"The marriage was no marriage"

Crossing Racial Lines in Territorial Arizona

The 10 Million Names Project at American Ancestors prompted me to begin researching African Americans who lived in Pima County, Arizona Territory, between 1856 and 1912. One of these individuals was Fannie (Smith) (Garcia) Pogue.

Fannie J. Smith was born April 5, 1865, at Lawrence, Douglas County, Kansas, to parents born in Kentucky.[1] She has not been located in the 1870 or 1880 censuses but is mentioned in the June 18, 1882, *Arizona Weekly Citizen*. An article reported that Fannie and her partners S. C. Ehrenfeldt and P. J. Garcia had located silver mines called Victoria and Red Cloud in the vicinity of Arivaca, Arizona.[2]

Mining has a long history in Arizona, stretching back to the pre-contact period, when Native Americans mined minerals for pigments. The Arizona Territorial period (1848–1912) saw prospectors and miners flooding the region in search of gold, silver, copper, and lead. The Southern Pacific Railroad was built across southern Arizona in 1880, leading to an influx of new arrivals. Among them were hundreds of African Americans searching for better economic opportunities.[3]

In 1880, about when Fannie is first documented in Arizona, the Black population of the entire territory was 155. The numbers grew over time, with 1,357 Black residents reported in 1890 and 1,848 in 1900.[4] A handful of African Americans went to work at mining camps as miners and cooks. An even smaller number reached a higher status in mining.

Fannie's partner Philip James Garcia was born about 1838 in California and, like Fannie, was African American. He had registered to vote in San Francisco in 1872 and was in Arizona by December 1880.[5] He moved to Tucson and purchased the San Juan Mine in the Santa Catalina Mountains for $3,500.[6] Philip and Fannie entered into a relationship; it is unclear whether they were formally married, although Fannie later used the Garcia surname.

Philip Garcia died January 9, 1887, in Tucson. Two days before his death he wrote his last will and testament, which gave all his property and estate to "Fanny Smith, now and for several years past known as Fanny Garcia, and who for years past has been my housekeeper in health, and my nurse in sickness." The property included a half interest in a ranch and several mines in the Sierrita Mountains, forty miles southwest of Tucson.[7] Fannie subsequently became known as the "Black Diamond of the Sierritas."[8]

Several years later Fannie became involved with David Pogue, who was born in Mexico on July 17, 1875, son of David S. Pogue of Kentucky and Louisa Mathilda Moreno of Mexico.[9] By the standards of the time, he was considered to be white. He had married Maria Rodriguez on December 15, 1890, in Tucson.[10] David and Maria had a daughter, Annie Pogue, born about 1893 in Tucson.[11]

In September 1893, David's wife, Maria Pogue, took her objections to David and Fannie's relationship to court. "Mrs. Maria Pogue swore to a complaint yesterday morning before Justice Scott charging her husband David Pogue and one Fannie Garcia, a colored woman, with adultery. She claimed that her husband was living with Fannie and that he was trying to gain possession of her child." David and Fannie were both arrested.

The couple was charged with violating the Edmunds Anti-Polygamy Act, passed by the U.S. Congress in 1882. Persons charged under the act could be convicted of a felony, fined up to $500, and sentenced for up to five years in prison. The law was initially directed toward members of the Latter-day Saints church but was also used to punish people in bigamous and adulterous relationships.[12]



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As a married man, David was charged with adultery. Because he did not have $500 for bail, he was sent to jail to await trial.[13] David initially claimed innocence, but then changed his plea to guilty.[14] After his trial, David was sent to Yuma Territorial Prison, arriving on October 1, 1893. He was released on December 27, 1893, after serving a three-month sentence that officially began on September 27.[15] Fannie was tried for fornication and found guilty by the grand jury and sentenced to forty days in jail. When she was released in November, Fannie treated her fellow prisoners to fruit, a luxury at the time.[16] In March 1894, Maria Pogue filed for divorce.[17]

After the divorce was granted, David and Fannie were married in Tucson on May 19, 1894, by C. P. Willson, a Methodist Episcopal minister.[18] However, the marriage was considered illegal in Arizona Territory. In 1865, the territorial legislature had passed a law based on House Bill 17. The final version of this legislation prohibited Blacks and "mulattoes," as well as "Indians and Mongolians," from marrying whites. Whites could only marry other whites; people of Mexican descent were considered white.[19]

The following year someone reported that David and Fannie were violating the Edmunds Act. A federal grand jury investigated, and, in October 1895, David was charged with adultery (although he was divorced) and Fannie was charged with fornication. Two separate trials were held in U.S. District Court. The federal government did not consider the marriage valid. "David Pogue being a single man did unlawfully willfully and knowingly had [*sic*] carnal knowledge of the body of one Fannie Garcia, the said Fannie Garcia then and there being a single woman and not the lawful wife of him, the said David Pogue." David refused to answer the subpoena for Fannie's trial and was arrested two miles north of Dudleyville, then brought to Tucson.[20]

The October 27, 1895, *Arizona Daily Star* reported that "the parties were really married, but the woman is a negress and the man is a white man, hence the marriage was no marriage." At his preliminary examination David declared that he wasn't white because his father was a Cherokee and his mother a "Mayo Indian." But the newspaper reported that David's father claimed to be an Irishman and his mother described herself as "a Mexican untainted by Indian blood."[21]

David's attempt to validate his marriage by claiming Native American ancestry was rejected by two family



Above: David Pogue, 1895, San Quentin Prison Inmate Photographs, 16466–1730, in *California, U.S., Prison and Correctional Records, 1851–1950*, Ancestry.com. *Below:* The Sierrita Mountains, Pima County, Arizona, October 2013. Photo by $1LENCE D00600D, Wikimedia Commons.

members who testified against him. "The mother and grandmother of the prisoner swore they were not of ordinary Mexican blood but belonged to the great Moreno family; as nearly Castilian as any in Mexico."[22] The jury found David guilty of perjury and, in the fall of 1895, he was sentenced to three years at San Quentin Prison in California.[23]

Fannie was also jailed after David's trial. Apparently, Fannie had threatened David's mother that if she denied being Native American Fannie would "put a head on her" and "do her up." Mrs. Pogue reported Fannie to the U.S. district attorney, which led to Fannie's incarceration in the Pima County Jail for an undisclosed amount of time.[24]

David served two years in San Quentin before he was pardoned by President William McKinley on July 21, 1897.[25] After his release, David returned to Arizona and resumed his relationship with Fannie.

The couple was enumerated for the 1900 census on June 25 in the Palo Alto District of Pima County. David was working as a silver miner.[26] In 1901, Fannie and

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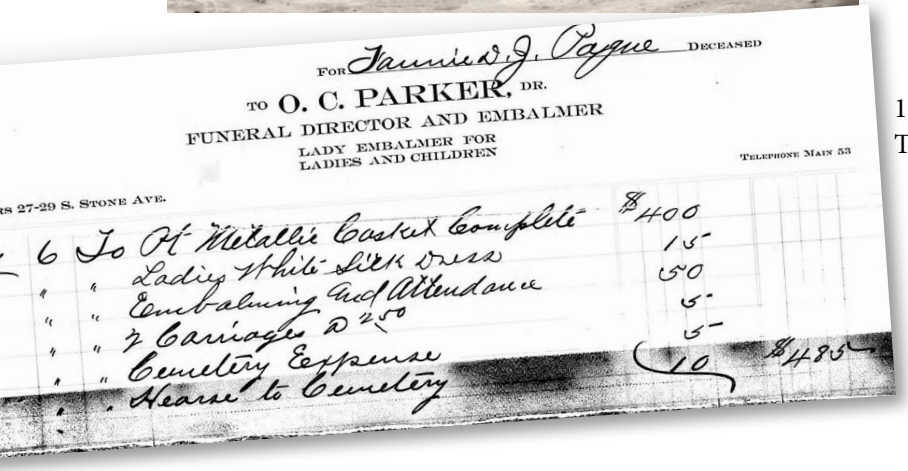

three other individuals incorporated the Lincoln Copper Mining Company.[27] In January 1902 she claimed she had taken $80,000 of ore out of her claims. In the same newspaper article, Fannie was described as "fat, black and fully forty."[28]

Fannie died from heart failure and cancer of the uterus on May 3, 1905, at the United Mining Camp, thirty-three miles southwest of Tucson. She was buried in the city cemetery portion of the Court Street Cemetery in Tucson.[29] Fannie's Probate Court file contains the bill for her funeral, which shows that David purchased the most expensive coffin available and had her embalmed and clothed in a new white silk dress.[30]

Her obituary was respectful and noted her place in the history of Arizona.

> Mrs. Fannie J. Pogue, aged 40 years, died at the Lincoln camp in the Sierritas at four o'clock Wednesday morning after about eight hours' illness, although Mrs. Pogue had been suffering for a long time with [a] tumor, which affected the stomach, and during the last and fatal illness produced heart trouble. Undertaker Parker went out Wednesday and late yesterday afternoon brought the remains to his establishment. Judge Pickett, who came in with advices, returning to town with Mr. Parker. Deceased, who was married, came to this section twenty-four years ago and has been identified with the history of Arizona during her residence in the territory, much of her time being occupied in the promotion of mining. She has had control of the old Garcia properties for many years and recently closed with Judge Pickett, late of Galveston, and others in city settlement of transfer. She still spent much of her time at camp, where the new company has been developing. Funeral at ten o'clock Saturday morning from the late residence, 373 South Main street.[31]

Six months after Fannie's death, on October 16, 1905, David married Blanca Rios (b. ca. 1883) in Tucson.[32] How that marriage ended is unknown.

From the top: George Cram, *Arizona (*1893), David Rumsey Map Collection; William Y. Beach, "Two Men at a Mine Entrance or Well," Arizona or New Mexico, 1882–83, New York Public Library Digital Collections; 1881 Pima County Courthouse where Fannie Pogue was tried, *Tucson Citizen*; and the bill for Fannie Pogue's funeral expenses, Pima County probate file, no. 1505, *Arizona, U.S., Wills and Probate Records, 1803–1995*, Ancestry.com.

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By 1910, David was living in Phoenix with his ex-wife Maria; their daughter, Annie; her husband, Ralph Escobosa, and their three-month-old son, Arthur.[33] In 1918, David married Dana (Eldridge) Howerton.[34] David died twenty years later, on May 30, 1938, from myocarditis arteriosclerosis at the Mays Rest Home in Phoenix. He was still married at the time of his death. He was buried there in the Saint Francis Catholic Cemetery.[35]

Hundreds of African Americans moved to southern Arizona in the late nineteenth and early twentieth centuries, searching for economic opportunity. Among them was Fannie (Smith) Pogue, who lived according to her own terms, refusing to allow a discriminatory law determine who she could marry. She was a successful and respected businesswoman and a devoted wife—but her story was forgotten soon after her death. Research in censuses, court, probate, and property records, and newspaper articles restored the details of Fannie Pogue's life. The stories of countless other forgotten African Americans are waiting to be reclaimed. ◆

NOTES

1 Fannie Pogue death record, *Arizona, U.S., Death Records, 1887–1968*, Ancestry.com; and David Pogue household, 1900 U.S. Census, Palo Alto, Pima Co., Arizona Territory, p. 7, Ancestry.com.

2 "Official Records," *Arizona Weekly Citizen*, June 18, 1882, 3.

3 J. Michael Cantry and Michael N. Greeley, eds., *History of Mining in Arizona* (Tucson, Ariz.: American Institute of Mining Engineers and Southwestern Mineral, 1987).

4 U. S. Census Bureau, "Arizona—Race and Hispanic Origin: 1860 to 1990," www2.census.gov/library/working-papers/2002/demo/pop-twps0056/table17.pdf, September 13, 2002.

5 Philip James Garcia entry, San Francisco 1872–1873, *California, U.S., Voter Registers 1866–1898*, Ancestry.com; "Personal," *Arizona Daily Citizen*, December 14, 1880, 3.

6 "Deeds for Mines," *Arizona Weekly Citizen*, April 3, 1881, 3.

7 Pima County probate file, no. 442, *Arizona, U.S., Wills and Probate Records , 1803–1995*, Ancestry.com.

8 "Lincoln Camp Mines," *Arizona Daily Star*, June 15, 1919, 6.

9 David's birth is reported as occurring between 1867 and 1875. As his parents had another child named David who was born and died in 1871, the David Pogue discussed here was likely born after 1871. David Pogue death record, *Arizona, U.S., Death Records, 1887–1968*, Ancestry.com. His parents and eight siblings were enumerated in Pima County in 1900: David Pogue household, 1900 U.S. census, Tucson, Pima Co., Arizona Territory, p. 11, Ancestry.com.

10 Pogue-Rodriguez entry, *Arizona, U.S., Marriage Collection, 1864–1982*, Ancestry.com.

11 Anna Pogue Escobosa entry, *U.S., Social Security Applications and Claims Index, 1936–2007*, Ancestry.com.

12 Mary Melcher, "Divorce in the Desert: Unhappy Marriages and Female Autonomy in Arizona, 1870–1930," *Journal of Arizona History*, 59 (Winter 2018): 279–304.

13 "Late Locals," *Arizona Daily Star*, September 8, 1893, 4.

14 "Federal Court Matters," *Arizona Daily Citizen*, September 27, 1893, 4.

15 David Pogue entry, Register and Descriptive list, 1879–1917, *Arizona, U.S., State Prison Records, 1875–1929*, Ancestry.com.

16 "Note about Fruit," *Arizona Daily Citizen*, November 11, 1893, 4.

17 "Local News," *Arizona Daily Citizen*, April 2, 1894, 4.

18 Pogue-Garcia entry, *Arizona, U.S., County Marriage Records, 1865–1972*, Ancestry.com.

19 Roger D. Hardaway, "Unlawful Love: A History of Arizona's Miscegenation Law," *Journal of Arizona History*, 27 (Winter 1986): 377–90.

20 Criminal case files, 1882–1923, cases 1019 and 1020; National Archives and Records Administration, National Archives at Riverside, Record Group 21–Records of the District Courts of the United States, U.S. Territorial Court for the First Judicial District of Arizona.

21 "Said It Was Manslaughter," *Arizona Daily Star*, October 27, 1895, 4.

22 "The Perjury of Pogue," *Arizona Daily Star*, November 1, 1895, 4.

23 Criminal case files, 1882–1923, case 1037 [note 20].

24 "The Perjury of Pogue" [note 22].

25 David Pogue, prisoner 16561, California State Archives; Department of Corrections, San Quentin Prison Inmate Photographs, 16466–1730; and, as "Daniel Poyne," prisoner 16561, Prison Registers, 1882–1897, both in *California, U.S., Prison and Correctional Records, 1851–1950*, Ancestry.com.

26 David Pogue household, 1900 U.S. census [note 1].

27 "Articles of Incorporation," *Arizona Daily Star*, November 9, 1901, 5.

28 "Reported Mine Sale Pima County Matter," *Tucson Citizen*, September 5, 1902, 1.

29 Fannie Pogue death record [note 1].

30 Pima County probate file, no. 1505 [note 7].

31 "Local Paragraphs," *Arizona Daily Star*, May 5, 1905, 4.

32 Pogue-Rios entry, *Arizona, U.S., County Marriage Records, 1865–1972*, Ancestry.com.

33 Ralph Escobosa household, 1910 U.S. Census, Phoenix Ward 1, Maricopa Co., Arizona, p. 7, Ancestry.com.

34 "Couple to Wed," *Arizona Republican*, October 11, 1918, 8; Pogue-Howerton entry, *Arizona, U.S., County Marriage Records, 1868–1972*, Ancestry.com.

35 David Pogue death record [note 9]; and David Pogue gravestone, FindaGrave memorial #200544518, Saint Francis Catholic Cemetery, Phoenix, Arizona.

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