

## APPLICATION FOR JUDICIAL OFFICE

### SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

#### PERSONAL INFORMATION

1. Full Name: **Nathaniel Todd Sorenson**
2. Have you ever used or been known by any other name? **No**
3. Office Address: **250 W. 2<sup>nd</sup> St., Suite G, Yuma, AZ 85364**

4. How long have you lived in Arizona? What is your home zip code?

**I have lived in Arizona for 27 of the last 37 years. My time living outside of Arizona was spent serving a mission for my church and attending college out of state. My home zip code is 85364.**

5. Identify the county you reside in and the years of your residency.

**I live in Yuma County. I have lived here for 16 of the last 26 years.**

6. If appointed, will you be 30 years old before taking office? ☒ **yes** ☐ **no**

If appointed, will you be younger than age 65 at the time of appointment?  
☒ **yes** ☐ **no**

7. List your present and any former political party registrations and approximate dates of each: **Republican: June 1999 - present**
8. Gender: **Male**

Race/Ethnicity: **White**

## EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

**Arizona Western College: August 1999 – May 2000 (No degree earned)**

**Brigham Young University: January 2004 – June 2007 (BS Education)**

**University of Arizona: August 2007 – May 2010 (Juris Doctor)**

10. List major and minor fields of study and extracurricular activities.

**I attended Arizona Western College for one year. Prior to transferring to Brigham Young University, I served a two year mission for my church. I served in Dublin, Ireland and Belfast, Northern Ireland from Aug. 2000 through Sept. 2002.**

**Brigham Young University:**

- **Major – Social Science Teaching**
- **Minor – Coaching (not completed)**
- **Extra-curricular activities: Volunteer coach for 5 year old soccer**  
**Volunteer coach for 5<sup>th</sup> grade basketball**  
**Ast. Coach for high school track team**  
**Intramural sports: flag football**  
**softball**  
**volleyball**  
**soccer**

**University of Arizona:**

- **Major – Juris Doctor**
- **Extra-curricular activities:**
  - o **Religious Freedom Moot Court (Organizer and Team Captain)**
  - o **Student Bar Association (Elected Officer 2007 – 2010)**
  - o **Law School Curriculum Committee (Appointed Student Representative 2008 - 2010)**
  - o **Federalist Society (Member: 2007 – 2010; Elected officer: 2007 – 2009; Selected: National Leadership Conference Representative)**
  - o **J. Rueben Clark Law Society (Member 2007 – 2010; Elected Officer 2009 – 2010)**
  - o **Founded religious study course on Law School campus for J. Reuben Clark Law Society**

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

**Arizona Western College:**

- Honors Scholarship
- Honors Program Participant
- Geology Honors project creating 3 dimensional model of the Owens Valley

**Brigham Young University:**

- Student Technician at BYU's Office of Information of Technology (January 2004 – June 2007)
  - o Trained and assisted other technicians
  - o Supervised call center for overnight shifts
- Storage Manager: Fort Knox Storage of Lehi (Dec. 2005 – June 2007)
  - o Cleaned and rented storage units while living on site and taking call over the weekends and evenings
- Married my wife and we had two children

**University of Arizona:**

- Certificate in Criminal Law and Policy
- Certificate in International Trade and Business Law
- Dean's Recognition Award
- Arizona State Bar Criminal Justice Section Book Scholarship
- Outstanding Performance in Oral Advocacy
- Established a new team and competed in a National Moot Court competition in Washington, D.C.
- Elected Officer in Federalist Society: I assisted in organizing speakers and food for approximately 5 – 6 events each year
  - o Represented my chapter at the National Federalist Society leadership convention in Washington, D.C.
- Worked in the Family Law Clinic for my third year of law school: handled a case load under direction of an attorney.
  - o Cases included: assisting a grandmother in transferring custody of her 12 year old Downs Syndrome granddaughter back to the child's mother, AND
  - o Assisted an abused women through a divorce proceeding including a contested hearing in State court
- Worked with the Yuma County Attorney's Office as an intern for the summer of 2008
- Worked as an intern with Southern Arizona Legal Aid for the summer of 2009
- My wife and I had two more children during law school

|   |
|---|
| <b>PROFESSIONAL BACKGROUND AND EXPERIENCE</b> |
|---|

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

**The Supreme Court of Arizona and all other Courts of the State of Arizona  
Admitted to Practice: January 27, 2011**

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? **No**
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? **No**
14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

| EMPLOYER                            | DATES                 | LOCATION      |
|-------------------------------------|-----------------------|---------------|
| Yuma County Attorney's Office       | May 2011 – Present    | Yuma, Arizona |
| Arizona Western College             | Aug. 2013 - Present   | Yuma, Arizona |
| Seventh Judicial District of Nevada | Aug. 2010 – Apr. 2011 | Ely, Nevada   |

I was unemployed from June 2007 when I graduated from BYU until I began working at the Seventh Judicial District of Nevada in August 2010. During this time I attended law school at the University of Arizona in Tucson, AZ. During my time in law school, I worked in a paid internship at the Yuma County Attorney's office for one summer in 2008.

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

**Yuma County Attorney's Office Roster:**

**Jon Smith** (County Attorney)

**John Tate** (Chief Criminal Deputy)

**William "Bill" Kerekes** (Chief Civil Deputy)

**Criminal Division:**

*(All attorneys listed are Deputy County Attorney's)*

Andrew Orozco

Charles "Charlie" Platt

Chris A. Weede

Claudia Gonzalez

Dallin Marcy

Griselda Cordova

Jessica Holzer (Pending Admission to the State Bar of Arizona)

Jim E. Eustace

Joshua Davis-Salsbury

Karolyn Kaczorowski

Mary E. White

Meaghan Gallagher

Nathaniel T. Sorenson

Rachel Guerrero

Ricki Nicewander

Robert Severson

Stephen "Steve" A. Kiholm

Thomas "Tom" E. Varela

**Civil Division:**

*(All attorneys listed are Deputy County Attorney's)*

Amanda Mahon

Edward "Ed" Feheley

Theresa Fox

All attorneys at the office may be reached by calling 928-817-4300 asking for the attorney by name.

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

**I am a prosecutor with the Yuma County Attorney's Office. My practice consists entirely of Criminal Law. I have practiced Criminal Law since May 2011.**

17. List other areas of law in which you have practiced.

**I clerked for two judges in Ely, NV where I saw many different areas of the law. I worked on a variety of civil and criminal cases, and I handled a large number of prisoner litigation cases.**

**In working in the Criminal division, I have practiced extensively in Misdemeanors, Felonies, Violation of Probation cases, and Juvenile cases. I spent at least one year handling each of those case loads.**

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

**I am not a certified specialist in any State Bar.**

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

**I served as a clerk for two judges from the Seventh Judicial District Court of Nevada, where I drafted proposed orders for review by the judges. I was assigned cases by the judges, and I was responsible for reading the briefs, conducting research, and drafting a proposed order. After discussing the case and proposed order with the judges, I drafted a final copy for the judge to edit and file. Under the guidance of these judges, I drafted approximately thirty to forty orders.**

**As a deputy county attorney, I have negotiated approximately 1500 misdemeanor cases, 950 juvenile cases, and 1000 felony cases. Each case was a contested case. I was responsible for drafting the plea agreements presented to the court in all of the felony and juvenile cases, and in a substantial number of the misdemeanor cases. I regularly draft motions and responses to defendant's motions for presentation to Superior Court Judges.**

**Additionally, I worked with the Yuma County Narcotics Taskforce to write and refine the language used in search warrants and warrant returns. And I assisted the County Attorney in drafting a multi-disciplinary protocol for drug lab investigations used to instruct law enforcement and supporting agencies in their investigations of drug labs when there are minors present.**

20. Have you practiced in adversary proceedings before administrative boards or commissions? **No.**
21. Have you handled any matters that have been arbitrated or mediated? **No.**
22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case.

**State v. Natasha Turriff (S1400CR2013-637, -092, -0170, -0617, and -638)**

**Date: 11/17/2012 – 4/8/2014**

**Parties:**

**State: Nathaniel T. Sorenson**

**250 W. 2<sup>nd</sup> St., Suite G**

**Yuma, AZ 85364**

**nathaniel.sorenson@yumacountyaz.gov**

**928-388-4300**

**Defendant: Richard Edgar**

**200 S. 2<sup>nd</sup> Ave.**

**Yuma, AZ 85364**

**richard@yumaabogados.com**

**928-539-0500**

**Summary: I charged five separate cases involving burglaries and possession of stolen property. None of the cases had high dollar amounts, and nearly all of the items were recovered. The defendant had no prior criminal history, and a drug habit. The drugs were the impetus of all of the defendant's crimes. I negotiated two years of probation in each case with all terms served consecutively. This resulted in a total of ten years of probation.**

**Significance: The defendant is halfway through the probation period, and is current with fines, fees, and restitution. She has not relapsed, and is complying with all terms of probation. A creative solution was found to get the defendant help to prevent recidivism, while protecting the community. If the defendant violates her probation, she will serve prison time, and then go back on probation. This case allows the defendant the opportunity to become a productive citizen while ensuring the community is protected if she relapses.**

State v. Richard Limones (S1400CR2013-806)

Date: 7/18/2013 – 5/5/2014

**Parties:**

**State:** Nathaniel T. Sorenson

250 W. 2<sup>nd</sup> St., Suite G

Yuma, AZ 85364

nathaniel.sorenson@yumacountyaz.gov

928-388-4300

**Defendant:** Victoria Thompson

202 S. 1<sup>st</sup> Ave.

Yuma, AZ 85364

lawyervic58@gmail.com

928-246-1840

**Summary:** An adult and a juvenile used a shotgun to rob five liquor stores. The adult was coercing the juvenile to go into the stores. The juvenile was dating the adult's daughter, so the juvenile felt a lot of pressure to accompany the adult and do as he said. There was also evidence of threats by the adult against the juvenile. I pled the case out to 9 counts where the juvenile served 6.5 years on each count concurrently.

**Significance:** I saw the importance of pleading out multiple counts in order to give the victims closure, but still using the concurrent sentencing to get a just result for the defendant. I learned that each person involved with a case needs to be considered when seeking a resolution.

State v. Nolan Williams (2014-JV-0851)

Date: 1/16/2015 – 8/28/2015

**Parties:**

State: Nathaniel T. Sorenson  
250 W. 2<sup>nd</sup> St., Suite G  
Yuma, AZ 85364  
nathaniel.sorenson@yumacountyaz.gov  
928-388-4300

Defendant: W. Michael Smith  
113 W. Giss Parkway  
Yuma, AZ 85364  
wms@bowmansmith.com  
928-783-8879

**Summary:** A freshman football team was practicing, when one boy on the team punched another boy on the team. The victim sustained a fracture to the orbital bone in his eye, which pinched the nerve and cause severe and permanent damage to the eye and the ability of the eye to move. There was some evidence that the defendant was being bullied, and that the victim had made a comment to the defendant. The defendant was charged with a Class 2 felony aggravated assault. I pled the case out to a Class 1 misdemeanor assault with full restitution.

**Significance:** This was a case that was handled in Juvenile court. I was assigned the case after some complaints by the victim's mother regarding another prosecutor. I took over the case, and had it set for trial. I offered a plea to a misdemeanor assault, but the plea was rejected by the defendant's mother. I felt that a felony was too harsh a punishment for the defendant given the totality of the case, so I worked with the defense attorney to ensure that the defendant was able to make his voice known. I also worked with the victim to ensure that his voice was heard throughout the proceeding. The victim's parents were very involved, and it was a difficult balancing act. But I was able to learn how to see beyond the multitude of voices to the heart of the issue and work toward a just and right resolution.

State v. Fernando Demara Diarte (S1400CR2018-1476)

Date: 9/4/2018 – Presently set for Change of Plea

**Parties:**

**State:** Nathaniel T. Sorenson

250 W. 2<sup>nd</sup> St., Suite G

Yuma, AZ 85364

nathaniel.sorenson@yumacountyaz.gov

928-388-4300

**Defendant:** Fausto Falzone

168 S. 2<sup>nd</sup> Ave

Yuma, AZ 85364

fausto.falzone@yumacountyaz.gov

928-817-4600

**Summary:** Defendant crossed from Mexico into the United States. A canine alerted to his person, so he was sent to a secondary inspection area. A search revealed 1.63 grams of methamphetamine in a bindle in the defendant's mouth. The defendant and I negotiated a plea agreement where the defendant would plead guilty to Possession of Drug Paraphernalia and would serve a term of six months in prison.

**Significance:** This case involved a couple of significant issues. First, the defendant filed a motion to suppress the evidence based on the fact that the port of entry is a "federal enclave," so the State of Arizona cannot prosecute crime from that area. The defendant requested an evidentiary hearing. My response included a statute and case directly on point identifying the State's jurisdiction to prosecute the case. The defendant's motion was denied without a hearing because the case law was clearly against the defendant's stated arguments.

Second, this was the defendant's first drug offense. The defendant wanted to remove the methamphetamine language from the plea. Removal of the methamphetamine language would make this offense eligible for 13-901.01 sentencing restrictions. This typically means the defendant cannot be sentenced to jail or prison, even if the defendant fails to follow any rules while on probation. In return for removing the methamphetamine language, I negotiated a prison term. This allows the State to obtain a first drug conviction and move the defendant out of 13-901.01 for any future offenses, but the State still gets punishment for this offense.

State v. John M. Gomez (S1500CR2018-289)

Date: 8/24/2018 – Currently set for COP on 3/11/2019

**Parties:**

**State:** Nathaniel T. Sorenson

250 W. 2<sup>nd</sup> St., Suite G

Yuma, AZ 85364

nathaniel.sorenson@yumacountyaz.gov

928-388-4300

**Defendant:** Shannon Peters

4201 N. 24<sup>th</sup> St. Suite 200

Phoenix, AZ 85016

shannon@allenlawaz.com

602-456-0545

**Summary:** The defendant groped the victim at a party held at the defendant's home. The defendant and the victim were co-workers. The victim delayed reporting of the groping. During a confrontational call, the defendant made admissions regarding putting his hand under her shirt and grabbing her breast. Defendant was drunk, and the victim had also had some drinks.

**Significance:** This was a case that the La Paz County attorney's office conflicted out to my office. I handled this case from start to finish. The victim's opinion changed during the case, getting stronger in favor of increased punishment. I negotiated a resolution to the case while dealing with jurisdiction issues. The defendant and the victim were both opposed to going to trial in Parker. They were seeking to move the jurisdiction out of La Paz County. I was able to reach a conclusion in the case where each party received some satisfaction, and neither party had to face a jury of their friends in a small town.

23. Have you represented clients in litigation in Federal or state trial courts? **Yes** If so, state:

The approximate number of cases in which you appeared before:

|                           |              |
|---------------------------|--------------|
| Federal Courts:           | <b>0</b>     |
| State Courts of Record:   | <b>2,001</b> |
| Municipal/Justice Courts: | <b>1,568</b> |

The approximate percentage of those cases which have been:

|           |             |
|-----------|-------------|
| Civil:    | <b>0</b>    |
| Criminal: | <b>100%</b> |

The approximate number of those cases in which you were:

|                    |              |
|--------------------|--------------|
| Sole Counsel:      | <b>3,558</b> |
| Chief Counsel:     | <b>4</b>     |
| Associate Counsel: | <b>7</b>     |

The approximate percentage of those cases in which:

|   |           |
|---|-----------|
| You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: | <b>3%</b> |
|---|-----------|

|                                     |           |
|-------------------------------------|-----------|
| You argued a motion described above | <b>3%</b> |
|-------------------------------------|-----------|

|   |           |
|---|-----------|
| You made a contested court appearance (other than as set forth in the above response) | <b>1%</b> |
|---|-----------|

|                              |            |
|------------------------------|------------|
| You negotiated a settlement: | <b>99%</b> |
|------------------------------|------------|

|  |             |
|--|-------------|
| The court rendered judgment after trial: | <b>0.5%</b> |
|--|-------------|

|                            |             |
|----------------------------|-------------|
| A jury rendered a verdict: | <b>0.5%</b> |
|----------------------------|-------------|

The number of cases you have taken to trial:

|                            |    |
|----------------------------|----|
| Limited jurisdiction court | 17 |
| Superior court             | 7  |
| Federal district court     | 0  |
| Jury                       | 7  |

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

**These numbers are as accurate as I could find in my file system. They should reflect an accurate number of trials.**

24. Have you practiced in the Federal or state appellate courts? **No.**

If so, state:

The approximate number of your appeals which have been:

Civil: \_\_\_\_\_

Criminal: \_\_\_\_\_

Other: \_\_\_\_\_

The approximate number of matters in which you appeared:

As counsel of record on the brief:

Personally in oral argument:

25. Have you served as a judicial law clerk or staff attorney to a court? **Yes.** If so, identify the court, judge, and the dates of service and describe your role.

I clerked in the Seventh Judicial District of Nevada from August 2010 through April 2011. I clerked for Judge Dan Papez and Judge Steve Dobrescu. This court covered White Pine, Eureka, and Lincoln Counties in the State of Nevada.

My main responsibility was drafting proposed orders. I would receive a case assignment from one of the judges. I would review briefs and motions from both sides, and then I would conduct additional research on the issue. Finally, I would draft a proposed order for the judge's review. The judge would discuss the issues with me, and I would make any corrections necessary. I drafted approximately 30 – 40 orders during my time with the court.

I learned to sort through pleadings, identify the issues, and then research case law and statutes looking for the just outcome on each issue. I learned a lot of information that went beyond just case law. I saw that facts can obscure the law, so the judges showed me how to apply the law consistently regardless of the facts.

The court covered a prison, so I had the opportunity to work on motions and pleadings from the prisoners. I read 30 page motions written in pencil, or sometimes crayon, looking at issues as varied as requests for extra time in the library to requests for particular diets. Most of the motions were meritless, but some of the motions required more research and thought when the prisoner identified actual problems requiring judicial intervention. It was interesting work, and helped me remember the importance of getting it right when working on a case no matter who the parties were.

I travelled with the judges to outlying communities to hear cases and observe court proceedings. I also assisted in the administration of the Drug Court program for the District. This time spent working with these two judges taught me the value of reviewing all of the information carefully, removing bias from my work, and making decisions based only on facts and law.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

**Caption: State v. Oscar Manuel Ayon (J1401MS2010-365)**

**Date: 12/1/2010 – 8/17/2011**

**Court: Yuma County Justice Precinct 1; Courtroom B (Honorable Yolanda Torok)**

**Parties:**

**State: Nathaniel T. Sorenson**

**250 W. 2<sup>nd</sup> St., Suite G**

**Yuma, AZ 85364**

**nathaniel.sorenson@yumacountyaz.gov**

**928-388-4300**

**Defendant: Tori Bryant**

**1390 Santa Alicia #15102**

**Chula Vista, CA 91910**

**tbryant\_atty@yahoo.com**

**619-272-1272**

**Summary: This case was a misdemeanor case involving the possession of drug paraphernalia found in an oven. The detectives told me they had mail with the defendant's name and address consistent with the house where the pipe was found in the oven. At trial, the first question the defense attorney asked was "Where was the oven?" The answer was the oven was found in the backyard. There was no fence and anyone had access to the yard and the oven. I lost the trial at the Rule 20 motion.**

**Significance: This was my first trial as a new attorney. It stands out to me because of the lesson learned: always ask where the oven was located. I learned not to take everything at face value. Ask the next question. Get all of the information that you can obtain. Make sure that the story is fully fleshed out prior to asking the first question at trial.**

**Caption: State v. Christopher Michael Cartier (S1400CR2011-0120)**

**Date: 1/12/2011 – 2/1/2013**

**Court: Yuma County Superior Court Division 5 (Honorable John Nelson)**

**Parties:**

**State: Nathaniel T. Sorenson**

**250 W. 2<sup>nd</sup> St., Suite G**

**Yuma, AZ 85364**

**nathaniel.sorenson@yumacountyaz.gov**

**928-388-4300**

**Defendant: German Salazar**

**168 S. 2<sup>nd</sup> Ave.**

**Yuma, AZ 85364**

**german.salazar@yumacountyaz.gov**

**928-817-4600**

**Summary:** This case involved a defendant who, while high on methamphetamine, drove out to a former employer and shot a rifle through the windows and walls of the house. The two victims who lived there were home and sleeping when this occurred. When they awoke and went in to the living room, more shots were fired.

**Significance:** This was my first experience in a jury trial. I was preparing for a jury trial of my own, so I asked to join another prosecutor as second chair on this trial. It was a learning experience to see what practicing in front of a jury was like. The defendant was convicted on all counts.

**Caption: State v. James Albert Travis (S1400CR2012-506, -876, and -970)**  
**Date: 5/4/2012 – 6/19/2013**  
**Court: Yuma County Superior Court Division Four (Honorable David Haws)**

**Parties:**

**State: Nathaniel T. Sorenson**

**250 W. 2<sup>nd</sup> St., Suite G**

**Yuma, AZ 85364**

**nathaniel.sorenson@yumacountyaz.gov**

**928-388-4300**

**Defendant: Paul Kittredge\***

**201 S. 2<sup>nd</sup> Ave.**

**Yuma, AZ 85364**

**paul.kittredge@yumacountyaz.gov**

**928-817-4650**

**\*Paul Kittredge retired from the practice of law and relocated to the Phoenix, Arizona area. I am unable to locate his new contact information.**

**Summary: These cases involved two Possession of Dangerous Drugs for Sale cases and one fraud case. I lost the first case involving a traffic stop where the information received by police came from the defendant's former girlfriend. She testified at trial and was very hostile toward the defendant. The defense attorney used that hostility to say the girlfriend set up the defendant. The defendant was found not guilty on all charges. The defendant was convicted on all charges in the next two cases. A different agency used a confidential informant to buy drugs from the defendant. A search warrant was obtained and executed at the defendant's residence. The defendant was in the kitchen with a scale, bags of methamphetamine, methamphetamine cut into lines, and other paraphernalia. While police were searching, the defendant received text messages from people asking to buy drugs. The defendant was arrested and his truck and title were seized as part of the investigation. The third case saw the defendant posting bond, and then obtaining a copy of his truck title from a secondary DMV vendor. He used this title to obtain a title loan even though his truck was in police custody. He returned to the title loan store and told them that he would not pay the loan back until he received his truck back. He never made payments on the loan. Juries found the defendant guilty on all charges in each case.**

**Significance: These three cases were heard back to back to back. It was a stressful experience because it was my first solo jury trial, and I lost the first one. I brought on a second chair for the next two trials to assist in making sure I was covering all of the necessary material. I learned to manage a case better from start to finish. I found that by allowing the cases to stack up, I was pressured into taking the cases into trial without adequate time to prepare each individual case. Case management is important.**

**Caption: State v. Jason Cooper (2015-JV-0388)**

**Date: 5/19/2015 – 7/17/2015**

**Court: Yuma County Juvenile Court, Commissioner 1 (Honorable Kathy Stocking-Tate)**

**Parties:**

**State: Nathaniel T. Sorenson**

**250 W. 2<sup>nd</sup> St., Suite G**

**Yuma, AZ 85364**

**nathaniel.sorenson@yumacountyaz.gov**

**928-388-4300**

**Defendant: Denise Avila-Taylor**

**2440 W. 28<sup>th</sup> St.**

**Yuma, AZ 85364**

**denise.avilataylor@gmail.com**

**928-257-0168**

**Summary: A juvenile fought a resource officer at the high school. The resource officer was a police officer on assignment to the school. The testimony showed that the officer had a “quarter sized abrasion on his arm.” Video evidence of the fight was shown where the officer tried to diffuse the situation, but the juvenile attacked the officer. The juvenile was charged with aggravated assault on the officer. The judge found that there was no physical injury, so the juvenile was found not responsible on all charges.**

**Significance: This was a difficult case for me. I lost a case that I should have won, and there was nothing I could do about it. The judge simply made a ruling that I believe was wrong and based on inaccurate application of law to facts. The judge ignored the evidence to get to a resolution that was desired, instead of using the law to reach a just conclusion. I learned a valuable lesson on applying the law correctly and consistently in all situations.**

**Caption: State v. Lionel Rios (S1400CR2012-1076)**

**Date: 9/26/2012 – 12/20/2013**

**Court: Yuma County Superior Court Commissioner 3 (Honorable Lisa Bleich)**

**Parties:**

**State: Nathaniel T. Sorenson**

**250 W. 2<sup>nd</sup> St., Suite G**

**Yuma, AZ 85364**

**nathaniel.sorenson@yumacountyaz.gov**

**928-388-4300**

**Defendant: Kristi Riggins\***

**168 S. 2<sup>nd</sup> Ave.**

**Yuma, AZ 85364**

**kristi.riggins@yumacountyaz.gov**

**928-817-4600**

**\*Kristi Riggins retired from the practice of law and relocated to the Phoenix, Arizona area. I am unable to locate her new contact information.**

**Summary: Defendant was an employee at a care home watching over severely disabled adults. While at work, the defendant stomped on the victim's stomach leaving a red mark. I lost a pre-trial motion requesting to bring in the defendant's poor behavior at work over the weeks leading up to the incident. The defendant was demoted approximately 3 weeks prior to this incident for a clerical error he made. I was motioning to admit this evidence as other act evidence showing motive. The judge precluded the evidence.**

**Significance: I learned that no matter how good I think I have prepared, there is always something that can derail a case. I had discussed the possibility of that testimony being precluded, and asked the victim representatives if they would like me to offer a better plea. They asked me to take the case to trial. I did, and the defendant was found not guilty on all charges.**

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

**Not applicable**

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

**Not applicable**

29. Describe any additional professional experience you would like to bring to the Governor's attention.

**My diversity of practice distinguishes me from other attorneys. I have practiced for at least a year each in the Felony, Misdemeanor, Violation of Probation, and Juvenile sections of a prosecutor's office. I have extensive experience in all areas of criminal law.**

**Clerking for two judges gives me unique insight into judicial functioning. I learned about keeping a straight face on the bench regardless of what is being said or done in the courtroom. Judicial temperament is an important characteristic, and I learned early in my career to maintain my composure in all situations. This attribute will serve me well on the bench.**

**My clerkship also provided a breadth of experience in many different areas of the law. And I also gain a breadth of legal experience through my teaching. I teach at Arizona Western College in the paralegal program. I teach substantive areas of the law including Business, Probate, Contracts, Criminal Law and Procedure, and introductory courses for paralegals. I spend time learning the substantive law. But I also spend time interacting with the students and teaching them how to think critically.**

|   |
|---|
| <b>BUSINESS AND FINANCIAL INFORMATION</b> |
|---|

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14?

**No.**

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise?

**No.**

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are appointed?

**Not applicable.**

32. Have you filed your state and federal income tax returns for all years you were legally required to file them?

**Yes.**

33. Have you paid all state, federal and local taxes when due?

**Yes.**

34. Are there currently any judgments or tax liens outstanding against you?

**No.**

35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support?

**No.**

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce?

**No.**

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest

**No.**

38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties?

**No.**

|                           |
|---------------------------|
| <b>CONDUCT AND ETHICS</b> |
|---------------------------|

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity?

**No.**

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation?

**No.**

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.

**Not applicable.**

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

**Not applicable.**

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

**Not applicable.**

44. List and describe any sanctions imposed upon you by any court.

**Not applicable.**

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction?

**No.**

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law?

**No.**

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency?

**No.**

48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs?

**No.**

49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings?

**No.**

|  |
|--|
| <b>PROFESSIONAL AND PUBLIC SERVICE</b> |
|--|

50. Have you published or posted any legal or non-legal books or articles?

**No.**

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

**Yes.**

52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars?

**Yes.**

**I teach in a paralegal program at Arizona Western College. I have taught Introduction to Paralegalism, Business Law, Probate Law, and Criminal Law and Procedure. I cover the substantive law in each course with an emphasis on critical thinking and "thinking like a lawyer."**

**The Introduction to Paralegalism course is a survey course where I attempt to introduce the students to the legal world and legal discussions. I focus on critical thinking by discussing news articles and trending legal topics. In Business Law I focus on contracts, with a small part of the class spent on business organizations. Probate law goes through the components of a will and then spends some time on trusts. Criminal Law and Procedure discusses the various types of crimes, and then procedures for investigations and trial.**

53. List memberships and activities in professional organizations, including offices held and dates.

**Arizona State Bar  
Yuma County Bar**

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar?

**No.**

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

**Not applicable.**

54. Describe the nature and dates of any relevant community or public service you have performed.

**I serve as a Bishop in the Church of Jesus Christ of Latter-day Saints. I began my service in July 2015. I spend approximately 15 - 20 hours a week serving the 650 members of my congregation. I do this by organizing and presiding at meetings on Sunday and during the week. I also spend time counseling with members regarding having problems or issues in their lives. These problems range from illness to mental health to financial to spiritual. I also oversee church discipline. I interview and counsel with the youth (age 12 – 18) on issues they are having.**

**I get to interact with people going through hard times, and I develop empathy and sympathy for the problems they are having. I also learn to see through all of the information to the heart of the issues they are having. I dig down to the root cause, and look for ways to resolve those issues. This is a unique opportunity that I have, which I see as invaluable experience in someone taking the bench.**

**I serve on the Yuma County Republican Party Executive Committee. I was the first vice chair for one year with Jonathan Lines from January through December 2016. Then I served as first vice chair for two years with Russ Jones from January 2017 through December 2018. I currently serve as third vice chair. As first vice chair I took care of Precinct Committeeman training and recruitment. Now, I am in charge of programming for the monthly meetings.**

**I spend the rest of my free time with wife and kids. I support my wife's efforts to raise our kids in a manner that will create strong, productive adults. We try to raise our children to be contributing members of the rising generation.**

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

**After only five years at the Yuma County Attorney's Office, I became a Supervisor. I supervise the Misdemeanor unit where I hire and train all of the new attorneys for our office. (May 2016 – Present)  
Eagle Scout: June 1999**

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

**Precinct Committeeman: January 2016 to the Present date  
Yuma County Superior Court Judge (applicant): May 2017**

Have you ever been removed or resigned from office before your term expired?

**No.**

Have you voted in all general elections held during the last 10 years?

**Yes, to the best of my memory.**

57. Describe any interests outside the practice of law that you would like to bring to the Governor's attention.

**I find joy in simple things in life. Service to others is my primary interest outside of work and family. But I view my work and my time with family as service as well. My wife and I volunteer in our church to work with the youth. I spend a lot of time every month meeting with the youth in interviews, meals, activities, and playing games. Volunteering with the youth is a wonderful opportunity to pass along my knowledge and experience. But I also learn so many lessons as I watch these youth grow.**

**I have recently returned to coaching. I love coaching and teaching. I consider my knowledge and experience as a resource to pass on. I was a volunteer coach during my undergraduate education, and I have recently returned to coaching my children's soccer teams. It is wonderful to see the joy and enthusiasm as the kids chase the ball. And I love getting to spend time with my children.**

**My oldest daughter is a prolific reader. She has inspired me to read more for pleasure. I have been recently reading biographies. I am discovering a treasure of history as I delve into the lives of the great men of the past. I have learned that the greatest of men make mistakes. And the smallest of men can do great things. I see patterns of behavior that lead to lasting happiness, and mistakes that tear apart lives. It is a fascinating study.**

**My wife and I recently began playing tennis together. It is a great way for us to exercise and spend time together. We can chat between rallies, and work on improving a new skill.**

|               |
|---------------|
| <b>HEALTH</b> |
|---------------|

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying?

**Yes.**

## ADDITIONAL INFORMATION

59. Provide any information about yourself (your heritage, background, life experiences, etc.) that you would like the Governor to consider.

I am Arizona born and raised. I was born in Tucson, and then we moved to Parker. I lived there for 7 years. Then we moved to Page for 2 years. We spent 6 months in Wilcox, and then a year and a half in Thatcher. We moved to Yuma when I was eleven years old. I returned to Tucson for law school. I know Arizona and Arizonans in a unique way. I love this state and her people. I know her uniquely from living in her small towns and her big cities. I have been marked by each place I lived, and I bring that love and knowledge with me to every case I work on.

I left Yuma at 19 to serve a church mission in Ireland. I lived in Dublin, Ireland and Belfast, Northern Ireland. I learned to love the Irish for their cultural beauty and their open hearts. I spent two years on the Emerald Isle, and I saw firsthand what happens when the rule of law is not respected. I saw the buildings where people planted bombs to kill others. I saw the "parades" as Protestants marched through Catholic neighborhoods. I saw the Catholic murals depicting the Protestants with hate. Generational prejudices that have amplified over the years tear at the society. But recently, law makers have made progress by enforcing the law. I understand that if the government abdicates its role as the law maker and enforcer, then people will fill that gap with vigilante justice. I take the prosecutors role in preventing chaos seriously. I will bring that same desire to the bench if selected.

On returning home I enrolled at Brigham Young University in Provo, UT. I graduated with a degree in Secondary Education. I am a teacher at heart. I enjoy the pursuit of knowledge and the opportunity to share that knowledge with others. Teaching and learning are a single endeavor. I try to maintain a love of learning by reading books. And not only books on the law. I pursue all knowledge, because a well-rounded education makes for a better person. So I read fiction and non-fiction alike. I will bring that thirst for knowledge to the bench with me. I will learn all I can about the law, so that I am able to make well-reasoned judgment.

I decided on law school. I attended the University of Arizona, graduating in May 2010. I received a certificate in International Trade and Business Law and in Criminal Law and Policy. This allowed me to take a broad spectrum of classes and teachers. I gained a solid foundation in the law. Following law school I clerked for a court in Nevada. In Nevada, I was able to deepen my understanding of the areas of law that I studied in law school. I began to see how the pursuit of justice involves a solid

understanding of the law tempered with compassion and common sense. A good judge would never allow mercy to rob justice. But a great judge sees how mercy and justice work together to make a better society.

I married at 22. I learn everyday about patience, compromise, and hard work from my wife. We are blessed with six children. They teach me many lessons that a book never could. Patience in spades, but also how to pursue life with passion. I learn lessons from my family that I know will serve me well as a judge. I know this because they serve me well in my work as a prosecutor.

I am devoutly religious. It is a part of my life. I try to live my life in line with the precepts taught by Jesus Christ. Love, respect, mercy are attributes I cultivate in personal and professional lives. But Christ also taught honor and respect for the laws of the land. Render to Ceasar, is not just a command to pay taxes. It is a command to honor the laws and processes of the governments who rule. We should honor the government and its institutions, but we should also work to improve them where we can. As a citizen, I do so. I am active in the Republican Party. I seek to improve the system of law and government I live in by voting and working to get good people elected. But as a judge, my role would be different. I would work to consistently apply the law in a manner that is fair and just. Just as I hope all judge do and will.

I don't know if I am diverse. I hope everyone feels similar to me. I have lived the life I was given, and I feel I have lived it well. So I know that, if selected, I will serve with honor and uphold the Constitution of Arizona and the Constitution of the United States.

60. Provide any additional information relative to your qualifications you would like to bring to the Governor's attention.

**I've been pretty long winded, so I'll give you a break on this question.**

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location?

**Yes.**

62. Attach a brief statement explaining why you are seeking this position.

**See attached.**

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.

**See attached.**

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than two written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.

**See attached.**

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.

**Not applicable.**

-- INSERT PAGE BREAK HERE TO START SECTION II  
(CONFIDENTIAL INFORMATION) ON NEW PAGE --

Attachment for Question 62.

I have spent my life serving others. I look for opportunities to serve my family, my community, and my God. I view this not as an opportunity for me to advance my career, but as an opportunity to better serve my community.

Yuma is my home, and Yuma deserves great judges who will apply the law to the facts in a manner that is fair, honest, and equal. There is no room for bias and opinion on the bench. The office of judge requires an equitable and fair analysis of each case. This is a skill that I have honed in my years of raising children, prosecuting cases, and serving the members of my congregation. I have opportunities daily to hear about issues and weigh out the evidence. These opportunities sometimes come in small situations such as my children arguing over what television show to watch. But I also have opportunities to assist couples with marital problems and parents having issues with children. In each case, I sit and listen to the information provided. I ask questions designed to elicit information necessary to resolving the issue. And I often find ways to help the person or people to find a solution on their own.

I understand that serving as a judge is a stressful position, and I have experienced this type of stress in many circumstances. I have sat on councils where I disagree with the majority of persons involved. But I speak my mind and argue my position carefully and thoughtfully. Just as I would carefully and thoughtfully outline my orders if selected to serve as a judge. Most importantly, I desire to serve as a judge in Yuma, Arizona, because I believe that I am most capable of making Yuma a better community by serving as a judge. I believe in my skills and abilities, and I believe in the system. I know that I can assist people in making changes in their life, and I guide people in positive decision making processes.

**Attachment for Question 63.**

1 JON R. SMITH  
2 YUMA COUNTY ATTORNEY  
3 NATHANIEL T. SORENSON  
4 DEPUTY COUNTY ATTORNEY  
5 Arizona State Bar No. 028367  
6 250 West Second Street  
7 Yuma, Arizona 85364  
8 (928) 817-4300  
9 YCAAttOffice@yumacountyaz.gov

10  
11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
12  
13 IN AND FOR THE COUNTY OF YUMA  
14

10 STATE OF ARIZONA,  
11  
12 Plaintiff,  
13  
14 vs.

13 JOSEPH JOHN SOZA,  
14  
15 Defendant.

No. S1400CR2015-1008  
S1400CR2015-1007  
S1400CR2015-0002

Division: COMMISSIONER II  
(ROUFF)

STATE'S RESPONSE TO DEFENDANT'S  
MEMORANDUM OF CREDIT

16  
17 The State of Arizona, through the Office of the Yuma  
18 County Attorney, respectfully moves this court to deny the  
19 defendant's request to grant credit for time served in Maricopa  
20 County in his Yuma County Probation Violation cases.

21 **FACTUAL HISTORY**

22 On May 27, 2015, the defendant, Joseph John Soza, was  
23 convicted of attempted unlawful use of a means of transportation,  
24 a class-six felony, in Yuma County, Arizona. The court sentenced  
25 defendant to thirty-six months of supervised probation. On  
26 November 13, 2015, the defendant pled guilty to the crime of  
27 Attempted Theft of Means of Transportation, a class four felony.  
28 The defendant was ordered to serve 48 months of supervised

1 probation following a four month jail sentence. On November 13,  
2 2015, the defendant also pled guilty to Theft and Possession of a  
3 Dangerous Drug. The defendant received probation terms on these  
4 cases concurrent with the sentence stemming from the defendant's  
5 other guilty plea on November 13, 2015.<sup>1</sup> On February 25, 2016, the  
6 defendant absconded from probation. The defendant's probation  
7 officer filed a petition to revoke probation (PTR) on February  
8 29, 2016.

9           On August 16, 2016, the defendant was arrested in  
10 Maricopa County. On August 19, 2017, Maricopa County charged the  
11 defendant with burglary in the second degree, possession of  
12 dangerous drugs, criminal damage, cause fear of physical injury,  
13 and theft of a means of transportation. (See Exhibit \_\_\_\_). The  
14 defendant remained in the custody of Maricopa County until June  
15 27, 2017, at which time the defendant pled guilty to theft of a  
16 means of transportation (Count 3), a class-five felony, and  
17 possession of dangerous drugs (Count 2), a class-four felony.  
18 (See Exhibit \_\_\_\_). At sentencing, the defendant received a  
19 sentence of 2.25 years' incarceration for Count 3 with credit for  
20 the 311 days he spent in presentence custody, from August 19,  
21 2017 until June 26, 2017. The defendant received three years  
22 probation for Count 2 to be served consecutive to Count 3. (See  
23 Exhibit \_\_\_\_).

24           The Arizona Department of Corrections accepted custody  
25 of the defendant and, on July 12, 2017, notified the Yuma County  
26 \_\_\_\_\_

27 <sup>1</sup> Defendant was also ordered to participate in, and successfully complete,  
28 Drug Court as a term of probation in both of these cases. However, the  
defendant failed to appear at his Drug Court staffing because he already  
absconded. Subsequently, the defendant was removed from Drug Court.

1 Attorney's Office of defendant's location. On July 13, 2017, the  
2 Yuma County Attorney's Office petitioned for a writ of habeas  
3 corpus ad prosequendum and an order was granted the following  
4 day. (See Exhibit \_\_\_\_). The defendant was transferred to the  
5 custody of Yuma County on July 24, 2017 to face the Petitions to  
6 Revoke Probation filed in February 2016. The defendant admitted  
7 to the allegations in the petitions on September 26, 2017 with no  
8 sentencing agreements. At disposition, the defendant made an oral  
9 motion for credit for time served. The Court ordered the issue be  
10 briefed by both parties.

11 **I. THE DEFENDANT IS NOT ENTITLED TO CREDIT THE TIME SERVED IN**  
12 **HIS MARICOPA COUNTY CASE TOWARD HIS YUMA COUNTY CASES.**

13 "Custody credit is only allowed where the time is  
14 'actually spent in custody pursuant to an offense....'" State v.  
15 San Miguel, 132 Ariz. 57, 60-61, 643 P.2d 1027, 1030-1031 (1982)  
16 (quoting A.R.S. 13-709(B) (now 13-712(B)). Credit for time served  
17 is to be given where a person is in custody for the case where  
18 the credit is being applied. See State v. De Passquallo, 140  
19 Ariz. 228, 229, 681 P.2d 380, 381 (1984) (holding the defendant  
20 should receive time on his Arizona case for time served while  
21 pending charges in the Arizona case even where that time was also  
22 credited on a Federal sentence). Arizona State Rules of Criminal  
23 Procedure 8.3(b)(1) states, "Any person who is imprisoned in this  
24 state may request final disposition of any... complaint pending  
25 against the person in this state..." "To meet this burden, a  
26 defendant must show that the Arizona charge was a "'but for'  
27 cause" of his or her out-of-state presentence incarceration."  
28

1 State v. Cecena, 235 Ariz. 623, 626, 334 P.3d 1282, 1285 (2014).

2            "It is the defendant's burden at sentencing to  
3 demonstrate entitlement to presentence incarceration credit." *Id.*  
4 at 625, 334 P.3d at 1284. The State can then file a writ of  
5 habeas corpus ad prosequendum which serves as a request for  
6 custody of the defendant. See State v. Seay, 232 Ariz. 146, 148,  
7 302 P.3d 671, 673 (2013) (citing State v. Loera, 165 Ariz. 543,  
8 545-546, 799 P.2d 884, 886-887 (App.1990).

9            In the present case, the probation officer filed a  
10 petition to revoke defendant's probation in February 2016. A  
11 warrant was issued at that time. In August 2016, the defendant  
12 was arrested for multiple charges resulting in two new felony  
13 convictions. The defendant pled guilty and was sentenced on those  
14 charges in June 2017. At no point between August 2016 and June  
15 2017, did the defendant follow the procedures outlined in Arizona  
16 State Rules of Criminal Procedure 8.3(b)(1). Yuma County did not  
17 file a writ of habeas corpus ad prosequendum until July 2017.  
18 This was after the defendant and was sentenced in Maricopa  
19 County, and transferred to the Arizona State Prison system. While  
20 there was a warrant for the defendant's arrest, there has been no  
21 showing by the defendant that the warrant was the "'but for'  
22 cause" required under the Cecena standard. Indeed, it appears the  
23 defendant was in custody in Maricopa County because of new felony  
24 charges pending. The arrest of the defendant was not on the  
25 warrant, but because he was committing a crime.

26            The State analogizes the *Cecena* case. In *Cecena*, the  
27 defendant was in custody in Mexico. However, Rule 8.3 does not  
28 require the jurisdiction where the defendant is being held on new

1 charges to be a foreign jurisdiction, or even another state.  
2 Therefore, the State feels that Rule 8.3 applies even where the  
3 two jurisdictions in question are different counties in the State  
4 of Arizona. Rule 8.3 is designed to allow a defendant to move his  
5 cases along according to his own will. He has the duty because  
6 the benefit of quickly moving the case is his. In the present  
7 situation, the defendant is attempting to get the benefit of Rule  
8 8.3 without abiding by the duty and burden of Rule 8.3

9           Therefore, the State respectfully moves this court to  
10 deny the defendant's request to grant credit for time served in  
11 Maricopa County in his Yuma County Probation Violation cases.

12       **II. THE DEFENDANT IS NOT ENTITLED TO CREDIT FOR THE TIME HE**  
13       **SPENT IN MARICOPA COUNTY JAIL IF THE COURT IMPOSES A**  
14       **SENTENCE CONSECUTIVE TO HIS MARICOPA COUNTY SENTENCE.**

15           A defendant is not entitled to a "double credit  
16 windfall." State v. McClure, 189 Ariz. 55, 57, 938 P.2d 104, 106  
17 (Ct. App. 1997) (quoting State v. Cuen, 158 Ariz. 86, 87, 761  
18 P.2d 160, 161 (App.1988)). When consecutive sentences are  
19 imposed, a defendant may not receive presentence incarceration  
20 credit on more than one of those sentences, "even if the  
21 defendant was in custody pursuant to *all* of the underlying  
22 charges prior to trial." State v. McClure, 189 Ariz. 55, 57, 938  
23 P.2d 104, 106 (Ct. App. 1997); cf. State v. Brooks, 161 Ariz.  
24 177, 181, 777 P.2d 675, 679 (Ct. App. 1989) (granting petitioner  
25 credit where the judge imposed concurrent sentences).

26           In this case, Maricopa County awarded the defendant  
27 credit for 311 of the 314 days he spent awaiting sentencing for  
28

1 his August 19, 2016, charges. During this time, Yuma County had  
2 no knowledge of the defendant's whereabouts as he had absconded  
3 from probation and fled the county months earlier. It was not  
4 until the July 12, 2017, notice from ADOC that Yuma County was  
5 informed of the defendant's incarceration. Yuma County then  
6 petitioned the court for a writ of habeas corpus ad prosequendum  
7 and secured the defendant's transfer to Yuma County. The  
8 defendant seeks a "double credit windfall" for the time he spent  
9 in presentence incarceration, hoping to apply the credit he  
10 already received in Maricopa toward his Yuma County sentence.

11           However, the defendant may only receive this "double  
12 credit windfall" if the Court imposes a sentence concurrent to  
13 his Maricopa sentence. A.R.S. 13-708(E) requires a court to run  
14 sentences consecutive when one of the crimes is committed while  
15 the defendant is on probation. In this case, the defendant  
16 committed a new crime while he was an absconder on probation. The  
17 defendant should not receive a concurrent sentence on his Yuma  
18 County cases because the legislature clearly intended a person  
19 who commits crimes while on probation to receive consecutive  
20 sentences. If this Court imposes any sentence consecutive to the  
21 Maricopa County sentence, this Court may not grant the defendant  
22 credit for time served on both cases.

23           Therefore, the State asks this Court to impose  
24 sentences in the Yuma County cases to run consecutive to the  
25 sentence imposed in Maricopa County and deny the defendant's  
26 request for credit for time served in Maricopa County on the Yuma  
27 County Cases.

1 CONCLUSION

2 The State asks the this Court to agree with the logic  
3 of the Cecena court and deny the defendant credit for the days  
4 served in Maricopa County while pending final disposition of his  
5 felony case in that county. If the court finds the Cecena case  
6 unpersuasive, then the State asks this Court to follow the  
7 legislative intent of A.R.S. 13-708 and sentence the defendant to  
8 sentences consecutive to each other and to the Maricopa County  
9 case and only grant credit to the defendant on a single case.

10 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of **OCTOBER, 2017.**

11 JON R. SMITH  
12 YUMA COUNTY ATTORNEY

13  
14 NATHANIEL T. SORENSON  
15 DEPUTY COUNTY ATTORNEY

16 Copy of the foregoing  
17 was placed in the box  
18 of the following on this  
19 20<sup>TH</sup> day of OCTOBER, 2017:

20 The Honorable **STEPHEN ROUFF, COMMISSIONER II**

21 **Raymond Vaca**, Attorney for Defendant, Public Defender's Office

22 By: \_\_\_\_  
23  
24  
25  
26  
27  
28

1 JON R. SMITH  
YUMA COUNTY ATTORNEY

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9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
10 IN AND FOR THE COUNTY OF YUMA

11 STATE OF ARIZONA,

12 Plaintiff,

13 vs.

14 MICHELLE C. GRECO,

15 Defendant.

No. S1400CR2014-0938

Division: COMM. II (ROUFF)

STATE'S RESPONSE TO DEFENDANT'S  
MOTION TO COMPEL DISCLOSURE OF  
CONFIDENTIAL INFORMANT

16 COMES NOW the State of Arizona, through the Office of  
17 the Yuma County Attorney, by and through the undersigned deputy,  
18 responding to defendant's Motion to Compel Disclosure of  
19 Confidential Informant filed on November 18, 2014. The State asks  
20 this Court to deny the defendant's motion. This response is  
21 supported by the attached Memorandum of Points and Authorities.

22 RESPECTFULLY SUBMITTED this \_\_\_\_ day of DECEMBER, 2014.

23 JON R. SMITH  
24 YUMA COUNTY ATTORNEY

25  
26 NATHANIEL T. SORENSON  
27 DEPUTY COUNTY ATTORNEY



1 methamphetamine for sales. A handgun was hidden in the couch  
2 cushion immediately next to where the drugs were sitting. The  
3 defendant was sitting on the couch within reach of the drugs and  
4 gun when the Task Force executed the search warrant.

5       Persons other than the defendant were present during the  
6 search; however, the defendant admitted possessing and selling  
7 methamphetamine and marijuana. Based on the physical evidence and  
8 the defendant's statements, the defendant was charged with  
9 Possession of Dangerous Drugs for Sale along with seven other  
10 charges. The State only used the confidential informant's  
11 information to obtain the warrant, and does not intend to use the  
12 informant for proof of guilt at trial.  
13

#### 14 The Defendant's Arguments

15       The Defendant argues that the confidential reliable  
16 informant provided an inaccurate description of the defendant  
17 which might provide a defense to the charges.

#### 18 Law

19       Arizona Rules of Criminal Procedure Rule 15.4(b)(2) states:

##### 20       **b. Materials Not Subject to Disclosure.**

21       (2) *Informants.* Disclosure of the existence of  
22 an informant or of the identity of an informant  
23 who will not be called to testify shall not be  
24 required where disclosure would result in  
25 substantial risk to the informant or to the  
26 informant's operational effectiveness, provided  
27 the failure to disclose will not infringe the  
28 constitutional rights of the accused.

1 Rule 15.4(b)(2) codified the holding in *Roviaro v. United*  
2 *States*.<sup>1</sup> Arizona courts also adopted the *Roviaro* standard.<sup>2</sup>

3 The *Roviaro* standard requires a balancing by the trial  
4 court when determining whether to require disclosure of a  
5 reliable confidential informant.<sup>3</sup> The balancing test weighs the  
6 "public['s] interest in protecting the flow of information,  
7 against the individual's right to prepare his defense."<sup>4</sup> The  
8 test weighs three factors:

- 9
- 10 1) the level of the informant's activity;
  - 11 2) the helpfulness of the disclosure to the asserted  
12 defense; and
  - 13 3) the government's interest in non-disclosure.

14 Arizona's Supreme Court says "a defendant seeking to  
15 overcome the basic policy of protecting an informant's identity,  
16 has the burden of proving that the informant is likely to have  
17 evidence bearing on the merits of the case."<sup>5</sup> Speculation on an  
18 informant's knowledge is not enough to force disclosure of the  
19 informant's identity.<sup>6</sup> The defendant must show that the  
20 informant is a material witness who can testify on issues  
21 pertaining to the guilt of the defendant.<sup>7</sup>

22

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23

24 1. 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 639 (1957)

25 2. *State v. Tisnado*, 105 Ariz. 23, 458 P.2d 957 (1969).

26 3. *Id.* at 24, 458 P.2d at 958.

27 4. *Id.*

28 5. *State ex rel. Berger v. Superior Court*, 111 Ariz. 429, 430, 531 P.2d 1136,  
1137 (1975)

6. *State ex rel. Berger*, 111 Ariz. at 430, 531 P.2d at 1137.

7. *State v. Grounds*, 128 Ariz. 14, 15, 623 P.2d 803, 804 (1981).

1) The informant's involvement was limited to obtaining the search warrant.

This case is analogous to *State v. Dixon*, where the defendant argued mistaken identity.<sup>8</sup> The court in *Dixon* held, "Since the informant's information was used only to support the issuance of the warrant and did not pertain to any sales transactions, nondisclosure did not hamper appellant's defense."<sup>9</sup>

Similarly, in this case, the informant was not present at the execution of the search warrant. Thus, the informant cannot testify to the events of that day. Assuming, arguendo, that the informant saw a tall, Hispanic woman possessing drugs at the same address on a different day, that testimony would not only be irrelevant, but it also would not help the defendant in light of her own incriminating statements made during the execution of the search warrant.

2) The informant cannot provide any information which would assist the defense.

The defense has not made the necessary showings to overcome the privilege as stated in Rule 15.4(b)(2) of the Arizona Rules of Criminal Procedure. The defense asserts that the informant has information regarding another person who possessed drugs at the address identified in the search warrant. Because the defendant identified herself as the person named in the warrant

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8. *Dixon*, 125 Ariz. 442, 444, 610 P.2d 76, 78 (1980).

9. *Id.*

1 and admitted possessing and selling drugs, there is no issue as  
2 to who possessed the drugs found pursuant to the warrant. Thus,  
3 information about a possible third party possessing drugs is  
4 irrelevant and would not aid the defense at trial.

5 The facts in this case also conform to the facts in *State*  
6 *v. De La Cruz*.<sup>10</sup> In *De La Cruz*, the informant was not disclosed  
7 because the court found: 1) there were other people in the house  
8 with the defendant at the time the warrant was executed who  
9 could serve as material witnesses; 2) the informant was not  
10 present when the arrest occurred; 3) the informant's information  
11 was not used against the defendant except to obtain the warrant;  
12 4) the record at trial corroborated the defendant's story; and  
13 5) testimony was provided that the informant's life was in  
14 danger if the identity was revealed.<sup>11</sup>

16 In the instant case, there were two other people in the  
17 trailer with the defendant when the warrant was executed. The  
18 informant was not present when the warrant was executed, and the  
19 informant's information was used only to obtain the warrant. The  
20 informant's information was not presented to the grand jury, and  
21 will not be used by the State at trial. Finally, the affidavit  
22 for the warrant states that the informant's identity should be  
23 protected to protect the informant's personal safety and to  
24 protect the informant's future usefulness to law enforcement.

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26 10. *De La Cruz*, 19 Ariz.App. 166, 505 P.2d 1057 (1973).

27 11. *Id.* at 168, 505 P.2d at 1059.

1 3) Disclosure of the informant's identity in this case would put  
2 the safety of the informant at risk, as well as harm the  
government's ability to use informants in future cases.

3 Informants are an indispensable part of narcotic  
4 investigations. Officers work with informants on a daily basis  
5 to build cases and combat the drug problem in our community.  
6 "The policy of the informant's privilege is in protecting police  
7 informants and in maintaining a steady supply of information to  
8 our law enforcement agencies."<sup>12</sup>

9  
10 In this case, the affidavit identifies physical, social and  
11 emotional dangers to the informant if their identity is  
12 revealed. These dangers result from retribution when criminals  
13 find out a person provided information to law enforcement. If  
14 identified, this informant can no longer work with law  
15 enforcement to protect our community, and would impede the  
16 ability of law enforcement to find new informants.

17 Additionally, revealing the informants identity would have  
18 a chilling effect on the desire of the community to provide  
19 anonymous tips to law enforcement for fear their name would be  
20 disclosed and retribution would follow.

#### 21 CONCLUSION

22  
23 The informant in this case provided information which law  
24 enforcement used to obtain a search warrant. When the warrant was  
25 executed, law enforcement found drugs, a gun, and indicia of  
26 sales. The defendant confessed to possessing and selling drugs at

1 the residence listed in the warrant. This confirmed the source's  
2 information. The defendant's Motion to Compel Disclosure of  
3 Confidential Informant should be denied because:

4 1) the informant was not present during the search and is not a  
5 material witness,

6 2) the informant cannot give any testimony as to the facts from  
7 inside the home or the defendant's statements to law enforcement,  
8 and

9 3) the safety and effectiveness of the informant would be impeded  
10 along with the flow of information to law enforcement.

11 Based on the above facts and law, the State respectfully  
12 requests defendant's Motion to Compel be denied.  
13

14  
15 RESPECTFULLY SUBMITTED this \_\_\_\_ day of **DECEMBER, 2014.**

16 JON R. SMITH  
17 YUMA COUNTY ATTORNEY

18  
19 NATHANIEL T. SORENSON  
20 DEPUTY COUNTY ATTORNEY

21 Copy of the foregoing  
22 was placed in the box  
23 of the following this  
\_\_\_\_ day of **DECEMBER, 2014:**

24 The Honorable **STEPHEN ROUFF**, Commissioner **II**  
25 **RAYMOND VACA**, Attorney for Defendant

26 By: \_\_\_\_\_

27 12 State v. Gutierrez, 121 Ariz. 176, 182, 589 P.2d 50, 56 (1978).  
28

Attachment for Question 64.

FILED

Case No. HC-1004016

2010 OCT 21 PM 3: 28

Dept. No. 02

JOAN MALONE  
WHITE PINE COUNTY CLERK

BY J. Manson  
DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

\*\*\*\*\*

ROBERT CRAWFORD,

Petitioner,

vs.

E. K. McDANIEL,

Respondent.

ORDER DISMISSING PETITION FOR  
WRIT OF HABEAS CORPUS

FACTUAL AND PROCEDURAL HISTORY

On April 6, 2010, Petitioner filed a Petition for Writ of Habeas Corpus. On April 28, 2010, this Court ordered Respondent to answer within forty-five (45) days. On June 10, 2010, Respondent filed an Answer to Petition for Writ of Habeas Corpus. Petitioner alleges the State of Nevada Department of Corrections ("NDOC") forfeited more statutory good time credits than he had. Petitioner does not claim any Due Process violations, only NDOC's failure to properly calculate statutory good time credits.

Upon reviewing the file, the Court finds additional briefing or argument is not necessary.

DISCUSSION

As stated in N.R.S. 34.360, "[E]very person unlawfully committed, detained, confined or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of ... imprisonment or restraint." However, writs of habeas corpus cannot be employed to adjudicate all prisoner grievances. A prisoners challenge is limited to the judgment of conviction or sentence in a criminal case, or the computation of time the prisoner has served pursuant to a judgment of conviction.<sup>1</sup>

**A. Petitioners Allegations Not Relating to Computation of Time are not Cognizable.**

Habeas corpus proceedings are a special statutory remedy.<sup>2</sup> A habeas corpus petition may be used to seek relief from a judgment of conviction or sentence in a criminal case, or challenge the computation of time served pursuant to a judgment of conviction.<sup>3</sup> A habeas petition may challenge the validity of current time served, but not a condition of confinement.<sup>4</sup>

Petitioner alleges falsification of evidence/evidence tampering during a preliminary hearing held in Carson City Justice Court on January 22, 2008. Petitioner also alleges NDOC is using the disciplinary process to prevent Petitioner's transfer to a minimum security facility. Neither of these allegations pertain to current time served, so they are not appropriate for a habeas corpus proceeding.<sup>5</sup>

...

...

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<sup>1</sup>N.R.S. 34.720.

<sup>2</sup>*Hill v. Warden*, 96 Nev. 38, 40, 604 P.2d 807 (1980).

<sup>3</sup>NRS 34.720.

<sup>4</sup>*Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250 (1984).

<sup>5</sup>*see, e.g. Bowen*, 100 Nev. at 490, 686 P.2d 250..



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**B. Petitioner's Statutory Good Time Credits Were Calculated Correctly.**

A habeas corpus petition may be used to seek relief from a challenge to computation of time served pursuant to a judgment of conviction.<sup>6</sup> When a prison disciplinary hearing results in the loss of statutory good time credits, minimal Due Process rights entitle a prisoner to: (1) advance written notice of the charges, (2) a qualified opportunity to call witnesses and present documentary evidence, (3) a written statement by the fact-finder of evidence relied upon, and (4) a sufficiently impartial fact-finder.<sup>7</sup> Finally, the disciplinary hearing officer's decision must be supported by some evidence.<sup>8</sup>

It appears Petitioner's only allegation is NDOC's forfeiture of nine hundred fifty-five (955) days of statutory good time, and Petitioner claims not to have that number of credits available for forfeiture. Petitioner makes no other claims of improprieties regarding any of his disciplinary hearings.

NDOC records show that Petitioner earned one thousand four hundred seven (1407) days towards his first sentence<sup>9</sup> and one thousand four hundred forty-six (1446) days towards his second sentence.<sup>10</sup> In addition, NDOC records show Petitioner as only forfeiting eight hundred seven (807) days. Both of Petitioner's sentences contain enough statutory good time to cover the number of credits claimed by Petitioner or the number of credits in NDOC records.

Petitioner does not allege any improprieties during any of his disciplinary hearings, nor any violations of his Due Process rights. In addition, NDOC records clearly contradict

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<sup>6</sup>NRS 34.720.

<sup>7</sup>*Id.*; *Wolff v. McDonnell*, 418 U.S. 539, 563-69 (1974).

<sup>8</sup>*Hill*, 472 U.S. at 454.

<sup>9</sup>Petitioner is currently serving two concurrent fifteen (15) year sentences.

<sup>10</sup>State's Exhibits 1 & 2 (for a summary see Respondent's Answer to Petition for Writ of Habeas Corpus, p. pp. 3 - 4).

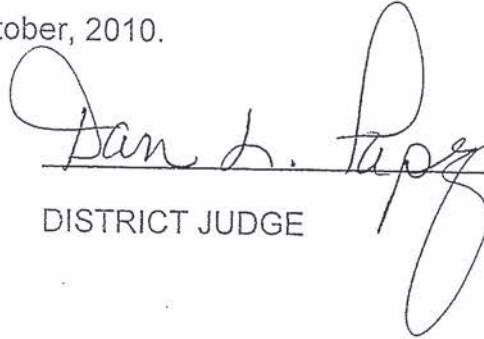


1 Petitioner's contentions by showing that NDOC has only forfeited statutory good time  
2 credits accrued by Petitioner. Petitioner's claims are belied by the record.

3 Good Cause Appearing,

4 IT IS HEREBY ORDERED that this PETITION FOR WRIT OF HABEAS CORPUS  
5 is DISMISSED.

6 DATED this 21<sup>st</sup> day of October, 2010.

7   
8  
9 DISTRICT JUDGE

SEVENTH JUDICIAL DISTRICT COURT  
DAN L. PAPEZ  
DISTRICT JUDGE  
DEPARTMENT 2  
WHITE PINE, LINCOLN AND EUREKA COUNTIES  
STATE OF NEVADA



Case No. CR-1007056

Dept. No. 02

**IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WHITE PINE**

\* \* \* \* \*

State of Nevada,

Appellant,

vs.

State of Nevada,

Respondent.

**ORDER OF AFFIRMANCE**

**PROCEDURAL HISTORY**

Appellant, Robin Custer Hancock was charged with Driving Left of Center, Failure to Wear a Safety Belt, and Driving Under the Influence by the Department of Public Safety Nevada Highway Patrol, in Eureka, Eureka County, Nevada. These charges stem from an incident on November 9, 2008 on U.S. Highway 50 at mile marker Eureka four in Eureka County<sup>1</sup> where the Appellant is accused of swerving into, and

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<sup>1</sup>Trial Transcript at 16.

driving in, the oncoming traffic lane while not wearing a seat belt and being under the influence of alcohol.<sup>2</sup>

The Justice Court decided to combine the Motion to Suppress hearing with the trial, and both were held on January 21, 2009, with Appellant appearing and represented by Deputy Public Defender Ben Gaumond. The Motion to Suppress was denied, and Appellant was found guilty of Driving Left of Center,<sup>3</sup> Failure to Wear Safety Belt,<sup>4</sup> and Driving Under the Influence of Intoxicating Liquor.<sup>5</sup> The "Judgment and Sentence" was filed on January 22, 2009. Appellant filed this timely Notice of Appeal on January 27, 2009.

### **FACTUAL HISTORY**

On November 9, 2008, Trooper Minoletti was traveling westbound on U.S. Highway 50 in Eureka County when he saw a blue Toyota truck.<sup>6</sup> Trooper Minoletti testified he saw the truck swerve right into the gravel on the side of the road, then swerve left, cross the dotted yellow line, and move completely into the oncoming traffic lane for several seconds, and finally swerve right back into the gravel on the side of the road and come

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<sup>2</sup>Trial Transcript at 18 - 20.

<sup>3</sup> N.R.S. 484.291

<sup>4</sup> N.R.S. 484.641(2)

<sup>5</sup> N.R.S. 484.379 and N.R.S. 484.3792

<sup>6</sup>Trial Transcript at 15 - 16.

to a complete stop.<sup>7</sup> Trooper Minoletti put on his emergency lights and conducted an enforcement stop on the blue truck.<sup>8</sup>

Trooper Minoletti approached the truck and noticed the driver was not wearing a safety belt.<sup>9</sup> Trooper Minoletti requested the driver's license, insurance and registration.<sup>10</sup> While making this request, Trooper Minoletti noticed the driver's eyes were glossy and bloodshot, there was a moderate smell of alcohol emanating from the vehicle and the driver's speech was slurred.<sup>11</sup>

Trooper Minoletti identified the driver as Robin Custer Hancock ("Appellant"). Trooper Minoletti conducted four tests on Appellant: the horizontal gaze and nystagmus, the nine step walk and turn, the one-legged stand, and the preliminary breath test.<sup>12</sup> Trooper Minoletti testified that Appellant's performance on the four tests showed an inability to safely operate a motor vehicle.<sup>13</sup> Appellant was arrested and advised of his

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<sup>7</sup>*Id.* at 17.

<sup>8</sup>*Id.* at 19.

<sup>9</sup>*Id.* at 20.

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

<sup>12</sup>*Id.* at 22 and 33.

<sup>13</sup>*Id.* at 24 - 34.

*Miranda* rights as well as the Nevada Implied Consent Law.<sup>14</sup> Appellant was transported to jail where a blood draw was conducted by Dr. Waite.<sup>15</sup>

At trial, Trooper Minoletti testified that it is common practice for a trooper to stop and assist a motorist who is stopped on the side of the road.<sup>16</sup> The procedures of the stop would be the same as an investigatory stop, but the stop would be inquisitory to see if the motorist requires assistance.<sup>17</sup> The stop becomes investigatory if the trooper sees anything indicating a crime has been committed, is being committed or is about to be committed.<sup>18</sup>

This appeal is based on two alleged errors that occurred during the Justice Court hearing. First, Appellant alleges the Justice Court erred in denying Appellant's Motion to Suppress.

Second, Appellant alleges the Justice Court erred in not fully establishing facts for review on appeal.

Upon reviewing the file, the Court finds additional briefing or argument is not necessary.

### **DISCUSSION**

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<sup>14</sup>*Id.* at 34.

<sup>15</sup>*Id.* at 35.

<sup>16</sup>*Id.* at 39.

<sup>17</sup>*Id.* at 39 - 40.

<sup>18</sup>*Id.*

## **1. JURISDICTION OF THE DISTRICT COURT**

"The party aggrieved in a criminal action may appeal ... [t]o the district court of the county from a final judgment of the justice court."<sup>19</sup> "[A] defendant in a criminal action tried before a justice of the peace may appeal from the final judgment therein to the district court of the county where the justice of the peace is held, at any time within 10 days of the time of the rendition of the judgment."<sup>20</sup>

Appellant's trial was held on November 10, 2009 and the sentence was rendered on January 20, 2010. The Notice of Appeal was filed on January 20, 2010, and therefore Appellant's appeal is timely. The Justice Court of the Eureka Township is in Eureka County, located in the Seventh Judicial District of Nevada, and therefore this Court has jurisdiction over the matter.

## **2. STANDARD OF REVIEW IN APPEALS**

When a District Court reviews a Justice Court judgment the standard of review is whether there was sufficient evidence upon which the Justice Court's finding of guilt is based. In doing so, the District Court must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."<sup>21</sup> This review

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<sup>19</sup>N.R.S. 177.015(1)(a).

<sup>20</sup>N.R.S. 189.010.

<sup>21</sup>*Lay v. State*, 110 Nev. 1189, 1192, 886 P.2d 448 (1994) (citing *Guy v. State*, 108 Nev. 770, 776, 839 P.2d 578 (1992)).

is limited because “it is exclusively within the province of the trier of fact to weigh evidence and pass on the credibility of witnesses and their testimony.”<sup>22</sup>

### **3. JUDGMENT OF THE JUSTICE COURT**

The Justice Court found Appellant guilty of the offenses of Driving Left of Center, Failure to Wear a Safety Belt, and Driving Under the Influence. After weighing the credibility of the witnesses and their testimony, the Justice Court found the elements of the crimes were proven beyond a reasonable doubt.

#### **a.) Did the trier of fact err in denying Appellant's Motion to Suppress?**

For a traffic stop to comply with the Fourteenth Amendment, there must be reasonable suspicion.<sup>23</sup> Nevada law states:

1. Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.<sup>24</sup>

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<sup>22</sup>*Id.* (citing *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20 (1981)).

<sup>23</sup>*State v. Rincon*, 122 Nev. 1170, 1173, 147 P.3d 233, 235 (2006).

<sup>24</sup>N.R.S. 171.123(1).

"In determining the reasonableness of a stop, the evidence is viewed under the totality of the circumstances and in the context of the law enforcement officer's training and experience."<sup>25</sup> The court should consider all relevant circumstances including, but not limited to, road and weather conditions, time of day, driving pattern and behavior of the driver.<sup>26</sup> Again, these circumstances are viewed in light of the particular officer's training and experience.<sup>27</sup>

In addition to reasonable suspicion, Nevada recognizes the "community caretaker" function of law enforcement.<sup>28</sup> The community caretaking function applies where there is a reasonable belief that a motorist is in need of emergency assistance.<sup>29</sup> A reasonable belief arises if a police officer observes indications of a medical emergency or automotive malfunction.<sup>30</sup>

In this case, Trooper Minoletti testified that he saw the blue truck swerve to the right off the road, then left across the center line, and then back to the right and off the road.<sup>31</sup> This could indicate the driver of the vehicle was either intoxicated or

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<sup>25</sup>*Rincon*, 122 Nev. at 1173-1174, 147 P.3d at 235.

<sup>26</sup>*Id.* at 1175, 147 P.3d 233, 237.

<sup>27</sup>*Id.*

<sup>28</sup>*Id.* at 1175 - 1176, 147 P.3d at 237 (citing *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S. Ct. 2523 (1973)).

<sup>29</sup>*Id.* at 1176, 147 P.3d at 237

<sup>30</sup>*Id.*

<sup>31</sup>Trial Transcript at 17.

experiencing vehicular difficulties. In either case, Trooper Minoletti's testimony is evidence supporting a stop to check on the driver of the truck.

Therefore the Justice Court did not commit an error in denying the Motion to Suppress.

**b.) Did the trier of fact err by not fully establishing facts for review on appeal?**

Trial courts should issue express factual findings when ruling on suppression motions so reviewing courts will have no need to speculate.<sup>32</sup> When factual findings are written and entered, they are entitled to deference on appeal and are not overturned if supported by substantial evidence.<sup>33</sup> The trial court is in the best position to judge both witness and evidence credibility, and "unless this court is 'left with the definite and firm conviction that a mistake has been committed,' this court will not second-guess the trier of fact."<sup>34</sup>

Appellant does not argue that no factual findings were made.<sup>35</sup> Instead, Appellant argues for remand based on a single line from the Order Denying Motion to Suppress.<sup>36</sup> The Order Denying Motion to Suppress said

This court finds it difficult to place trust in [Appellant's] recitation of the events, but for the following reasons determines the credibility of [Appellant] is not important to a determination whether Trooper Minoletti had reason to contact [Appellant].<sup>37</sup>

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<sup>32</sup>*Rincon*, 122 Nev. at 1177, 147 P.3d at 238; *Rosky v. State*, 121 Nev. 184, 191, 111 P.3d 690, 695 (2005).

<sup>33</sup>*Rincon*, 122 Nev. at 1177, 147 P.3d at 238. See *State v. McKellips*, 118 Nev. 465, 469, 49 P.3d 655, 658-659 (2002).

<sup>34</sup>*Rincon*, 122 Nev. at 1177, 147 P.3d 233, 238 (quoting *McKellips*, 118 Nev. at 469, 49 P.3d at 685

<sup>35</sup>Appellant's Opening Brief p. 4, lines 17 - 18.

<sup>36</sup>*Id.* at lines 18 - 23 (quoting the Order Denying Motion to Suppress p. 2, lines 2 - 4).

Appellant argues this line from the Order meant “even if [Appellant’s] account were believed, the suppression motion should still be denied.”<sup>38</sup> Appellant argues this is only true if Appellant’s story matches the trooper’s story.

However, Appellant disregards the phrase “for the following reasons” from the Justice Court’s order. The Justice Court, after giving the above statement, continued by saying

Trooper Minoletti testified that even in the absence of observing an erratic driving pattern, he still would have stopped to contact the driver of the Toyota in order to carry out the caretaking function of the Nevada Highway Patrol. On the rural roads of this State, assistance is difficult to come (sic) by, and it is a common practice for a Trooper to contact the occupants of a vehicle stopped along the highway to confirm they are not in need of assistance.<sup>39</sup>

The Justice Court was stating that even in the absence of erratic driving, Trooper Minoletti would have properly stopped and made contact with Appellant.

In this case, there are findings of fact written, entered, and supported by substantial evidence. Because this court is not left with a “definite and firm conviction” that a mistake was made by the Justice Court, “this court will not second-guess the trier of fact.”<sup>40</sup>

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<sup>37</sup>Order Denying Motion to Suppress p. 2, lines 2 - 4.

<sup>38</sup>Appellant’s Opening Brief p. 5, lines 1 - 2.

<sup>39</sup>Order Denying Motion to Suppress p. 2, lines 5 - 10.

<sup>40</sup>*Rincon*, 122 Nev. at 1177, 147 P.3d 233, 238 (quoting *McKellips*, 118 Nev. at 469, 49 P.3d at 685

Good Cause Appearing,

**IT IS HEREBY ORDERED** that the JUSTICE COURT CONVICTION for DRIVING LEFT OF CENTER is **AFFIRMED**.

**IT IS FURTHER ORDERED** that the JUSTICE COURT CONVICTION for FAILURE TO WEAR A SAFETY BELT is **AFFIRMED**.

**IT IS FURTHER ORDERED** that the JUSTICE COURT CONVICTION for DRIVING UNDER THE INFLUENCE is **AFFIRMED**.

DATED this \_\_\_\_\_ day of January, 2010.

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DISTRICT JUDGE