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3 **IN THE APPELLATE COURT**
4 **OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES**
5 **OF THE FLATHEAD NATION, PABLO, MONTANA**
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9 **Confederated Salish and**
10 **Kootenai Tribes**

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) **Cause No. AP-18-1252-CR**
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11
12 **Plaintiffs/Appellant,**

13
14 **v.**

)
) **OPINION**
)

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16 **Colby Roberts,**
17 **Defendant/Appellee.**
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25 **Appeal from the Tribal Court of the Confederated Salish and Kootenai Tribes,**
26 **Honorable Chief Justice Eldena Bear Don't Walk, Justice Robert McDonald, and**
27 **Justice Joshua Morigeau presiding.**
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33 **Appearances:**

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35 **Annette Brown, Esq., Confederated Salish and Kootenai Tribes Prosecutors Office,**

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37 **Appellee.**

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39 **James G. Gabriels, Confederated Salish and Kootenai Tribes Public Defenders Office,**
40 **for the Appellee.**
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1 The issues on appeal are whether:
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- 3 1. The Tribal Court erred in its application of state law over precedent announced by the
4 CSKT Court of Appeals to grant Motion to Suppress by Defendant.
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6 2. The Tribal Court erred by entering on-board camera recording evidence without
7 providing the Tribes an opportunity to address.
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13 **I. BACKGROUND**
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15 On September 28, 2018, at approximately 2 a.m., Polson Police Officer Oscar Garcia was
16 parked along Highway 93 while on traffic patrol and saw a vehicle traveling north on the
17 highway. Officer Garcia reported seeing the vehicle take a curve wide and cross the fog
18 line, then corrected and crossed into the left-hand turn lane which caused him to switch on
19 his in-car camera and stated he observed the vehicle cross the fog line multiple times and
20 again over correct into the left-hand turn lane. He turned on his emergency lights to
21 perform a traffic stop of the observed vehicle. The vehicle turned into the KwaTaqNuk
22 Resort and Casino. Officer Garcia stated the black 2007 Dodge Ram 2500 pickup truck
23 pulled into a parking spot and came to an abrupt stop as it hit the cement parking divider.
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25 Tribal Officer Casey Couture was patrolling the area and observed Officer Garcia initiating
26 the traffic stop. Officer Couture took over the stop when he arrived on the scene.
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33 The defendant was charged with Aggravated Driving While Under the Influence of
34 Alcohol or Drugs pursuant to Section 2-1-1301, CSKT Laws Codified.
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1 On January 7, 2019, Defendant filed a Motion to Suppress Evidence, requesting an order
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3 suppressing all evidence obtained by law enforcement resulting from the traffic stop of the
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5 Defendant's vehicle. The Defendant's motion argued that the officer lacked particularized
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7 suspicion to stop the vehicle and investigate criminal activity. The Defendant's argument in
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9 the motion was the in-car camera does not show the Defendant's truck crossing road lines
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11 as described in Officer Garcia's descriptions before the stop and therefore Officer Garcia
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13 did not have a valid reason to stop the car.
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17 Tribal Court Judge Pluff stated in his ruling on the Motion to Suppress that the Court had
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19 reviewed Officer Garcia's in-car camera footage, which Defendant supplied together with
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21 his January 14, 2019 Reply to Tribes' Answer. The Court stated, "Although Defendant
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23 should have provided such footage as an exhibit to his moving brief so that the Tribes
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25 would have the opportunity to address it, this Court will consider this evidence in the
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27 interests of substantial justice, as such footage does contradict the description of
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29 Defendant's driving as described in Officer Garcia's police report." The video footage
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31 begins with Officer Garcia's vehicle at rest and goes on to the Defendant's traffic stop, "but
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33 does not show Defendant's vehicle crossing the fog line or overcorrecting into the left-hand
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35 turn lane prior to the traffic stop." On these observations, the Court ruled that Officer
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37 Garcia did not have particularized suspicion to initiate a traffic stop of Defendant's vehicle
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39 so that stop is a violation of the Fourth Amendment of the U.S. Constitution and the Indian
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41 Civil Rights Act. The Motion to Suppress was granted February 4, 2019.
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1 The Tribal Court did not hold an evidentiary hearing, did not ask for argument from the
2 Prosecution in opposition, and did not compel or even ask for testimony from Officer
3 Garcia.
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11 **II. ISSUES, APPLICABLE LAW AND STANDARD OF REVIEW**
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13 The trial court's determination is entitled to a presumption of correctness and will not be
14 disturbed absent an abuse of discretion.
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19 **III. DISCUSSION**
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21 A *central* purpose of this Court is to ensure fairness in tribal court proceedings *for all*
22 parties. Therefore, discussion in this case does not need to be complicated or long. Very
23 simply, the Tribal Court acted arbitrarily and capriciously in summarily dismissing the dash
24 camera evidence without even the benefit of asking the prosecution its position.
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31 Moreover, and with some disbelief, this Court finds the Tribal Court's *ad hoc* approach to
32 evidence and procedure troubling. Tribal Courts have thrived because they are not
33 necessarily bound by ponderous rules of evidence or procedure. However, being free from
34 the shackles of hundreds of years of European jurisprudence does not do away with the
35 basic requirements of *fairness*.¹
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43 ¹ The rules of criminal procedure developed over several hundred years by various court traditions around
44 the world exist to create fairness. The "English system" and the "French system" being the most
45 influential throughout the world. *See generally* Fed, Rules Crim. Proc. Rule 5.1 (Preliminary Hearing);
Criminal Procedure C. pr. pén. (France, 2000) Preliminary Article.

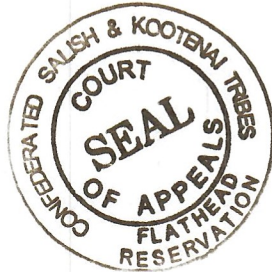
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3 Furthermore, the Court inappropriately inserted its own opinion in contradiction to United
4 States Supreme Court precedent. Whether traffic stops were undertaken within the bounds
5 of the United States Constitution is not new to the United States Supreme Court, the standard
6 is something less than whether an officer had “reasonable suspicion” to believe a person was
7 engaged in illegal activity. *United States v. Brignoni-Ponce*, 422 U. S. 873 (1975). The
8 officer is entitled to rely on the totality of the circumstances which led him to cause the
9 traffic stop. *United States v. Arvizu* (2002) 122 S.Ct. 744 (2002).
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19 *Arvizu* is just one waypoint of Supreme Court cases that that give an officer some ability to
20 do his job. *See United States v. Sokolow*, 490 U.S. 1 (1989) (“reasonable suspicion”); *United*
21 *States v. Cortez*, 449 U.S. 411 (1981) (“totality of the circumstances” determines if an officer
22 had a “particularized and objective” basis for suspecting legal wrongdoing).
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29 This Court makes no judgment as to the veracity or usefulness of the dash camera
30 evidence. This Court *does* hold the Tribal Court abused its discretion, indeed acting
31 “whimsically” in granting the Motion to Suppress. *See People v. Preyer*, 164 Cal.App.3d
32 568, 573 (1985) (“the standard for abuse of discretion to be ‘absence of arbitrary
33 determination, capricious disposition or whimsical thinking’ and the court was within ‘the
34 bounds of reason’”).
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1 This Court remands the matter for an evidentiary hearing where the parties shall be granted
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3 consideration to put forward their arguments comports with the evidentiary standards of
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5 this holding.
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9 Submitted this 11th day of January, 2022, for the Court.
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Robert McDonald
Robert McDonald
Associate Lay Justice


Certificate of Mailing

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed a true and correct copy of the Opinion to the persons first named therein at the addresses shown below by depositing same in the tribal interoffice mail at Pablo, Montana, this 11th day of January, 2022.

**James Taylor
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**Abigail Dupuis
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