the prohibition against open containers, provided for civil penalties. (RR2 43–44). Officer Alarcon agreed that section 6.8.233 provides that a PTPD officer charging a person with a violation of the open-container statute should not take the offender before a magistrate, but that the officer should rather cite and release the offender. (RR2 44–45; SX1 at 34). Officer Alarcon again testified that Public Law 280 allows PTPD officers to enforce laws through the BIA Handbook. (RR2 46). When asked why he had not released Astorga for the open-container violations, Officer Alarcon replied that he had not done so because the officers found the methamphetamine pipe and had detained him for that reason. (RR2 46–47). Officer Alarcon iterated that Astorga was not arrested for possessing the pipe, but instead he was only detained "for further investigation" pursuant to the Peace Code, which is a separate provision from the Traffic Code. (RR2 47).

On redirect examination, Officer Alarcon testified that the Traffic Code's definition of "roadway" included parking areas. (RR2 50). Officer Alarcon also agreed that when PTPD detains suspects pursuant to Tribal law, such as for possession of a methamphetamine pipe, the suspects are detained "in order to then subsequently hand them over to another agency," such as had been done in this case. (RR2 50). Officer Alarcon also agreed that the period of time between the stop and violation until the point where suspects are transferred to another agency is considered a "detention period" under Tribal law. (RR2 50). Officer Alarcon also agreed that it was "a matter of minutes" of driving between the place he stopped Astorga and PTPD headquarters. (RR2 50–51). Once suspects arrive at PTPD headquarters, they are put into a cell and await transport by the outside law-enforcement agency that will be receiving them, which is what happened in Astorga's case. (RR2 51). When the officers from the outside agency arrive, they can choose whether to proceed with the case or not. (RR2 51). Officer Astorga agreed that the search of Astorga's person that yielded the methamphetamine occurred while waiting for EPPD to arrive at PTPD headquarters. (RR2 51).

II. Parties' arguments.

Following Officer Alarcon's testimony, the defense argued that Officer Alarcon had no legal basis for stopping Astorga because no applicable law requires a motorist to use turn signals when exiting a parking lot, and that the Texas

Transportation Code and the Traffic Code were similar in this regard. (RR2 56–57). The State disagreed and stated that while the Texas Transportation Code does not require a person to signal when turning from a private roadway, the Traffic Code provided differently. (RR2 57). The trial court noted that under the Traffic Code, a "roadway" means, *inter alia,* a parking area open to the public. (RR2 58–59). The defense then argued that even if the stop was justified, the officers were only entitled to cite Astorga civilly and release him, and that the open-container violations did not provide an adequate basis to detain Astorga. (RR2 59). The court responded that Officer Alarcon testified that Astorga had not been detained for the open-container violations, but rather for the "tribal violation of the paraphernalia." (RR2 60). The defense responded that the officers were not justified in detaining Astorga based on "two misdemeanors, two traffic tickets," and that because there was no violation of the law, the evidence seized pursuant to Astorga's detention should be suppressed. (RR2 61).

In response, the State argued that Officer Alarcon properly stopped Astorga pursuant to section 6.8.150 of the Traffic Code for failing to signal, that the officers next observed the open containers in the vehicle, and that the officers then found the methamphetamine pipe as they were searching for evidence associated with the open containers. (RR2 61). The State pointed to Officer Alarcon's testimony that possession of drug paraphernalia is a violation of the Peace Code, which is a separate

provision from the Traffic Code, and that that violation is what led to Astorga's detention until the arrival of EPPD officers. (RR2 61–62). The State further argued that PTPD officers only conducted a search of Astorga's groin based upon information they received from the passenger, and that PTPD officers attempted to honor Astorga's privacy rights by first asking him what the bulge in his underwear was before ordering him to remove his underwear. (RR2 63).

At the conclusion of the hearing, the trial court authorized both parties to submit briefing on the matter for the court's consideration. (RR2 66). Both parties submitted post-hearing briefing on the issue. (CR 40–55). In his post-hearing brief, Astorga conceded that Officer Alarcon had authority to conduct a traffic stop of Astorga, but contended that: (1) the Peace Code did not authorize PTPD officers to detain, arrest, or search Astorga; and (2) the officers' actions violated "both Tribal Law and the Fourth [A]mendment to the U.S. Constitution." (CR 45). The State responded that PTPD officers never arrested Astorga, but rather he was only detained until EPPD officers could arrive and arrest him. (CR 52–53). The State contended that Astorga's detention was reasonable because the drive from the scene to PTPD headquarters only took a few minutes, and EPPD officers arrived approximately 10 to 15 minutes after that. (CR 52–53). The State also argued that the second search of Astorga's person at PTPD headquarters was valid because: (1) the search occurred pursuant to PTPD policy; (2) the search was reasonable because

it ensured the safety of Astorga and the officers, and because jailed suspects have a diminished privacy interest in their inventoried items; and (3) the officers only conducted the search after the officers received a tip from the passenger that Astorga had conceacled narcotics in his genital area. (CR 53–54). The State, pointing to Officer Alarcon's testimony, further posited that the second search of Astorga's person was carried out using the least-intrusive means possible because the officers asked Astorga to first lower his pants and only requested him to remove his underwear when they observed an unusual bulge in his underwear, which "gave more credibility the passenger's [tip]." (CR 53–54).

III. Trial court's findings and conclusions.

The trial court granted Astorga's motion to suppress by written order and entered associated findings of fact and conclusions of law. (CR 57, 61–68). The trial court concluded that although Officer Alarcon conducted a lawful traffic stop based upon the Traffic Code (which, as the trial court noted, Astorga conceded in his post-hearing brief), Officer Astorga did not have authority under the Peace Code to detain or arrest Astorga for possession of drug paraphernalia, or to transport him to PTPD headquarters for the subsequent body search. (CR 66–67). The court also concluded that Astorga was under arrest when PTPD officers handcuffed him and searched him a second time. (CR 67). Ultimately, the court concluded that: (1) Astorga's detention, arrest, transport, and body search were not authorized under the Peace

Code or other Tribal law; (2) his arrest and the "additional intrusive body search" during his arrest were unlawful; and (3) any evidence found as a result of the illegal arrest and search was suppressed. (CR 67–68).

SUMMARY OF THE STATE'S ARGUMENTS

As acknowledged by Astorga in his post-hearing brief and by the trial court, whether Officer Alarcon had a legal basis for conducting a traffic stop of Astorga is not an issue in this appeal. Rather, the issues in this appeal are: (1) whether PTPD officers had a legal basis for detaining Astorga at PTPD headquarters until EPPD officers could arrive and arrest him; and (2) whether PTPD officers lawfully searched Astorga's groin area after the passenger informed the officers that he was concealing narcotics in his underwear. For the reasons that follow, Astorga's detention and the search of his person were lawful, and the trial court erred in granting his motion to suppress.

Regarding the first issue, the trial court erred in granting Astorga's motion to suppress on this basis because the officers had authority under federal and state law to detain Astorga for possession of drug paraphernalia. Specifically, federal statutes and case law establish that tribal officers have authority to detain a non-Indian suspect for violation of tribal, federal, or state law, and to then turn the suspect over to outside law-enforcement agencies for further investigation if the suspect's actions violated federal or state law. Here, the officers located a methamphetamine pipe in Astorga's vehicle, which constitutes a violation of the Peace Code and Texas law. Because Astorga committed an offense for which he could have been arrested under Texas law, the officers were justified under relevant tribal, federal, and state law in

detaining Astorga until EPPD officers could arrive and take over the case. For this reason, the trial court erred by concluding that the officers lacked authority to detain Astorga, and the court's order granting Astorga's motion to suppress should be reversed on this basis.

Turning to the second issue, the trial court also erred in granting Astorga's motion to suppress because the search of Astorga's person at PTPD headquarters was reasonable under the Fourth Amendment. The Supreme Court and Texas courts have repeatedly recognized the substantial governmental interest in pre-booking inventory searches of a jailed suspect's person that occur at a police station or jail because of the safety issues posed by jailed suspects who may conceal contraband on their person in a jail cell. Here, PTPD officers received a tip from the passenger that Astorga was concealing narcotics in his groin area. When the officers asked Astorga to remove his pants, they noticed an unusual bulge in his underwear that Astorga implausibly claimed was caused by a hernia. When the officers ordered Astorga to remove his underwear and he complied, the officers discovered baggies containing a white, crystal-like substance that later tested positive for methamphetamine. Under the relevant analytical framework, the search of Astorga's genital area was reasonable because: (1) the search was not unnecessarily intrusive; (2) the officers had a substantial interest in preventing Astorga from possessing contraband in his cell; and (3) the search of his person took place in the privacy of

PTPD headquarters, and nothing in the record suggests that that location was unsanitary or unsafe. For these reasons, the trial court erred in granting Astorga's motion to suppress on this basis, and the court's order granting Astorga's motion to suppress should be reversed on this ground also.

PRELIMINARY ISSUE

Standard of review on a pre-trial motion to suppress

Generally, a trial court's decision to grant or deny a motion to suppress is reviewed under a bifurcated standard of review. *See Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007); *Guzman v. State*, 955 S.W.2d 85, 87 (Tex. Crim. App. 1997). Under this standard of review, a reviewing court should give "almost total deference" to a trial court's rulings on: (1) questions of historical fact that the record supports, especially when the trial court's fact findings are based on an evaluation of credibility and demeanor; and (2) "application of law to fact questions," if the resolution of those questions turns on an evaluation of credibility and demeanor. *Amador*, 221 S.W.3d at 673. When "mixed questions of law and fact" do not depend upon credibility and demeanor, a reviewing court may review a trial court's rulings on those matters *de novo*. *See Amador*, 221 S.W.3d at 673; *Guzman*, 955 S.W.2d at 89. Likewise, all purely legal questions are reviewed *de novo*, including whether a search or seizure is reasonable under the Fourth Amendment. *See State v. Johnston*, 336 S.W.3d 649, 657 (Tex. Crim. App. 2011); *St. George v. State*, 237 S.W.3d 720, 725 (Tex. Crim. App. 2007); *Kothe v. State*, 152 S.W.3d 54, 62 (Tex. Crim. App. 2004).

The fact that credibility and demeanor are important factors in the trial court's assessment does not always mean that the question "turns" on an evaluation of

credibility and demeanor. *See Abney v. State*, 394 S.W.3d 542, 547 (Tex. Crim. App. 2013). Instead, a question "turns" on an evaluation of credibility and demeanor "when the testimony of one or more witnesses, if believed, is *always* enough to add up to what is needed to decide the substantive issue." *See id*., *quoting Loserth v. State*, 963 S.W.2d 770, 773 (Tex. Crim. App. 1998) (emphasis in original). "There is a sense in which all appellate review of mixed questions of law and fact are ultimately *de novo*—but only after the appellate court has first deferred to the trial court's resolution… of any material issue of historical fact or witness credibility, then measuring the facts, as so resolved, against the determinative legal standard." *See Johnson v. State*, 414 S.W.3d 184, 197 (Tex. Crim. App. 2012) (Price, J., concurring).

In this case, the trial court ultimately concluded that PTPD officers illegally detained and arrested Astorga because: (1) section 4.7.20 of the Peace Code only legally authorizes tribal officers to issue a civil citation for possession of drug paraphernalia; and (2) the Peace Code does not legally authorize PTPD officers to detain or arrest a person who violates that statute. (CR 67). The trial court seems to have also concluded that PTPD officers arrested (rather than detained) Astorga because he was handcuffed and searched a second time, and that the encounter did not constitute a mere detention. (CR 67). Finally, the trial court concluded that: (1) because PTPD officers illegally arrested and transported Astorga, the search of his

person at PTPD headquarters was therefore the product of the officers' illegal actions, including the "additional intrusive body search;" and (2) the narcotics found on Astorga's person during the unreasonable search at PTPD headquarters should therefore be suppressed as poisoned fruits of Astorga's illegal arrest and transport. (CR 67–68).

As such, the points of error presented in this appeal do not depend on an evaluation of Officer Alarcon's credibility and demeanor, but rather only concern the trial court's legal conclusions that he and other PTPD officers did not have legal authority under the either the Traffic and Peace Codes or federal or state law to arrest and search Astorga. Although the trial court entered findings that the provisions of the Peace Code did not support Officer Alarcon's testimony, the source of the trial court's findings was not based upon a credibility or demeanor determination regarding the officer's testimony; rather, the court's findings were grounded in the contents of the Peace Code that the State supplemented into the record. (CR 39, 64; SX2-B). As such, the court based its conclusions upon a source not dependent on a determination of a witness's credibility or demeanor.[7] Further, the trial court's conclusions also implicate the legal questions of whether Astorga's detention or

[7] Simply, there was no factual dispute at trial as to whether the PTPD officers actually observed the open containers and/or the methamphetamine pipe in Astorga's vehicle. Rather, the issue in dispute was what the officers were authorized to do based on these observations. As such, the issue presented is a pure question of law.

arrest and subsequent body search at PTPD headquarters were reasonable under the Fourth Amendment. Thus, these issues constitute pure questions of law or mixed questions of law and fact that do not turn on credibility and demeanor determinations. For these reasons, *de novo* review of the trial court's order is appropriate. *See Abney*, 394 S.W.3d at 547; *Johnston*, 336 S.W.3d at 657; *St. George*, 237 S.W.3d at 725; *Amador*, 221 S.W.3d at 673; *Kothe*, 152 S.W.3d at 62.

<u>Point of Error One:</u> The trial court erred by concluding that PTPD officers illegally detained or arrested Astorga after the officers discovered a methamphetamine pipe in his vehicle because: (1) tribal police officers are allowed to assist outside law-enforcement agencies with the enforcement of state law; and (2) Astorga's detention was reasonable under the Fourth Amendment.

UNDERLYING FACTS

The State here relies on and adopts the recitation of facts set out in the Statement of Facts above.

ARGUMENT AND AUTHORITIES

I. Officer Astorga and other PTPD officers were authorized under the Peace Code and related federal Indian law to detain Astorga until EPPD officers could arrive and assume prosecution of the case.

A. Applicable law.

In the absence of some form of congressional authorization, Indian tribes generally do not have criminal jurisdiction over non-Indian offenders based upon violations of state or tribal law. *See Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 194–95 (1978), *superseded by statute on other grounds as stated in United States v. Lara*, 541 U.S. 193 (2004). But, Indian tribes may adopt certain provisions that allow for the detention and arrest of a nonmember of a tribe for a violation of tribal or state law, and to subsequently deliver the offender to state or federal authorities for prosecution. *See, e.g.*, *Strate v. A-1 Contractors*, 520 U.S. 438, 455–56 n. 11 (1997); *Bressi v. Ford*, 575 F.3d 891, 895–96 (9th Cir. 2009), *citing Ortiz-Barraza v. United States*, 512 F.2d 1176, 1180 (9th Cir. 1975).

Further, tribal police officers are authorized by the BIA Handbook and associated federal statutes to assist outside law-enforcement agencies with the enforcement of federal, state, and tribal laws. As noted in the BIA Handbook, 25 U.S.C. ch. 30 establishes the basis for tribal police officers' authority to act as law-enforcement officers. *See* (Appendix, State's Exhibit A, BIA Handbook excerpts, at 1). The BIA Handbook also authorizes tribal police officers to "assist and cooperate with all federal, state, tribal, and local law-enforcement agencies in every way possible allowed by law." *See* (State's Exhibit A, BIA Handbook excerpts, at 2). Likewise, federal law provides that, upon request, tribal officers may assist any federal, tribal, state, or local law-enforcement agency in the enforcement or carrying out of the laws or regulations the outside agency enforces or administers. *See* 25 U.S.C. sec. 2803(8); *see also* Office of Chief Counsel—Artesia Legal Division, INDIAN LAW HANDBOOK at 94–97 (2d ed. 2017), https://www.fletc.gov/sites/default/files/2017%20Indian%20Law%20Handbook.pdf (explaining the legal basis under which tribal officers may detain a non-Indian suspect for violations of federal or state law and turn the suspect over to an outside authority with jurisdiction to prosecute the case).

B. Analysis.

In this case, Officer Alarcon testified that he was a tribal peace officer with PTPD and that officers with that agency have SLEC cards that allow them to enforce

laws through the BIA Handbook. Officer Alarcon stated that on the day of the offense, he stopped Astorga for failing to signal as he drove out of a parking lot owned by the Reservation. After Astorga pulled over in an area not belonging to the Reservation, Officer Villar observed two open alcohol containers in Astorga's vehicle and subsequently discovered a methamphetamine pipe in plain view. Officer Alarcon and other PTPD officers subsequently detained Astorga for possession of the methamphetamine pipe, which is a violation of Texas law for which Astorga could have been arrested. *See* TEX. HEALTH & SAFETY CODE sec. 481.125(a) (criminalizing possession of drug paraphernalia); *Nichols v. State*, 886 S.W.2d 324, 326 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd) (holding that an officer was justified in arresting the defendant for possession of drug paraphernalia when he observed a marijuana-smoking pipe in plain view in the defendant's vehicle). Officer Alarcon stated that PTPD officers did not formally arrest Astorga, but rather that PTPD officers only detained him until EPPD officers could arrive at PTPD headquarters, conduct any additional investigation, and arrest him for the commission of the narcotics-related offenses if the EPPD officers decided to do so.

Although the Peace Code itself does not explicitly provide a basis for PTPD officers to charge a suspect who violates a Peace Code provision with a criminal offense and turn him or her over to another agency for prosecution, section 4.1.10 of the Peace Code specifically states that "[a]n action under this [article] does not

preclude other possible actions under another [article] of this code nor a criminal action by another jurisdiction." (SX2-B at 2). This evinces an intent on the part of the YDSP government to not restrict subsequent criminal prosecutions by other sovereigns of individuals who commit violations of the Peace Code. Thus, this provision serves as an implied authorization by the YDSP government to PTPD officers to detain non-Indian offenders for violations of state law. *See, e.g.*, *Bressi*, 575 F.3d at 895–97 (holding that tribal police did not violate a non-Indian plaintiff's constitutional rights in setting up a roadblock on a state highway crossing an Indian reservation because tribal officers may enforce state law and "detain… for a reasonable period of time" non-Indian suspects who commit "obvious violations," such as driving while intoxicated, and then turn those suspects over to state or federal authorities), *citing Strate*, 520 U.S. at 456 n. 11; *Ortiz-Barraza*, 512 F.2d at 1180 (finding that an Indian government may adopt resolutions that establish the authority of tribal police officers to investigate on-reservation violations of state and federal law and subsequently turn over violators to outside state or federal law-enforcement agencies).

Likewise, federal law and case law from other jurisdictions stand for the proposition that tribal officers are able assist local law-enforcement agencies and to "detain" non-Indian suspects who commit clear violations of state law until state or local law-enforcement agencies can take over the investigation. *See* 25 U.S.C. sec.

2803(8); *Strate*, 520 U.S. at 455–56 n. 11; *Bressi*, 575 F.3d at 895–96; *Ortiz-Barraza*, 512 F.2d at 1180; *United States v. Ramirez*, EP-18-CR-01661-DCG, 2019 WL 96589, at *3 (W.D. Tex. Jan. 3, 2019) (holding that tribal officers lacked sufficient probable cause to arrest the defendant under the Fourth Amendment, but that the officers were nonetheless authorized to detain the defendant under the reasonable-suspicion standard for a suspected violation of a YDSP Peace Code provision); *State v. Schmuck*, 850 P.2d 1332, 1342 (Wash.), *cert. denied*, 510 U.S. 931 (1993) (holding that tribal officers have inherent authority to stop and detain non-Indian suspects who have allegedly violated state and tribal law while on a reservation until he or she can be turned over to state authorities for charging and prosecution).

C. Conclusion.

In sum, federal statutes and prior case law stand for the proposition that tribal officers may detain a non-Indian suspect for violations of federal, state, or local law, and then turn the suspect over to an outside law-enforcement agency with jurisdiction to prosecute the suspect under the authority granted to that agency. That is exactly what happened in this case. Here, PTPD officers detained Astorga for possession of drug paraphernalia, a violation of both tribal and Texas law, until the EPPD officers could arrive at PTPD headquarters, undertake any additional investigation of the case, and arrest Astorga for violating Texas law if they chose to

do so. For these reasons, the PTPD officers therefore had authority to temporarily detain Astorga for a violation of a Texas law for which he could have been arrested by a Texas law-enforcement officer. Thus, the trial court erred by concluding that the officers did not have authority to detain or arrest Astorga until EPPD could arrive and take over the case. For these reasons, and for the reasons below, this Court should reverse the trial court's order granting Astorga's motion to suppress.

II. Officer Astorga and other PTPD officers were authorized under the Fourth Amendment and Texas law to detain Astorga until EPPD officers could arrive and take over the case.

A. General Fourth-Amendment principles.

The Fourth Amendment prohibits unreasonable searches and seizures by government actors. U.S. CONST. amend. IV. The reasonableness of a search or seizure under the Fourth Amendment is measured "in objective terms by examining the totality of the circumstances… [and] eschew[s] bright-line rules, instead emphasizing the fact-specific nature of the… inquiry." *Kothe*, 152 S.W.3d at 62, *quoting Ohio v. Robinette*, 519 U.S. 33, 39 (1996). This analysis "requires a balance between the public interest served and the individual's right to be free from arbitrary detentions and intrusions." *Id*., *citing Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977).

Law enforcement and citizens engage in three distinct types of interactions: (1) consensual encounters, (2) investigatory detentions, and (3) arrests. *See State v.*

Woodard, 341 S.W.3d 404, 410–11 (Tex. Crim. App. 2011); *State v. Castleberry*, 332 S.W.3d 460, 466 (Tex. Crim. App. 2011). Arrests and detentions implicate Fourth Amendment protections because both are seizures under the Fourth Amendment. *See Woodard*, 341 S.W.3d at 411; *State v. Camacho*, No. 08-11-00289-CR, 2013 WL 4624491, at *2 (Tex. App.—El Paso Aug. 28, 2013, no pet.) (not designated for publication). A person has been "seized" within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. *See California v. Hodari D.*, 499 U.S. 621, 627-628 (1991); *United States v. Mendenhall*, 446 U.S. 544, 554 (1980); *Anderson v. State*, 932 S.W.2d 502, 505 (Tex. Crim. App. 1996). The reasonable-person standard presupposes an innocent person. *See Florida v. Bostick*, 501 U.S. 429, 438 (1991).

When an officer detains a suspect under the reasonable-suspicion standard, the officer must have specific, articulable facts that, when combined with rational inferences from those facts, lead him to reasonably conclude that a particular person actually is, has been, or soon will be, engaged in criminal activity. *Arguellez v. State*, 409 S.W.3d 657, 663 (Tex. Crim. App. 2013) (citation omitted). Because this standard is an objective one, there only needs to be an objective basis for the detention; thus, the subjective intent of the officer is irrelevant. *Id*. (citation omitted). The reasonable-suspicion determination is made by considering the totality of the

circumstances. *Id*. (citation omitted). In order to establish probable cause to arrest, the evidence must show that, at the time of the arrest, "the facts and circumstances within the officer's knowledge and of which he had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the arrested person had committed or was committing an offense." *State v. Martinez*, 569 S.W.3d 621, 628 (Tex. Crim. App. 2019), *citing Woodard*, 341 S.W.3d at 412 (internal quotation marks omitted). Both the reasonable-suspicion and probable-cause standards are much-lower standards of proof than the beyond-a-reasonable-doubt standard. *See Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013).

B. PTPD officers lawfully detained Astorga until EPPD officers could arrive and arrest him because he possessed drug paraphernalia, an offense for which he could have been detained or arrested under Texas law.

Here, Officer Alarcon stopped Astorga for failing to signal as he was exiting the parking lot, which is a violation of section 6.8.150 of the Traffic Code.[8] After Officer Alarcon made contact with Astorga to inform him of the reason for the stop, Officer Villar noticed two open alcohol containers in plain sight in the passenger area of Astorga's vehicle, which constituted a separate violation of both section 6.8.220 of the Traffic Code and related Texas law. *See* TEX. PENAL CODE sec. 49.031(b) (prohibiting the possession of open alcohol containers in the passenger

[8] Again, as noted by the trial court, Astorga conceded that the traffic stop was valid in his post-hearing briefing.

area of a motor vehicle). When Officer Villar went to retrieve the open containers, he noticed a white clear glass pipe on the floorboard near the passenger seat, which due to Officer Astorga's training and experience he believed to be a methamphetamine pipe. Possession of this type of drug paraphernalia constituted a violation of both section 4.7.20(B)(5) of the Peace Code and related Texas law, and Texas law authorizes detention or arrest of a suspect for possession of drug paraphernalia. As such, the PTPD officers were justified under Texas law to detain Astorga for possession of drug paraphernalia. *See* TEX. CODE CRIM. PROC. art. 14.01(b) (stating that an officer may arrest an offender without a warrant for any offense committed in his presence or within his view); TEX. HEALTH & SAFETY CODE sec. 481.125(a) (criminalizing possession of drug paraphernalia); *Tate v. State*, 500 S.W.3d 410, 415–17 (Tex. Crim. App. 2016) (holding that legally sufficient evidence supported the defendant's conviction for possession of methamphetamine where officers found methamphetamine in plain view in an area of the defendant's vehicle that was also accessible to passengers who were present in the vehicle); *Nichols*, 886 S.W.2d at 326.[9]

[9] Although the level of Astorga's restriction of freedom at PTPD headquarters could be associated with an arrest (as opposed to a detention), previous cases have treated this period of interaction between suspects and tribal officers until outside law enforcement can arrive as a detention rather than an arrest. *See*, *e.g.*, *Bressi*, 575 F.3d at 895–96; *Ortiz-Barraza*, 512 F.2d at 1180; *see also* Office of Chief Counsel—Artesia Legal Division, INDIAN LAW HANDBOOK at 94–97 (2d ed. 2017), https://www.fletc.gov/sites/default/files/2017%20Indian%20Law%20Handbook.pdf.

Furthermore, adopting the trial court's reasoning in granting Astorga's motion to suppress would lead to an absurd result. Should this Court affirm the trial court's order, tribal officers would be precluded from detaining a suspect, who committed an obvious criminal violation for which the suspect could be arrested, until local law enforcement could arrive and continue investigation of the case. Instead, under the trial court's reasoning, tribal officers would only be authorized to issue a civil citation for a violation of the Peace Code, and the officer would then have no choice but to release the suspect. For example, a tribal officer who stops a driver for committing a traffic violation and then sees obvious signs of intoxication in the driver would again be only authorized to issue a civil citation and release the driver, who could then go on to continue driving while intoxicated and possibly injure or kill himself or another person.[10] Or, as a more extreme hypothetical, a tribal officer who conducts a stop for a traffic violation, makes contact with the driver, and sees an obviously murdered person in the back seat of the vehicle would only be allowed to civilly cite the driver for the traffic violation and for a homicide-related offense, and the officer would then be forced to release the suspect and send him on his way to possibly conceal the evidence or commit another crime. This type of result is flatly inconsistent with one of the YDSP government's stated reasons for a Peace Code:

[10] The Ninth Circuit recognized this potential scenario in *Bressi*, 575 F.3d at 895–97.

to "exercise the sovereign power of the [YDSP government to] preserve the peace, harmony, safety, health[,] and general welfare of the people of the Tribe and those permitted to enter or reside on the Reservation." (RR2 62; SX2-B at 2).

C. Conclusion.

In sum, "'[r]easonableness' is the touchstone for the Fourth Amendment [analysis]." *Meekins v. State*, 340 S.W.3d 454, 459 (Tex. Crim. App. 2011), *citing Florida v. Jimeno*, 500 U.S. 248, 250–51 (1991). Under the totality of the circumstances, the PTPD officers' actions cannot be said to have been unreasonable because, as provided for by federal law and prior cases, tribal officers have the authority to detain suspects for obvious violations of tribal or state law until federal, state, or local law-enforcement agencies can take over further investigation of the case. Likewise, the record shows that Astorga's detention for possession of drug paraphernalia was reasonable and supported by both tribal and state law. To conclude otherwise would result in a severe restriction of tribal officers' authority to enforce tribal law, or tribal officers' ability to assist outside law-enforcement agencies. This would further result tribal officers being only authorized to civilly cite and release suspects who commit obvious criminal offenses, resulting in a degradation of public safety. For all these reasons, the trial court erred by concluding that the officers illegally detained or arrested Astorga by transporting him to PTPD headquarters until local law-enforcement officers could arrive and take over the case,

and the court thus erred in granting Astorga's motion to suppress on this basis. This Court should therefore reverse the trial court's order granting the motion to suppress.

<u>Point of Error Two:</u> The trial court erred by concluding that PTPD officers illegally searched Astorga's person during his detention at PTPD headquarters because the search was reasonable under the Fourth Amendment.

UNDERLYING FACTS

The State here relies on and adopts the recitation of facts set out in the Statement of Facts above.

ARGUMENT AND AUTHORITIES

I. Applicable law.

The Supreme Court has recognized the validity of a warrantless stationhouse search of an arrestee's person and possessions. *See Illinois v. Lafayette*, 462 U.S. 640, 643–48 (1983). In *Lafeyette*, officers found narcotics in the defendant's cigarette packet as he was booked into jail. *Id*. at 642. The Court held that officers may search the personal effects of a person as a part of a normal booking procedure. *Id*. at 648. In so holding, the Court noted:

> The governmental interests underlying a stationhouse search of the arrestee's person and possessions may in some circumstances be even greater than those supporting a search immediately following arrest. Consequently, the scope of a stationhouse search will often vary from that made at the time of arrest. Police conduct that would be impractical or unreasonable—or embarrassingly intrusive—on the street can more readily—and privately—be performed at the station. For example, the interests supporting a search incident to arrest would hardly justify disrobing an arrestee on the street, but the practical necessities of routine jail administration may even justify taking a prisoner's clothes before confining him, although that step would be rare…. It is not unheard of for persons employed in police activities to steal property taken from arrested persons; similarly, arrested persons have been known to make false claims regarding what was taken from their

> possession at the stationhouse. A standardized procedure for making a list or inventory as soon as reasonable after reaching the stationhouse not only deters false claims but also inhibits theft or careless handling of articles taken from the arrested person. Arrested persons have also been known to injure themselves—or others—with belts, knives, drugs[,] or other items on their person while being detained. Dangerous instrumentalities—such as razor blades, bombs, or weapons—can be concealed in innocent-looking articles taken from the arrestee's possession. The bare recital of these mundane realities justifies reasonable measures by police to limit these risks—either while the items are in police possession or at the time they are returned to the arrestee upon his release. Examining all the items removed from the arrestee's person or possession and listing or inventorying them is an entirely reasonable administrative procedure. It is immaterial whether the police actually fear any particular package or container; the need to protect against such risks arises independent of a particular officer's subjective concerns. Finally, inspection of an arrestee's personal property may assist the police in ascertaining or verifying his identity.

Lafayette, 462 U.S. at 645–46.

Texas courts, including this Court, have since applied *Lafeyette*'s holding and reasoning. *See, e.g*., *Rogers v. State*, 774 S.W.2d 247, 263–64 (Tex. Crim. App. 1989), *overruled on other grounds by Peek v. State*, 106 S.W.3d 72 (Tex. Crim. App. 2003); *Gonzalez v. State*, 990 S.W.2d 833, 835–36 (Tex. App.—El Paso 1999, pet. ref'd). In *Rogers*, 774 S.W.2d at 263–64, the defendant was in custody and awaiting transport to jail when a detective decided to search the defendant a second time, even though no weapons were found on the defendant's person during the first search, after the detective noticed an unusual bulge in the defendant's boot. When the detective ordered the defendant to remove his boot, the detective discovered a roll of money the defendant had obtained from an earlier armed robbery. *Id*. at 264. The

Court of Criminal Appeals held that the second search of the defendant's person was reasonable, reasoning that:

> [W]e are unwilling to hold that the law permits but one search incident to the arrest and detention of a criminal suspect, or that further searches conducted while the suspect is processed through initial levels of the criminal justice system require the issuance of a search warrant or are subject to more restrictive notions of reasonableness than apply in the case of other searches incident to lawful arrest and detention. The search of which [the defendant] complains here was made subsequent to an arrest, the legality of which is not challenged, while [the defendant] was still in custody of the arresting officers, and it was therefore subject to usual notions of search incident to a lawful arrest and detention.

Rogers, 774 S.W.2d at 264. In *Gonzalez*, 990 S.W.2d at 834, officers arrested the defendant for public intoxication and located narcotics in the defendant's wallet as he was being booked into the county jail. This Court upheld the validity of the search, reasoning that: (1) the defendant was lawfully under arrest at the time of the search; (2) the arresting officers were still present in the room to maintain custody of him; and (3) the officers searched the defendant in accordance with departmental guidelines. *Id*. at 836.

In determining whether a search of a defendant's person was reasonable, a reviewing court should consider the following factors: (1) the scope of the particular intrusion; (2) the manner in which it was conducted; (3) the justification for initiating it; and (4) the place in which it was conducted. *McGee v. State*, 105 S.W.3d 609, 615 (Tex. Crim. App. 2003), *cert. denied*, 540 U.S. 1143 (2004), *citing Bell v.*

Wolfish, 441 U.S. 520, 559 (1979). Body searches of suspects in jails and prisons can be conducted with less than probable cause. *Gilmore v. State*, 323 S.W.3d 250, 256 (Tex. App.—Texarkana 2010, pet. ref'd), *citing Bell*, 441 U.S. at 559.

II. Under the *Bell* factors, PTPD officers reasonably searched Astorga's person at PTPD headquarters.

Here, Officer Alarcon testified that another PTPD officer conducted a *Terry* frisk of Astorga at the scene of the traffic stop to determine whether he had weapons or other objects that could jeopardize the officers' safety, but Officer Alarcon recalled that the officers did not find anything unusual on his person during this initial search.[11] After the officers transported Astorga to PTPD headquarters, they searched his person a second time as part of standard policy to ensure that he did not have handcuff keys, sharp objects, or other contraband on his person. The officers again did not locate anything of note during this second search and placed Astorga into a cell while awaiting the arrival of EPPD officers. After the passenger told the officers that Astorga was concealing narcotics in his groin area, the officers asked him to remove his pants. Astorga complied, and the officers observed an unusual bulge in his groin area. Based on the officers' independent corroboration of the passenger's tip, the officers asked Astorga to remove his underwear, and Astorga replied that the bulge was caused by a hernia. Astorga then removed his underwear

[11] *See Terry v. Ohio*, 392 U.S. 1 (1968).

in compliance with the officers' order, and near his genitals the officers located a package of a white, crystal-like substance that subsequently tested positive for methamphetamine.

The search of Astorga's genital area constituted a "visual body-cavity search," which perhaps weighs against a finding of reasonableness. But, the manner of the search favors reasonableness because, as the State argued in its post-hearing brief, the officers searched Astorga's genital area with the least-intrusive means possible and only conducted the search after the officers independently verified that there was an unusual bulge in Astorga's underwear. Likewise, the intrusive nature of the search of Astorga's groin area, which required him to remove his pants and underwear, occurred within the privacy afforded by PTPD headquarters instead of a public area, such as the scene of the traffic stop. Thus, Astorga was spared the embarrassment of being forced to expose himself in a public place, and the practical necessities of jail administration enumerated above rendered the increased intrusiveness of the search reasonable. *See Lafayette*, 462 U.S. at 645–46; *McGee*, 105 S.W.3d at 617 (finding that a search of the defendant's buttocks "on the whole… was reasonable" because no penetration of the defendant's anus occurred during the search, and because the privacy interests of the defendant were protected due to the search taking place at a nearby fire station); *Gilmore*, 323 S.W.3d at 256 (finding that although the nature of a visual body-cavity search of the defendant's genitals and anus at a jail weighed

against a finding of reasonableness, the location and the least-intrusive nature of the search weighed in favor of the a finding of reasonableness).

The justification for the search also favors reasonableness. As noted by *Lafeyette* and related Texas cases, the officers in this case had a substantial interest in preventing Astorga from remaining in the cell with narcotics or other contraband. Had Astorga been allowed to do so, he could have injured the officers or himself with a concealed weapon whose existence was then unknown to the officers. Astorga could also have consumed the narcotics, concealed them elsewhere, or destroyed them. Thus, because Astorga was lawfully detained at the time of the search and the officers carried out the search in accordance with departmental policy, the additional search of Astorga's person made in response to the passenger's tip and the corroboration of the tip by officers was reasonable under the Fourth Amendment. *See Lafayette*, 462 U.S. at 645–48; *Rogers*, 774 S.W.2d at 263–64; *Gonzalez*, 990 S.W.2d at 834–36; *see also Gilmore*, 323 S.W.3d at 256–60 (holding that officers had reasonable suspicion to search the defendant's genitals and anus at the jail based upon an anonymous tip that the defendant was concealing narcotics in his anus and the officers' corroboration of the circumstances associated with the tip, reasoning in part that the "significant and legitimate security interests" of penal institutions justified the search), *citing Bell*, 441 U.S. at 560.

Finally, the location of the search favors reasonableness. Although the search did not occur at a hospital or a similar medical facility, nothing in the record indicates that PTPD headquarters was unsanitary. Further, the search did not involve the probing of any of Astorga's body cavities. This factor therefore weighs in favor of reasonableness. *See McGee*, 105 S.W.3d at 617; *Gilmore*, 323 S.W.3d at 260. In sum, because three of the four factors weigh heavily in favor of reasonableness, the search of Astorga's genitals was reasonable, and the trial court erred in concluding otherwise. *See McGee*, 105 S.W.3d at 617; *Gilmore*, 323 S.W.3d at 260.

III. Conclusion.

Again, "'[r]easonableness' is the touchstone for the Fourth Amendment [analysis]." *Meekins*, 340 S.W.3d at 459, *citing Jimeno*, 500 U.S. at 250–51. Based on the foregoing, the officers' actions at PTPD headquarters by: (1) asking Astorga to remove his pants after receiving a tip from the passenger that he was concealing narcotics in his groin area; (2) observing an unusual bulge in his underwear; and (3) ordering Astorga to remove his underwear after the officers noticed the bulge and heard Astorga's implausible explanation that the bulge was due to a hernia, did not rise to the level of being unreasonable. As such, the trial court erred by concluding that the second search of Astorga's person occurring at PTPD headquarters violated the Fourth Amendment. This Court should thus reverse the trial court's order granting Astorga's motion to suppress for this additional reason.

PRAYER

WHEREFORE, the State prays that this Court reverse the trial court's order granting Astorga's motion to suppress and remand the case to the trial court for trial.

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

The undersigned does hereby certify that, pursuant to TEX. R. APP. P. 9.4, the foregoing document contains 8,360 words.

/s/ Justin M. Stevens
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the above brief was sent via the e-file system on December 16, 2020, to Brock M. Benjamin, attorney for Astorga, at brock@brockmorganbenjamin.com, 1600 N. Kansas, El Paso, Texas, 79902.

/s/ Justin M. Stevens
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APPENDIX

EXHIBIT A (BIA LAW ENFORCEMENT HANDBOOK EXCERPTS)

Section 3. Statutory Authority

General Information.

1. ***Limitations on the Authority of Officers.*** The United States Constitution guarantees every citizen certain safeguards from government intrusion into their lives. These safeguards have become the cornerstone for the application of criminal justice in America. Consequently, these safeguards have placed limitations on the authority of police to enforce Federal, state, county, and tribal laws. The Bureau of Indian Affairs expects its officers to act with due regard for citizens' civil liberties.
2. ***Intent of the Handbook.*** The Law Enforcement Services Handbook is designed to guide all law enforcement officers and employees engaged in law enforcement in Indian country. It provides general rules and serves as an outline for law enforcement officers and employees of the Bureau of Indian Affairs. It is important to understand that rules cannot be arbitrarily established to cover all situations that arise in law enforcement. Some things must be left to the intelligence, experience, initiative and judgement of the individual officers and employees. In the absence of specific policy and procedure, officers are expected to make decisions consistent with the mission and value statements of OLES. Law Enforcement personnel, employed by the Bureau of Indian Affairs, are public officers, and they have a responsibility to see that law and order is maintained in Indian country.
3. ***Primary Law Enforcement Functions.*** The primary functions of law enforcement are:
   A. The preservation of the public peace and order
   B. The prevention, detection, and investigation of crime
   C. The apprehension of offenders
   D. The protection of persons and property
   E. The enforcement of laws applicable to Indian country

   For these purposes, law enforcement officers are clothed with a vital legal authority. As they use this power, and to achieve true success, it is imperative that all police officials know the law, it precepts and functions.
4. ***Importance of Officer Selection Process.*** The success of the whole Indian law enforcement program depends in a larger measure upon the active interest and participation of the tribal governing bodies and the Indian people, as well as upon the development of efficiently organized, professional Indian law enforcement departments. This is true whether they function under Federal, state or tribal jurisdiction. These goals can only be achieved through the intelligent selection, instruction, and training of law enforcement personnel.
5. ***Basic Source of Law Enforcement Authority.*** It is important that officers understand the basic source of their authority to act as law enforcement officers or as agents of the government. They are often required to testify in court or otherwise show such authority. Title 25, United States Code, Chapter 30, the Indian Law Enforcement Reform Act is the basis of this authority. A copy of this section of U.S. Code is attached to this section of the Handbook.

addressed to the program administrator. Questions not resolved at the next higher level in the chain of command may ultimately be referred to the Director, OLES, through the chain of command.

C. Any criminal cases referred to the United States Attorney's Office which result in a decision of decision of "declined to prosecute" or "dismissed," due to law enforcement officer mishandling, are carefully reviewed and appropriate corrective action taken. The United States Attorney's Office is asked to bring such cases to the attention of the program administrator.

2. All employees assist and cooperate with all federal, state, tribal, and local law enforcement agencies in every way possible allowed by law.

Development of Resource Referral List

1. The program administrator or designee reviews the governmental functions, programs and resources to familiarize himself with the services which are provided.
2. The program administrator or designee maintains a brief listing of each agency, their address, regular and emergency telephone numbers for use by law enforcement personnel.
3. If any of these organizations or services with whom the law enforcement program has frequent emergency contact maintains an emergency on-call schedule, the program administrator ensures that an updated and current copy of this on-call list is maintained in an area to which law enforcement personnel have access.

Automated Certificate of eService

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