

IN THE PASCUA YAQUI COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

Docket No. CA-01-003

Pascua Yaqui Tribe,)	
Appellant,)	
)	
v.	)	OPINION
	)	AND
	)	ORDER
Randy Baltazar,)	
Appellee.)	

Appearances: Tamara Walters, Chief Prosecutor, for the Appellant;
Vincent Gonzalez, Public Defender, for the Appellee.

Before: Richard A. Monette, Chief Justice;
Carolyn Abeita, Associate Justice;
Carey N. Vicenti, Associate Justice.

C.N. Vicenti, Justice, for a unanimous Court.

This matter comes before the Court of Appeals by an appeal submitted by the Chief Prosecutor on behalf of the Pascua Yaqui Tribe of Arizona. This Court requested and received brief in this matter. Oral arguments were held on June 14, 2001. Having fully considered the arguments and the authorities cited, this Court hereby holds in favor of the Appellant, Pascua Yaqui Tribe, and remands this matter to the trial court for further consideration consistent with this ruling.

I. Jurisdiction

The Appellant has appealed an Order of the Court entered on March 2, 2001. Section 1.22 of the Court of Appeals Procedures Act allows such appeal. This Court has jurisdiction over the present appeal.

II. Facts

On August 4, 2000, at about 8:30 in the evening, a crime was allegedly committed on South Kau Bo-oh Street. The crime resulted in bodily injury to Ernesto Flores. As a result of a cursory investigation the Office of the Prosecution then filed this case against Randy Baltazar. The Complaint filed in this case relied principally upon an affidavit prepared by Officer Vincent Pettis. Apparently, as a matter of mere clerical error, the Officer cited the date of the incident as August 4 rather than the correct day of August 5. As the Prosecution became aware of this mistake, she requested counsel for the defense to stipulate to an amendment to change the '4' to a '5'. Defense Counsel refused. The Prosecution then filed a Motion to Dismiss and re-filed the Complaint making the necessary alteration. The new complaint was filed on November 14, 2000.

As the new complaint advanced through the criminal process, Ernesto Flores, the alleged victim, then disclosed that the alleged crime occurred at 7600 South Kau Bo-oh -- --thus contradicting yet another prosecution fact, that the event took place at '7700' South Kau Bo-oh Street. The Prosecution then, based upon this new information, directed Officer Pettis to re-interview Mr. Flores and revise his original affidavit. He did so. The Prosecution filed a Motion to Amend the Complaint. As the matter went forward, however, it was soon discovered that the date had been reverted to the originally erroneous 4th of August, 2001. Upon the Defense Counsel's assertions that such mistakes of date and location would prejudice the defenses available to the defendant the Court summarily dismissed the complaint with prejudice, recognizing that these errors "*can* prejudice the defendant". Order of March 2, 2001. (Emphasis added.) This appeal then

ensued. The appeal essentially asks whether such dismissal constituted an abuse of discretion on the part of the presiding judge.

III. Discussion

The appeal in this matter is rather direct and simple. It asks whether, upon initial examination of a complaint, a judge possesses the discretion to dismiss a complaint with prejudice which is technically defective upon its face with respect to foundational facts. Our primary guidance in this question is presented by the Pascua Yaqui Tribal Code at Chapter 1, Sections 1.28 to 1.30. Specifically, Section 1.30 of that Chapter states that the form of the Complaint must contain (a) the name of the Jurisdiction where it is filed, (b) the name of the party, if the defendants be known, and if not, then such names as may be given by them by the complainant, and a statement signed by the complainant of the acts constituting the offense and the time and place of the commission of the offense, as near as may be ascertained.

It is in the latter requirement regarding a statement of “the time and place” of the alleged offense from which this appeal arises. Section 1.57 of Chapter 1 give us further guidance in stating that a court *must* set aside a complaint (a) where it is found not to comply with the requirements of Sec. 1.29 or 1.30... (b) the defendant has been charged without reasonable of probable cause, [or] (c) upon a determination that the Court has no jurisdiction over the person of the offense. The mandatory nature of this provision suggests that a court upon first examination of a complaint has no discretion in rendering a determination of the sufficiency of a complaint. If a complaint does not meet the requirements of Section 1.30 in its recitation of foundational facts, it would appear that the complaint must be dismissed. But this is misleading.

The terms of Section 1.30 are, themselves, cast in very liberal fashion. For instance, it is not necessary to identify the defendant with precision. See Section 1.30 (b). The “time and place” requirements themselves only require a precision “as near as they can be ascertained”. Section 1.30(c). This suggested tolerance of imprecision built into the criminal process recognizes the immense potential for error or mistake early in the initiation of criminal proceedings. At this point in the criminal process, there has been insufficient time to determine the reliability and veracity of witnesses. The court’s role here is to determine whether the basic information necessary to go forward with a criminal prosecution have been met, whether reasonable or probable cause exists that a crime has been committed and whether the case involves an incident having occurred within the territorial boundaries and involving a person within the Tribe’s jurisdiction. The court is determining whether there has been any mistake *ab initio* as to whether this is even the proper court for the filing of the criminal case; the court is determining whether a gross error exists leading to an erroneous conclusion as to the reasonableness or probability of the conclusion that a crime has been committed.

The appellant cites to United States v. Orbiz, 358 F. Supp. 200 (D. Ct. Puerto Rico, 1973) in which the federal court states that “common sense and reason prevail over mere technicalities”. We are in agreement. When a case of this nature is filed, not only is it a question of fairness to the defendant that provides a court with a policy basis to render determinations. The court must also recognize that a victim, too, relies upon the Tribe to recognize that some harm has occurred and that the Tribe sits in a position of trust to remedy that harm. The court’s superior concern, therefore, must be whether a justice can be accomplished which takes into account these competing concerns. This

becomes more important in the early stages of the criminal process when a confrontational opportunity to examine the factual basis for the complaint has not yet happened.

The appellee has argued that the trial court dismissed the case “*not* for a deficiency in the complaint but rather , [for] the unfairness of subjecting Mr. Baltazar to multiple affidavits regarding the same incident.” Brief in Response at 4. (Emphasis in the original). More precisely, the court stated that it could not allow any amendment to the complaint because to do such “*can* prejudice the defendant”. Order of March 2, 2001. (Emphasis added.) The basis for the dismissal is not inconsequential here. When a dismissal is reached so early in the criminal process, it is incumbent upon the court to state with specificity how such errors do prejudice the defendant. It is not enough that it is an inconvenience to the defendant----it is a truism that all legal process involves inconvenience. But, in a ‘victim’ case, as stated above, the Tribe stands in a trust position to ensure that justice is accorded to all parties. A technical failure early in the legal process must point to a fatal failure on the prosecution’s part, or, to a clear violation of the defendant’s rights. An order at this juncture dismissing a case with prejudice serves as an explanation to the tribal public, in general, and the victim, in particular, why any further pursuit of the criminal prosecution would result in a manifest injustice to the defendant, either through the violation of his rights or through the sabotage of an available defense.

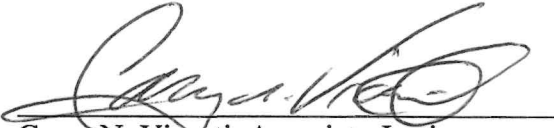
The appellant fulfilled the requirements of 1 PYTC Section 1.30 in the filing of the charges against the appellee. The mere fact that certain allegations were in error

could not work a prejudice either against a defense possessed by the defendant or against any rights he may have.

IV. Conclusion

For the foregoing reasons, we conclude that the trial court abused its discretion in dismissing this case with prejudice. We reverse the trial court and remand this case for further consideration consistent with this opinion and order.

IT IS SO ORDERED, this 12th day of September, 2001.



Carey N. Vicenti, Associate Justice

IN THE PASCUA YAQUI COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

Docket No. CA-01-004

Pascua Yaqui Tribe)
Appellant)
)
v.)
)
Baltazar, Randy)
Appellee)

ORDER

This Court received the Appellee's Motion to Preclude Appellant's Reply Brief, Appellant's Opposition to Motion to Preclude, and Appellee's Reply to Motion to Preclude. This Court has taken the all of the documents under advisement and will issue its ruling on the Motion to Preclude Appellant's Reply Brief at the time of the hearing in this case scheduled for June 15, 2001.

IT IS SO ORDERED this 11th day of June 2001.

Richard A. Monette, Chief Justice


Carolyn Y. Abeita, Associate Justice

Carey Vicenti by GJA - telephonically approved 6/11/01
Carey N. Vicenti, Associate Justice

PASCUA YAQUI TRIBAL COURT
P.O. BOX 200
TUCSON, AZ 85746
01 MAY 23 AM 10:14
CASE NO. CA-01-003
[Signature]

1 J. Vincent González, SBN 018372
2 Pascua Yaqui Public Defender
3 7474 S. Camino de Oeste
4 Tucson, AZ 85746

Attorney for Appellee

5 IN THE PASCUA YAQUI TRIBAL COURT OF APPEALS
6 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

8 PASCUA YAQUI TRIBE,) Case No.: CA-01-003
9 Appellant,) (Tribal Court No. CR-01-024)
10 vs.) REPLY TO APPELLANT'S OPPOSITION
11 BALTAZAR, RANDY,) TO APPELLEE'S MOTION TO
12 Appellee) PRECLUDE
13)

14 Pursuant to Rule 1.20 of the Rules of Appellate Procedure,
15 Appellant had seven (7) days to respond to Appellee's Motion to
16 Preclude. Since Appellant did not file its Response within seven
17 days, this Court "will consider the motion unopposed." Appellant
18 filed its response fifteen days after receipt of the Motion,
19 eight days late. Appellee requests that this Court declare this
20 motion unopposed and grant Appellee's Motion to Preclude.

21 If this Court does entertain the Opposition, then Appellee
22 offers this Reply. Appellant is incorrect in its Opposition that
23 "It was alleged that Appellant was served by placing a copy of
24 the Brief in Response in the Appellant's In-Box at the Pascua
25 Yaqui Tribal Court..."¹

26
27
28 ¹ See Appellant's Opposition, page 1, lines 22-24.

1 Page 10 of Appellee's Brief in Response states "the
2 foregoing **hand-delivered** this date to Prosecutor's Office
3 (Appellant)" and to the Court in its In-box.²

4 Our offices do not have access to the other party's in-box
5 at court, nor do those in-boxes serve as a mailbox. Custom and
6 procedure between the two offices is to hand-deliver all
7 documents. Appellant knows of this procedure, and in this case,
8 Appellee did not deviate from that procedure, especially given
9 the importance of this particular pleading and this Court's
10 rules. Appellee hand-delivered its Response to Appellant on
11 April 19, 2001, as indicated.

12 Reviewing the Appellant's Exhibit B proves that Appellee
13 does not deliver **any** document via Appellant's in-box at Court,
14 let alone this motion. Only court clerks deliver documents this
15 way; this is the Tribal Court's method of delivery to parties,
16 and the parties ourselves hand-deliver documents to each other.

17 Appellant's claim has deceived this Court to prevail on
18 this issue. Appellant knows the practices and the established
19 delivery procedure between offices. Whether or not Appellant's
20 staff stamped "received" in a timely manner is irrelevant. The
21 court's stamp states April 19, 2001 and Appellee hand-delivered
22 Appellant's copy before the end of business on that same day.

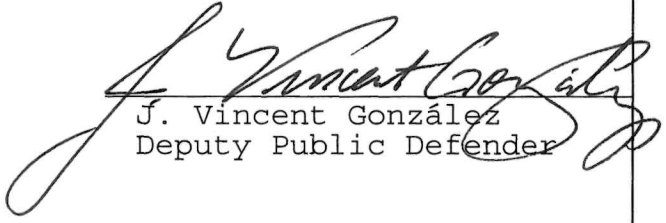
23 Appellant, by filing its Opposition over a week late, shows
24 its disregard to this court's rules. This pleading is the second
25 consecutive late document in the same case. Ironically, this
26 pleading argues the first deadline violation. These repeated


27
28 ² Emphasis mine, clarification mine.


1 violations show Appellant's propensity to file documents in an
2 untimely manner and/or its total disregard to this Court's
3 rules.

4 Appellee only asks that this court enforce its own rules.
5 Ignoring the rules, or bending them without cause sets a
6 dangerous precedence. Accordingly, Appellee requests that this
7 court preclude Appellant's reply brief.

8 RESPECTFULLY Submitted this 23rd day of May 2001.

9
10
11 
12 J. Vincent González
13 Deputy Public Defender
14

15 ORIGINAL and  four copies hand-delivered this date to
16 Court by:

17 COPY of the foregoing hand-delivered this date to
18 Appellant by: 
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28

FILED May 16 2001
NO. CA-01-003 DOCKETED
AT 4:50 O'CLOCK P.M.
CLERK. [Signature]

1 PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR
2 7474 S. Camino de Oeste
Tucson, Arizona 85746
3 (520) 879-5780

4 Tamara Walters, SBN 10510
Chief Prosecutor

5 **IN THE PASCUA YAQUI TRIBE COURT OF APPEALS**

6 **IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA**

7
8 PASCUA YAQUI TRIBE,)
Appellant,) NO. CA-01-003
9) (Tribal Court No. CR-01-024)
Vs.)
10 BALTAZAR, RANDY,) **OPPOSITION TO MOTION TO PRECLUDE**
Appellee.)
11 _____)

12 COMES NOW The Pascua Yaqui Tribe, by and through counsel
13 undersigned, and hereby opposes Appellee's Motion to Preclude
14 Appellant's Reply Brief for the reason that it was timely filed.

15 Appellant agrees that the Reply Brief was to be filed within
16 seven (7) days from the date the Brief in Response was received.
17 Appellant received the Brief in Response on April 20, 2001, and
18 was stamped in as Received by the Pascua Yaqui Prosecutor's
19 Office on April 20, 2001, as indicated in Exhibit A attached
20 hereto and incorporated herein by reference. Appellee filed the
21 Brief in Response on April 19, 2001 at 4:38 p.m. (Refer to the
22 Court stamp on Exhibit A.) It was alleged that Appellant was
23 served by placing a copy of the Brief in Response in the
24 Appellant's In-Box at the Pascua Yaqui Tribal Court on April
25 19th. However, a review of the Prosecutor's Sign Out Sheet kept
26 by the Pascua Yaqui Tribal Court, attached hereto as Exhibit B,
27 does not indicate that a copy of the Brief in Response was left
28

1 for Appellant in PY In-Box.

2 Appellant was not served with the Brief in Response until
3 the next day, April 20th. Seven days from the date of receipt
4 was April 27, 2001. This is the date the Reply Brief was filed.
5 Appellant's Reply Brief was timely filed, and should be
6 considered in this Court's Ruling. Appellee's Motion to Preclude
7 must be denied.

8 In support of Appellant's contention that the Brief in
9 Response was not served on Appellant until April 20, 2001 is the
10 fact that Appellee's Motion to Preclude was filed May 1, 2001 at
11 3:20 p.m., and it was alleged that a copy was hand-delivered to
12 Appellant that same date. It was not delivered to the Appellant
13 until today, May 16, 2001. When delivered, it had been hole
14 punched, indicating that it was inadvertently filed in a file and
15 when discovered fifteen days later, served on Appellant.
16 Appellant then date stamped it when received, and filed this
17 Opposition to Motion to Preclude. Appellant's copy of the Motion
18 to Preclude is marked as Exhibit C, attached hereto, and
19 incorporated herein by reference.

20 **Respectfully submitted this 16th day of May, 2001.**

21
22 OFFICE OF THE PROSECUTOR
23 PASCUA YAQUI TRIBE

24 

25 Tamara Walters
26 Chief Prosecutor
27
28

1 Original and four copies of the foregoing delivered/mailed
2 This date to:

3 Clerk of the Court, Pascua Yaqui Tribe Court of Appeals

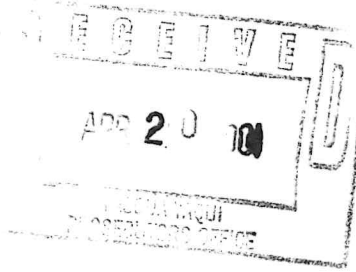
4 Copy delivered/mailed to:

5 Vincent Gonzalez
6 Deputy Public Defender
7 7474 S. Camino de Oeste
8 Tucson, Arizona 85746
9 Attorney for Appellee

10
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By  _____

EXHIBIT A

J. Vincent González, SBN 018372
Pascua Yaqui Public Defender
7474 S. Camino de Oeste
Tucson, AZ 85746



CLASSIFIED
CA-01-003
[Signature]

Attorney for Appellee

IN THE PASCUA YAQUI COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,
Appellant,

vs.

BALTAZAR, RANDY,
Appellee

) Case No.: CA-01-003
) (Trial Court No. CR-01-024)
)
) BRIEF IN RESPONSE

COMES NOW, Appellee, Randy Baltazar, by and through counsel undersigned to file his Brief in Response as prescribed by Section 1.22 of the Court of Appeals procedures.

A. Jurisdiction

Appellee concurs that this Court of Appeals has jurisdiction over this matter.

B. Facts of the Case

Appellee agrees with Appellant's Facts of the Case, however, Appellee contests several points of interest, specifically, the Appellant's non-compliance with Rule 3.1(B) of the Tribal Rules of Criminal Procedure.

1. Location/address of alleged incident.

After the arraignment hearing for case number CR-00-166,¹ the Appellant properly disclosed the names and addresses of potential witnesses. Appellee, through counsel had each

¹ See Appellant's Brief on Appeal, Section B: Facts of the Case.

*Dismissed w/ prep
Hawin to [unclear]*

Exhibit A

1 mistakes and thus, the errors in the Appellant's pleadings could have been avoided if Appellant
2 was more diligent in its pre-trial investigations.

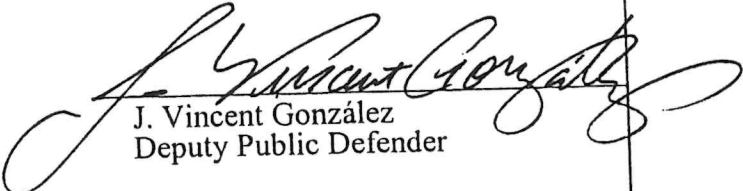
3 Appellant had its chance to prove its case. Appellant actually had two chances. Now, it
4 wants a third. The constant re-filing is harassing. Appellant's disregard for properly following
5 the Rules of Criminal Procedure proves a "conscious indifference." Either way, the trial court
6 had proper discretion to dismiss this matter. But, more simply, the trial court's decision was
7 based on common sense, justice, and fairness. Time after time, Appellant ignored details, refused
8 to investigate its case prior to filing, speak to its own witnesses, and review its own pleadings
9 prior to submitting them. Appellant relied on amended pleadings and the option of a dismissal
10 without prejudice. All the while, Appellant's fate lay in the balance.

11 The trial court did what was just. Its ruling did not prejudice Mr. Flores, as asserted by
12 the Appellant. The Appellant's negligence got this case dismissed. The trial court only ruled on
13 the information presented before it. Appellant blames the trial court, yet its failure to zealously
14 advocate for the Tribe and Mr. Flores is the real reason.

15 Appellant misinterpreted the Motion to Dismiss and the trial court's ruling. As a result,
16 its argument in its brief is not on point and neither is the case law presented. The trial court has
17 the discretion to dismiss when the prosecutor has displayed harassment or intentional or
18 "conscious indifference" to important procedures. Appellee has provided supporting case law.

19 WHEREFORE, Appellee prays that this court uphold the trial court's ruling.

20 RESPECTFULLY Submitted this 19th day of April 2001.

21
22 
23 J. Vincent González
24 Deputy Public Defender

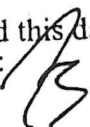
25 COPY of the foregoing hand-delivered this date to
26 Prosecutor's Office, PY Ct. In-box by: 

EXHIBIT B

ECUTORS / PUBLIC DEFENDERS DOCUMENT SIGN OUT SHEET		FOR THE WEEK OF		
DATE	DEF. NAME	DOCKET #	TYPE OF ORDER	SIGNATURE AND DATE
1 4.18.01		CR-01-085	Order	
2 4.18.01		JD-01-001	Order	
3 4.18.01		CR-01-091	Order	
4 4.18.01		TR-01-1997	Order	
5 4.18.01		TR-99-045Z	Order/BU	
6 4.18.01		CR-01-044	Judgment PD on A	
7 4.18.01		CR-01-042	Judgment PD on A	
8 4.18.01		CR-01-107	Bond - capd (Amend)	
9 4.18.01		CR-95-01	Reg	
10 4.18.01		CR-01-003	Order	
11 4.18.01		TR-01-1393	Judgment Order	
12 4.18.01		TR-01-1851	Order	
13 4.18.01		JD-01-008	Motion	
14 4.18.01		JV-01-013	Part 1 C, List	
15 4.18.01		CR-01-107	Order	
16 4.19.01		TR-01-1791	Asset Notice of Disclosure	
17 4.19.01		JD-01-072	Order	
18 4.19.01		JD-01-043	Order	
19 4.19.01		CR-01-0091000	Order	
20 4.19.01		CR-01-007	Order - GSC	
21 4.19.01		JD-01-040	Order, 1 BW-CW	
22 4.19.01		JD-01-039	Order	
23 4.19.01		JD-01-037	Order	
24 4.19.01		JD-01-036	Order	
25 4.20.01		CR-00-037/10/129	Order	
26 4.20.01		JD-01-031	POs	
27 4.20.01		JD-01-028	Subpoenas (10)	
28 4.20.01		JD-01-039	Amend Jo-P.O.	
29 4.20.01		JV-01-013	Order	
30 4.20.01		CR-99-035	Order	
31 4.20.01		CR-99-0425	Order	
32 4.20.01		JD-01-001	Return receipt	
33 4.20.01		CR-00-0691071	MGL	
34 4.20.01		CR-00-090	Order	
35 4.20.01		JD-01-038	Order	
36 4.20.01		CR-99-121	Key	
37 4.20.01		JD-01-003	Order	

EXHIBIT B

EXECUTORS / PUBLIC DEFENDERS DOCUMENT SIGN OUT SHEET
FOR THE WEEK OF

DATE	DEF. NAME	DOCKET #	TYPE OF ORDER	SIGNATURE AND DATE
4.20.01		TR-99-2216	Order Request	Amberna Thomas
4.20.01		JD-01-043	Not Dis	Amberna Thomas
4.20.01		JD-01-042	Not Dis	
4.20.01		JD-01-087	Order - P.O.	4/23/01
4.20.01		AW-97-017	Order	
4.20.01		CR-95-121	Order	4/23/01
4.20.01		CR-01-015	Subpoena	
4.20.01		CR-01-015	Subpoena	Amberna Thomas
4.20.01		CR-01-015	Subpoena	
4.23.01		CR-01-100	Subpoena	Amberna Thomas
4.23.01		JV-00-042	Order (2)	
4.23.01		JD-01-037	Order B/N/C/W	4/23/01
4.23.01		JD-01-044	Order + Reg.	
4.23.01		TR-98-2223	CS. Attendance	Amberna Thomas
4.23.01		CR-01-069/070	Order + Reg	
4.23.01		ME Order	JD 01044	Amberna Thomas
4.23.01		AW-99-010	Order	
4.23.01		AW-97-017	Order	4/23/01
4.23.01		CR-99-121	Not to Dismiss	
4.23.01		CR-93-07	Summ/Comp/APP	Amberna Thomas
4.23.01		CR-01-111	Summ/Comp/APP	
4.23.01		CR-01-160	Summ/Comp/APP	Amberna Thomas
4.23.01		CR-01-105	Summ/Comp/APP	
4.23.01		CR-01-102	Recognition (Susp Bond Release)	Amberna Thomas
4.23.01		CR-01-025	Order	
4.23.01		DC-01-004	CS.	Amberna Thomas
4.23.01		CR-01-080	MEETING Bnd app.	
4.23.01		CR-01-036/071	Order / Prob Order	Amberna Thomas
4.23.01		JD-01-012	Judgment Ord	
4.23.01		CR-01-031	Order. Attachs	Amberna Thomas
4.23.01		CR-01-015	Order (2)	
4.23.01		CR-00-107	Ord.	Amberna Thomas
4.23.01		CR-93-07	Ord.	
4.23.01		CR-01-004	Ord.	Amberna Thomas
4.23.01		CR-01-103	Ord.	
4.23.01				

EXHIBIT C

J. Vincent González, SBN 018372
Pascua Yaqui Public Defender
7474 S. Camino de Oeste
Tucson, AZ 85746

Attorney for Appellee

MAY 16 2001
PASCUA YAQUI
PROSECUTOR'S OFFICE

CLERK OF COURT
CLERK - I - 411 01 00
CA-01-003
[Signature]

IN THE PASCUA YAQUI TRIBAL COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,	) Case No.: CA-01-003
Appellant,	) (Tribal Court No. CR-01-024)
vs.	) MOTION TO PRECLUDE
BALTAZAR, RANDY,)
Appellee)

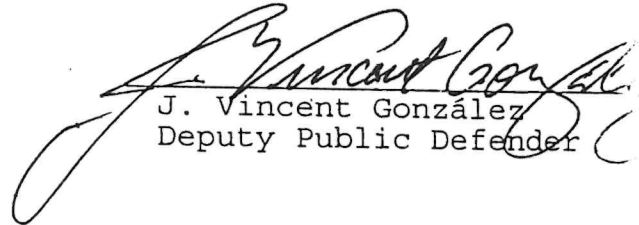
COMES NOW, Appellee, Randy Baltazar, by and through counsel undersigned to move this Court to preclude the Appellant's Reply Brief from the record and disregard its contents. The basis for this Motion is that Appellant did not file this Reply Brief within seven (7) days of being served the Brief in Response, as mandated by Section 1.22 of the new Rules of the Court of Appeals.

Section 1.22 provides that "...The Appellant shall have seven (7) calendar days after being served a Brief in Response to submit a Brief in Reply..." Appellee filed and served Appellant the Brief in Response on April 19, 2001. The deadline for Appellant's Reply was April 26, 2001. Appellant did not file its reply Brief until April 27, 2001, which is beyond the time allotted.

EXHIBIT C

For this reason, Appellee respectfully requests that this Court preclude the Appellant's Reply Brief from the record and disregard its contents.

RESPECTFULLY Submitted this 1st day of May 2001.


J. Vincent González
Deputy Public Defender

ORIGINAL and four copies hand-delivered this date to Court by: *FB*

COPY of the foregoing hand-delivered this date to Appellant by: *FB*

1 IN THE APPELLATE COURT OF THE YAQUI NATION

2 PASCUA YAQUI TRIBE)

) Case No. CA-01-003

3 Appellant)

vs.)

ORDER

4 BALTAZAR, RANDY)

5 Appellee)

6 The Appellee's counsel filed a Motion to continue oral arguments scheduled in the above matter.

7 The Appellate court is informed that the Appellant has no objection to the continuance.

8 IT IS ORDERED that the Appellee's motion is granted and the oral argument is hereby rescheduled to
9 Friday, June 15, 2001 at 10:30 a.m.

10 SO ORDERED THIS 14th DAY OF May, 2001.

11 Caroza J. Abiz
12 Acting CHIEF JUSTICE PASCUA YAQUI COURT OF APPEALS

1 Pascua Yaqui Public Defender
7474 S. Camino de Oeste
2 Tucson, Arizona 85746

3 J. Vincent González, SBN 018372
4 COUNSEL FOR: Appellee

APPELLATE COURT
CLERK OF COURT
01 MAY 10 PM 4:31
DOCKET NO CA-01-003
FILED *[Signature]*

5 IN THE APPELLATE COURT OF THE YAQUI NATION
6 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION
7

8 PASCUA YAQUI TRIBE,)

9 Appellant)

10 vs.)

11 BALTAZAR, RANDY,)

12 Appellee)
13

Case No.: CA-01-003
MOTION TO CONTINUE

14 COMES NOW, Appellee, Randy Baltazar, by and through counsel
15 undersigned to request a continuance for Oral Arguments in this
16 matter currently scheduled for May 30, 2001 at 10:30 a.m. The basis
17 for this motion is that this Counsel will be at a Drug Court
18 Conference out of state from May 29, 2001 through June 2, 2001.
19 Counsel avows that this motion is made in good faith and not for the
20 purpose of improper delay. Chief Prosecutor Tamara Walters has been
21 contacted and has no objections.

22 RESPECTFULLY SUBMITTED this 10th day of May 2001.
23

24 *[Signature]*
25 J. Vincent González
Deputy Public Defender

26 COPY of the foregoing delivered this date to
27 Prosecutor's Office, PY Ct. in-box by: *[Signature]*
28

1 J. Vincent González, SBN 018372
2 Pascua Yaqui Public Defender
3 7474 S. Camino de Oeste
4 Tucson, AZ 85746

Attorney for Appellee

TRIBAL COURT
CLERK OF COURT AND TIME

01 MAY -1 PM 3:19

BOOK NO. CP-g-03

RD

5 IN THE PASCUA YAQUI TRIBAL COURT OF APPEALS
6 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

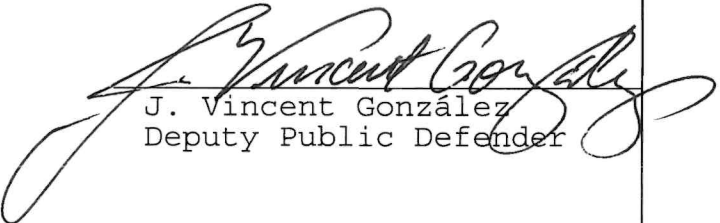
8 PASCUA YAQUI TRIBE,) Case No.: CA-01-003
9 Appellant,) (Tribal Court No. CR-01-024)
10 vs.) MOTION TO PRECLUDE
11 BALTAZAR, RANDY,)
12 Appellee)
13 _____)


14 COMES NOW, Appellee, Randy Baltazar, by and through counsel
15 undersigned to move this Court to preclude the Appellant's Reply
16 Brief from the record and disregard its contents. The basis for
17 this Motion is that Appellant did not file this Reply Brief
18 within seven (7) days of being served the Brief in Response, as
19 mandated by Section 1.22 of the new Rules of the Court of
20 Appeals.


21 Section 1.22 provides that "...The Appellant shall have seven
22 (7) calendar days after being served a Brief in Response to
23 submit a Brief in Reply..." Appellee filed and served Appellant
24 the Brief in Response on April 19, 2001. The deadline for
25 Appellant's Reply was April 26, 2001. Appellant did not file its
26 reply Brief until April 27, 2001, which is beyond the time
27 allotted.
28

1 For this reason, Appellee respectfully requests that this
2 Court preclude the Appellant's Reply Brief from the record and
3 disregard its contents.

4 RESPECTFULLY Submitted this 1st day of May 2001.

5
6
7 
8 J. Vincent González
9 Deputy Public Defender
10

11 ORIGINAL and four copies hand-delivered this date to
12 Court by: 

13 COPY of the foregoing hand-delivered this date to
14 Appellant by: 

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

01 APR 27 PM 4:49

DOCKET NO. CA-01-003
CLERK AL

1 PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR
2 7474 S. Camino de Oeste
Tucson, Arizona 85746
3 (520) 879-5780
4 Tamara Walters, SBN 10510
Chief Prosecutor

5
6 **IN THE PASCUA YAQUI TRIBE COURT OF APPEALS**
7 **IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA**

8 PASCUA YAQUI TRIBE,)
Appellant,) NO. CA-01-003
9) (Tribal Court No. CR-01-024)
Vs.)
10 BALTAZAR, RANDY,) **REPLY BRIEF**
Appellee.)
11 _____)

12 COMES NOW The Pascua Yaqui Tribe, by and through counsel
13 undersigned, and hereby files its Reply Brief to Appellee's Brief
14 in Response as follows.

15 **A. Location/address and date of alleged incident.**

16 At the time the first Complaint was filed (CR-00-166), it
17 was unknown to Appellant that the location of the incident was
18 7600 S. Kau Bo-oh instead of 7700 S. Kau Bo-oh, which was the
19 address identified to the police officer by the victim. The
20 police officer, in good faith, based the facts submitted in his
21 affidavit on information he had received from the victim and his
22 investigation of the incident. The fact that the process server
23 could not serve the witness, Josie Valencia, at 7700 S. Kau Bo-oh
24 would not necessarily have put Appellant on notice that the
25 incident occurred at a different address, as it was just as
26 likely that Josie Valencia had changed her address from 7700 S.
27 Kau Bo-oh and was no longer there when service was attempted.
28

1 When the second Complaint was filed, it was still unknown
2 that the victim had provided the police officer with an
3 inaccurate address. The victim did not know the exact address,
4 but pointed at a map of the Reservation and indicated by pointing
5 where he believed the incident to take place. The fact that a
6 witness, Josie Valencia, was not living at 7700 S. Kau Bo-oh when
7 service was again attempted, does not mean that Appellant had
8 knowledge that the location of the offense was not accurate. It
9 was not until January of 2001, when the victim himself identified
10 the error, when the Appellant had knowledge, and it then took
11 immediate action to correct the error by asking the officer to
12 re-interview the victim and prepare a new Affidavit, and then
13 filed a motion to amend the pleadings.

14 Appellant has sufficiently explained why the date of the
15 offense was stated in error, and will not again explain the same
16 facts.

17 Appellee raises the issue that he was prejudiced by multiple
18 Complaints and Affidavits being filed. The purpose of the
19 Initial Hearing is to only determine whether there is sufficient
20 probable cause to believe a crime has been committed and that
21 Defendant committed it. There was sufficient supporting
22 information in all of the affidavits to find probable cause that
23 Appellee may have committed a battery upon Ernesto Flores,
24 regardless of the date or location. Appellee was well aware of
25 the errors and could not possibly have been prejudiced by the
26 change of the date and location of the offense so early in the
27 proceedings. The Initial Hearing is not the time to question the
28

1 merits of the complaint and affidavit. Appellee would have an
2 opportunity at trial to question the police officer and the
3 victim as to the different recordings of the date and address if
4 he so desired to make Appellant's witnesses look less credible.
5 However, the dismissal of the charge with prejudice at this stage
6 and under these circumstances was an abuse of the trial court's
7 discretion.

8 **B. The Trial Court did abuse its discretion in dismissing**
9 **with prejudice.**

10 The Trial Court found that "the Court cannot allow the Tribe
11 to continue to amend their errors which can prejudice the
12 defendant." Although the Court made no specific finding of
13 prejudice and only that the defendant "may" be prejudiced, the
14 trial court found good cause to grant defendant's motion to
15 dismiss with prejudice. The Tribe was not given an opportunity
16 to respond to Appellee's Motion to Dismiss With Prejudice.

17 Appellee contends that the Trial Court acted appropriately
18 because Appellee was being harassed by the filing of new
19 complaints. Appellee cites case law from the State of Nevada and
20 the Nevada Supreme Court as support for their position. However,
21 these cases are not applicable to the facts at hand.

22 Appellee cites several Nevada cases about failing to comply
23 with important procedural rules, which are distinguishable from
24 the facts of the case at hand. State v. Austin, 482 P.2d 284
25 (1971) regarded speedy trial rights. The State had made three
26 motions to continue due to not being prepared. The rules of
27 Nevada required that any motion to continue be supported by an
28

1 affidavit setting forth the reasons for the request. The State
2 did not follow this rule and the case was dismissed at the
3 Justice Court level. The State then re-filed in the District
4 Court and they were not allowed to bring new proceedings for the
5 same offense when the original proceeding was dismissed due to
6 willful failure of the prosecutor to comply with important
7 procedural rules (i.e. filing an affidavit of good cause to
8 continue).

9 Likewise, in Maes v. Sheriff, Clark County, 468 P.2d 332
10 (1970), and McNair v. Sheriff, Clark County, 514 P.2d 1175, (1973),
11 both cases involve the State requesting continuances for not being
12 prepared or able to proceed and not filing the required affidavit
13 or giving adequate facts of good faith for the reason for the
14 continuance. The Tribe in the case at hand violated no procedural
15 rules requiring a dismissal with prejudice. There was no violation
16 of the Tribe of speedy trial rights, nor was there an agenda to
17 prolong the proceedings or harass Appellee.

18 In U.S. v. Cox, 342 F.2d 167 (5th Cir., 1965), cert. denied
19 June 1, 1965, the U.S. Attorney was presenting cases to the Grand
20 Jury for a return of an Indictment, or True Bill. The Grand Jury
21 requested the U.S. Attorney to draft certain indictments, and the
22 Court entered an Order that the U.S. Attorney draft those
23 indictments. The U.S. Attorney declined to do so, and the Court
24 gave him a one hour time limit to comply with the Court's ruling.

25 The U.S. Attorney declined to file the Indictments and was held
26 in contempt of court and jailed. The U.S. Attorney appealed and
27 the lower court's decision was overruled, finding it
28

1 was within the executive discretion of the prosecutor to bring or
2 not to bring criminal proceedings.

3 The Court considered the Constitutional requirement of an
4 indictment or presentment as a predicate to a prosecution for a
5 capital or infamous crime has for its primary purpose the
6 protection of the individual from jeopardy except on a finding of
7 probable cause by a group of his fellow citizens, and is designed
8 to afford a safeguard against oppressive actions of the
9 prosecutor or court. (Id., Page 170.) Furthermore, Rule 48(a)
10 Fed. Rules of Crim. Proc., 18 USCA, now provides that the U.S.
11 Attorney may by leave of court file a dismissal of an indictment.
12 The purpose of the Rule is to prevent harassment of a defendant
13 by charging, dismissing, and re-charging without placing a
14 defendant in jeopardy. (Page 171, citing Woodring v. U.S., 311
15 F.2d 417, (8th Cir, 1963). Substantial compliance rather than
16 technical exactness meets the requirement of the Rule.

17 In Woodring v. U.S., the prosecutor moved to dismiss without
18 prejudice one count of the indictment at the conclusion of the
19 evidence at trial and before the jury began deliberation. The
20 Court granted the motion without the defendant's consent. Rule
21 48(a) requires that a dismissal of the indictment may not be
22 filed during trial without the defendant's consent. Because the
23 count was dismissed because there was insufficient evidence, and
24 a motion for a directed verdict would have been entered, the
25 dismissal should have been with prejudice and the prosecutor
26 could not re-file.

27 In the case at hand, Appellant was at the Indictment stage
28

1 where the court was only to consider probable cause to proceed
2 when the case was dismissed with prejudice, not during trial or
3 when a determination of burden of proof on the merits was being
4 made. There was no prejudice or double jeopardy or harassment to
5 Appellee.

6 In Mende v. United States, 282 F.2d 881 (9th Cir., 1960), a
7 defendant was subjected to three indictments for the same offense
8 and the defendant claimed harassment. The Courts held that if the
9 defendant was indicted within time, then approximately the same
10 facts may be used for the basis of any new indictment within the
11 next term, if the earlier indictment runs into legal pitfalls. The
12 Court stated, "We are not impressed with arguments that successive
13 indictments during the extra term might be used to harass.
14 Experience has shown that such an evil certainly has not been
15 commonplace during the basic statutory period for indictment. (Page
16 883.)

17 There are no limitations to the number of times a complaint
18 can be amended for technical, formal, typographical or clerical
19 errors, nor are there any time limits for re-filing or amending the
20 complaint in the Pascua Yaqui Tribe Law and Order Code. The Code
21 does specifically say in 1 PYTC Sec. 1.58 that an order to set
22 aside the complaint, as provided for in this chapter, is no bar to
23 further prosecution for the same offense, except in the case
24 wherein the Trial Court has no jurisdiction.

25 **C. Conclusion.**

26 Appellant's requested relief must be granted as it is
27 supported by the Code and case law. It is requested that this
28

1 Court overturn the Order of the Trial Court denying a motion to
2 modify the complaint and/or overturn the Order of the Trial Court
3 dismissing the charge with prejudice.

4 Repectfully submitted this 27th day of April, 2001.

5
6 OFFICE OF THE PROSECUTOR
7 PASCUA YAQUI TRIBE

8 

9 Tamara Walters
10 Chief Prosecutor

11 Original and four copies of the foregoing delivered/mailed
12 This date to:

13 Clerk of the Court, Pascua Yaqui Tribe Court of Appeals

14 Copy delivered/mailed to:

15 Vincent Gonzalez
16 Deputy Public Defender
17 7474 S. Camino de Oeste
18 Tucson, Arizona 85746
19 Attorney for Appellee

20 By tw

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1 witness subpoenaed to submit to a pre-trial interview, including Josie Valencia.² In his process
2 log, Court Process Server Juan Urbalejo indicated that service could not be completed since the
3 resident at 7700 S. Kau Bo-oh, María Luisa Francisco, stated that Josie Valencia did not live at
4 that disclosed address.³ On November 9, 2000, Defense Counsel contacted the Prosecutor's
5 Office requesting a current address. The Appellant subsequently moved for dismissal based on
6 the mistake in dates of incident.⁴

7 When the Appellant re-filed this case a second time as CR-01-024, Appellant, again,
8 disclosed on December 12, 2000 Josie Valencia, 7700 S. Kau Bo-oh, as a potential witness.⁵
9 Following the same procedure, Appellee attempted to get Ms. Valencia to submit to an
10 investigatory interview. Process Server Juan Urbalejo was still unable to complete service for the
11 same reason as before.⁶ On January 2, 2001, Appellee again contacted Appellant regarding Ms.
12 Valencia's address. On February 6, 2001, Appellant filed a Notice of Disclosure (Supplement)
13 providing Ms. Valencia's address, *a third time*, as 7700 S. Kau Bo-oh, not 7600 S. Kau Bo-oh.⁷

14 Further, on page 3 of the Appellant's brief, lines 8-12, Appellant indicates that the
15 alleged victim, Mr. Ernesto Flores, advised this attorney that he had made a mistake and that the
16 location of the offense had been at 7600 S. Kau Bo-oh, and not 7700 S. Kau Bo-oh. However,
17 Appellant did not attend that interview. On January 3, 2001, this attorney did interview this
18 witness. As a courtesy to the Appellant, and to protect Mr. Flores' rights, this counsel invited the
19 Prosecutor's office to send a representative for this interview. That office declined. Appellant,
20

21 ² A copy of the subpoena is attached as Appellee's exhibit 1. The alleged incident took place at Josie Valencia's
22 residence, which is the address in question.

23 ³ See Appellee's exhibit 2.

24 ⁴ See Appellant's Brief, Facts of the Case. Note: Appellee could not stipulate to the requested amendment, as the
25 proposed change was directed at Officer Pettis' affidavit, not the actual Criminal Complaint (see Appellant's brief
26 page 2, lines 21-27). This Attorney could not stipulate to change a witness' sworn affidavit.

27 ⁵ See Appellee's exhibit 3.

28 ⁶ See Appellee's exhibit 4.

⁷ See Appellee's exhibit 5.

1 therefore, cannot attest to what Mr. Flores said to this counsel. Mr. Flores never indicated that he
2 made a “mistake” regarding the location of the alleged incident.

3 After this interview, Officer Pettis notified Appellee that Appellant had requested that he
4 re-interview Mr. Flores, regarding the location of this incident. Officer Pettis indicated that Lay
5 Advocate Alycia Tapia made the request. Appellant disclosed this updated report on February 6,
6 2001 as part of the supplemental disclosure.

7 Appellant knew of this defect (location/address) since November 9, 2000 and did not
8 investigate at that time or prior to re-filing this case. Only after Appellee notified Appellant on
9 January 2, 2001 did an investigation take place. Then to help its cause, it had Officer Pettis re-
10 interview Mr. Flores, specifically about the location, amend his report, and amend and file a third
11 sworn affidavit.

12 The Appellant also misstated the proximity of 7600 to 7700 S. Kau Bo-oh in its Brief.
13 These two addresses are a city block apart, separated by several houses and one of the
14 reservation’s bigger roads, Torim.⁸ These houses are not next door to each other as the Appellant
15 (or Mr. Flores) has stated.⁹ Even today, confusion still exists as to the location of the alleged
16 incident.

17 **2. Date of incident**

18 The Appellant has provided a detailed synopsis of the problems with the date of incident.
19 However, Appellant failed to mention that it is the trial court’s procedure to have the information
20 on the complaint match the information provided for on the affidavit, specifically the date, time,
21 place of incident and the crime charged.¹⁰ Any time this information in the affidavit does not
22 match the information on the complaint, the case may be dismissed. When the Appellant has
23 made a typographical error in the complaint, the trial court does entertain a motion to amend; but
24
25

26 ⁸ See Appellee’s exhibit 6.

27 ⁹ See Appellant’s Brief, page 3, line 20.

28 ¹⁰ This procedure has been derived from 10 PYTC §3.1.

1 the court does not do the same for an insufficient affidavit since it is a third person's sworn
2 statement, not a legal pleading.

3 In this case, Appellant moved the trial court to accept a *third sworn affidavit*, along with a
4 new complaint, which is what is needed (complaint and affidavit) to begin a new case. In
5 addition, these documents do not match, so a fourth sworn affidavit will be necessary. Again,
6 Appellant and Appellee cannot simply stipulate to change a witness' sworn statement.

7 **C. Issue Presented**

8 Did the trial court abuse its discretion by dismissing the charges with prejudice and by
9 not permitting Appellant to file the amended complaint and affidavit?

10 **D. Arguments**

11 **1. Appellant has misinterpreted the basis for the Trial Court's ruling to dismiss.**

12 Appellant has based its entire appeal on the basis that the trial court dismissed this case
13 for a simple deficiency in the complaint. However, the basis for Appellee's Motion to Dismiss
14 was not for a deficiency in the criminal complaint, but rather, the unfairness of subjecting Mr.
15 Baltazar to multiple affidavits regarding the same incident.¹¹

16 The trial court does follow Rule 3.1(D) of the Pascua Yaqui Rules of Criminal Procedure,
17 which requires a complaint and sworn statement (affidavit) to be filed.¹² From these two
18 documents, the trial court must determine whether sufficient probable cause exists to continue
19 with prosecution. If not, the court may dismiss the matter. As addressed above, the information
20 on these two documents must match to provide sufficient probable cause.

21 The affidavit, of course, is sworn under the penalty of perjury as true and accurate, yet
22 each one of the three affidavits in this case indicates separate dates of incident and/or separate
23 places of incident. How can any one affidavit be the "true and accurate" account when each has
24 been sworn as such? This argument was the basis for Appellee's Motion to Dismiss and the trial
25

26
27 ¹¹ See Appellant's Exhibit I.

28 ¹² See Appellant's Brief, page 5, lines 23-26.

1 court's dismissal. The motion and dismissal was not based on Section 1.57 of Title 1 as
2 Appellant asserts.¹³

3 The Tribe has acknowledged that even the amended complaint and affidavit is flawed
4 since the information does not match.¹⁴ These amended documents would not survive the initial
5 probable cause scrutiny of the trial court, which would result in another dismissal.

6 Appellant incorrectly focuses on the mistakes of the complaint, and claims that the trial
7 court must give Appellant the opportunity to amend the complaint. However, the essence of the
8 motion and dismissal was the unfairness of subjecting Appellant to the multiple affidavits
9 submitted by Officer Pettis, three so far, and a fourth that is needed. Ironically, given the
10 information on the respective affidavits, the complaints in CR-00-166 and in CR-01-024 were
11 not deficient. At those initial hearings, the trial court found sufficient probable cause, and
12 allowed the Tribe to continue with its prosecution. The information in those complaints and
13 affidavits properly matched with each other. The problem for the Appellant was that the
14 information in the affidavits themselves was wrong, not the complaint. Yet, no section in the
15 Pascua Yaqui Code allows the court to amend somebody's sworn statement, and this counsel
16 cannot stipulate to Appellant's request to change that statement made by Officer Pettis. Since the
17 trial court could not grant that request, the trial court had no other just alternative.

18 The errors presented to the trial court could have been avoided and should have been
19 caught prior to filing these pleadings. If Appellant had investigated its case, spoken to its own
20 witnesses, and reviewed its pleadings prior to filing, these mistakes would not have existed.
21 Appellant knew of the problem with the address since November 9, 2000 when Appellee notified
22 Appellant the first time, prior to its re-filing of the case. And, if it had properly investigated its
23 own case, Appellant should have known this defect even before this date. Still, Appellant did
24 nothing to correct that error before it filed the case the second time. This simple defect is
25

26
27 ¹³ See Appellant's Brief, page 11, lines 13-22.

28 ¹⁴ See Appellant's Brief, page 4, lines 4-9. Appellant lists the dates of April 4 and 5; yet, dates in question are August 4 and 5.

1 evidence that the Appellant did not investigate its case, including speaking to its own witnesses,
2 prior to filing.

3 These mistakes are not for the trial court to fix, nor is it Appellee's obligation to stipulate
4 to information needed for a conviction. The Appellant has the responsibility to investigate its
5 cases, prior to filing charges, to communicate with the officers involved, and to review each
6 document filed with the court for accuracy and detail. In this case, the Appellant failed. The
7 Appellant did not did not investigate its own case prior to filing (twice), review Officer Pettis'
8 affidavits (three times), and it did not review documents filed with the court, including a
9 supplemental disclosure with the same incorrect information. If it had, we would not be before
10 this Honorable Court, and the Tribe would have had its day in court.

11 The problems presented in these documents are details overlooked or ignored by
12 Appellant. Its solution to remedy these problems is to file amended pleadings, or to get
13 dismissals without prejudice and try again until it gets it right. But that is not justice. A man's
14 life and liberty are at stake, and Appellant blames the trial court for not allowing Appellant to fix
15 its repeated mistakes.

16 The trial court did not err in dismissing this matter with prejudice. Appellant moved the
17 trial court to accept a third complaint and affidavit, which is essentially the basis of a new case in
18 Tribal Court. The court did not base its ruling on a deficiency of the complaint as Appellant
19 asserts, but rather on the unfairness of subjecting Mr. Baltazar to numerous affidavits and the
20 continued errors committed by the Tribe. The trial court found that these errors prejudiced the
21 Defendant, and dismissed this matter accordingly.

22 **II. The Trial Court maintains discretion to dismiss this case.**

23 Appellant has asserted that that it should be allowed to re-file this case to cure errors it
24 has made a third time, as long as it is within the statute of limitations. However, the repeated
25 filing, dismissals, re-filing, and amendments in Appellee's case is harassing. Federal Courts have
26 held that the prosecuting agent cannot harass a defendant by charging, dismissing, and then re-

1 charging without placing a defendant in jeopardy.¹⁵ This case law derives from Rule 48(a) of the
2 Federal Rules of Criminal Procedure.¹⁶ The court in *Cox* observed that this rule authorized the
3 court to protect defendants from such harassment.¹⁷

4 Even if Appellant asserts that these errors were not intentional, and not made in bad faith,
5 the court in *State v. Austin*, 482 P2d 284 (1971), maintains that “conscious indifference” as well
6 as “willful” acts are subject to dismissal. In *Austin*, the Nevada Supreme Court upheld a trial
7 court’s dismissal on grounds that the State failed to comply with important procedural rules,
8 consistent with its holding in *Maes v. Sheriff*, 86 Nev 317, 468 P2d 332 (1970):

9 “The State also suggests that our holding in *Maes* applied only to “willful” failures to
10 comply with important procedural rules, which the State construes as meaning
11 “intentional.” In essence the State contends that, absent a showing of calculated bad faith,
12 the State’s legal representatives have an unrestricted right to blunder interminably, which
13 they may exercise by repeated re-filing of the same charges, limited only by the
14 applicable statute of limitations. A reading of the *Maes* case, in the light of its facts,
should have made it evident that its ruling applies equally to situations where there has
been conscious indifference to rules of procedure affecting a defendant’s rights.” At page
285.¹⁸

15 The Nevada Supreme Court in *McNair v. Sheriff*, 89 Nev 434, 514 P2d 1175 (1973) then
16 held “...when a justice court has dismissed a charge that subsequently is re-filed, our rulings
17 contemplate that **it is the district court which decides whether a prosecutor has been**
18 **“willful” or “consciously indifferent” so as to be barred from instituting a second**
19 **prosecution.”** (Emphasis added). Simply stated, the decision to dismiss lies with the trial court.
20

21 In *Austin*, the error violated speedy trial time limits by the State having this case
22 continued three times, and requesting a fourth. The *Maes* analysis of that case found that “basic
23

24
25 ¹⁵ See *United States v. Cox*, 342 F2d 167, cert. denied 381 U.S. 935.

26 ¹⁶ The Tribe does not have a similar statute, yet federal rules provide the best guidance since reservations are bound
27 by these decisions also.

28 ¹⁷ Three Circuit Court judges made this observation in a separate opinion, concurring in part and dissenting in part.

¹⁸ See attached copy of the opinion.

1 fairness” bars repeated filings when the prosecutor does not comply with important procedural
2 rules.

3
4 In the case at bar, the issues are similar in nature. Appellee was originally charged on
5 September 28, 2000. Because of the defects in the sworn statement, which is required in Rule 3.1
6 of the Rules of Criminal Procedures, the Appellant moved to dismiss the case, knowing it could
7 not prove the elements beyond a reasonable doubt at trial. After the trial court granted that
8 dismissal, the Tribe re-filed the case. Due to the discrepancies in Tribal witnesses’ statements,
9 the Appellant discovered that its pleading and supporting affidavit were insufficient again, not
10 meeting the standards of Rule 3.1. At that time, the Tribe submitted a third complaint and
11 affidavit; this time the information did not match. Similar to *Austin*, the Appellant needed more
12 time, and also needed to change its pleadings numerous times.

13
14 In this case, sloppy prosecution has violated Appellee’s due process. Rules of criminal
15 procedures are safeguards and limits on what the government may do in criminal prosecutions.
16 In this case, the Tribe has violated the Defendant’ right to fair proceedings. The Appellant has
17 submitted **three** sworn affidavit and **three** criminal complaints. Its method to cure its mistakes is
18 to re-file these documents with total disregard to Appellant. These actions are harassing. Filing,
19 dismissing and re-filing over and over is an abuse of Appellant’s authority over Appellee. The
20 Trial court was right to dismiss this matter for that reason alone. But Appellee also asserts that
21 Appellant’s lack of attention to detail in its charging documents and its disregard to properly
22 investigate it case, shows extreme indifference to the Tribal procedures. Just on that basis the
23 Trial Court’s decision was proper. The Trial court made this finding and ruled accordingly. This
24 Appellate Court should uphold the trial court’s decision.
25
26
27
28

1 **III. Appellant's Law and Authority section is not on point, and should not be**
2 **considered.**

3 Appellee does not contest that Appellant can amend technical errors in its complaint.
4 Generally, Appellee will not object to such requests. However, in this case, Appellee was
5 potentially facing four different sworn affidavits, which the trial court found, prejudices Appellee
6 along with the continued mistakes made by Appellant and its witnesses. That was the basis for
7 the dismissal, not the trial court's refusal to allow Appellant to amend the complaint.

8 The case law presented by Appellant addresses errors in the complaint and does not
9 address the problem of subjecting a defendant to numerous sworn statements by the same
10 witness. Appellant needs to present case law pertaining to discrepancies in sworn statements and
11 that the court cannot dismiss when it determines that the actions by the prosecutor has been
12 unfair or prejudices the defendant.

13 The trial court has not prohibited the Appellant from correcting typographical error in its
14 pleadings. Nor has the court, as a policy or practice, prevented the Tribe from filing amended
15 pleadings. However, in this specific case, the court found that the errors on behalf of Appellant
16 and subjecting the Appellee to numerous affidavits prejudice Appellee and dismissed this case.
17 That is within the trial court's discretion.

18 Appellant's arguments were misdirected, and as such, so was the case law provided.
19 Appellee does not contest that simple errors can be amended on the complaint, but the issue was
20 whether the numerous affidavits prejudice defendant. The trial court found that it did. Therefore,
21 this Court should uphold the trial court's findings and holdings.

22 **E. Conclusion**

23 The trial court determined that Appellee was indeed prejudiced by the Appellant's filing
24 of numerous affidavits and by Appellant's continuous mistakes. Appellee did not request, nor did
25 the trial court grant, a dismissal based on an error in the complaint as Appellant asserts. In fact,
26 the complaint contained no errors. The court found probable cause, twice, for each respective
27 complaint. Instead the error was in the Officer Pettis' sworn affidavits, all having different
28 information. These facts were actually Mr. Flores' account of the alleged incident. These

1 mistakes and thus, the errors in the Appellant's pleadings could have been avoided if Appellant
2 was more diligent in its pre-trial investigations.

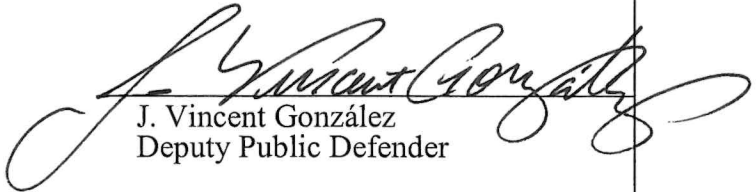
3 Appellant had its chance to prove its case. Appellant actually had two chances. Now, it
4 wants a third. The constant re-filing is harassing. Appellant's disregard for properly following
5 the Rules of Criminal Procedure proves a "conscious indifference." Either way, the trial court
6 had proper discretion to dismiss this matter. But, more simply, the trial court's decision was
7 based on common sense, justice, and fairness. Time after time, Appellant ignored details, refused
8 to investigate its case prior to filing, speak to its own witnesses, and review its own pleadings
9 prior to submitting them. Appellant relied on amended pleadings and the option of a dismissal
10 without prejudice. All the while, Appellant's fate lay in the balance.

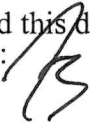
11 The trial court did what was just. Its ruling did not prejudice Mr. Flores, as asserted by
12 the Appellant. The Appellant's negligence got this case dismissed. The trial court only ruled on
13 the information presented before it. Appellant blames the trial court, yet its failure to zealously
14 advocate for the Tribe and Mr. Flores is the real reason.

15 Appellant misinterpreted the Motion to Dismiss and the trial court's ruling. As a result,
16 its argument in its brief is not on point and neither is the case law presented. The trial court has
17 the discretion to dismiss when the prosecutor has displayed harassment or intentional or
18 "conscious indifference" to important procedures. Appellee has provided supporting case law.

19 WHEREFORE, Appellee prays that this court uphold the trial court's ruling.

20 RESPECTFULLY Submitted this 19th day of April 2001.

21
22
23 
J. Vincent González
Deputy Public Defender

24
25 COPY of the foregoing hand-delivered this date to
26 Prosecutor's Office, PY Ct. In-box by: 

PASCUA YAQUI TRIBAL COURT
CLERK'S OFFICE
01 APR -5 AM 8:00
CA-01-003
[Signature]

1 PASCUA YAQUI TRIBE
2 OFFICE OF THE PROSECUTOR
3 7474 S. Camino de Oeste
4 Tucson, Arizona 85746
5 (520) 879-5780

6 Tamara Walters, SBN 10510
7 Chief Prosecutor

8 **IN THE PASCUA YAQUI TRIBE COURT OF APPEALS**
9 **IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA**

10 PASCUA YAQUI TRIBE,)
11 Appellant,) NO. CA-01-003
12 Vs.) (Tribal Court No. CR-01-024)
13 BALTAZAR, RANDY,)
14 Appellee.) **BRIEF ON APPEAL**
15 _____)

16 COMES NOW The Pascua Yaqui Tribe, by and through counsel
17 undersigned, and hereby files its Brief on Appeal within the time
18 limits specified and the manner prescribed by the Court of
19 Appeals Procedures Act of 2000, Section 1.22.

20 **A. JURISDICTIONAL STATEMENT**

21 Appellant is appealing an Order of the Trial Court made
22 March 2, 2001 dismissing Cause Number CR-01-024 with prejudice, a
23 copy of which is attached as Exhibit A. The Court of Appeals
24 shall have jurisdiction to hear all appeals from any Order of the
25 Trial Court pursuant to the Court of Appeals Procedures Act of
26 2000, Section 1.12. The Court of Appeals has jurisdiction over
27 this matter.

28 **B. FACTS OF THE CASE**

On September 28, 2000, Appellant filed a Criminal
Complaint alleging that Appellee had committed the offense of
Count 1: Battery in violation of 1 PYTC Section 3.8 on or about

1 August 5, 2000 at approximately 8:30 p.m., at or near 7700 S. Kau
2 Bo-oh, willfully struck or otherwise inflicted bodily injury to
3 Ernesto Flores. The Complaint was supported by an Affidavit
4 prepared by Officer Vincent Pettis, stating the date of offense to
5 be August 5, 2000. The Complaint and Affidavit were given the
6 docket number CR-00-166, a copy of which is attached hereto as
7 Exhibit B. Cause Number CR-00-166 proceeded to Initial Hearing and
8 Arraignment and was then set for Trial. Full Disclosure was made
9 to Appellee. Prior to Trial, it was realized that the offense had
10 been reported to the Pascua Yaqui Tribal Police on August 5, 2000
11 at 1:06 p.m., but that the battery had occurred the day before on
12 August 4, 2000 at 8:30 p.m. A copy of the Incident Report Number
13 PYPD-2000-736 is attached as Exhibit C. Reference is made to Page
14 1, Paragraph 1, Synopsis, which states "On 8/5/00 at about 1306
15 hours Ernesto Flores walked into the Pascua Yaqui Police Department
16 reference to an assault that allegedly occurred at 7700 South Kau
17 Bo-oh on 8/4/00 between the hours of 8:30 p.m.-9:00 p.m." It is
18 clear that the Officer made a typographical or clerical error in
19 the date of the offense, since he used the correct time of 8:30
20 p.m. which corresponds to August 4, 2000. When the error was
21 discovered by Appellant, counsel for Appellee, Vincent Gonzalez,
22 was contacted and made aware of the error and was asked if he would
23 stipulate to an amendment to the Complaint. He would not stipulate
24 to an amendment, but he did agree to a dismissal without prejudice
25 so the charges could be re-filed. Appellant then filed a Motion to
26 Dismiss without prejudice on November 14, 2000, a copy of which is
27 attached hereto as Exhibit D. The Court granted Appellant's Motion
28

1 on November 14, 2000. The Order is attached hereto as Exhibit E.

2 Appellant re-filed the charges on November 16, 2000. The
3 Criminal Complaint and Affidavit were identical to that filed in
4 the prior case, with the exception that the date of the offense
5 was changed to April 4, 2000. This re-filed Complaint was
6 assigned the docket number CR-01-024 and is attached hereto as
7 Exhibit F. The new case proceeded through Initial Hearing and
8 Arraignment and was set for Trial. During the pre-trial
9 interview of the victim, Ernesto Flores, which was conducted by
10 the Appellee's attorney at his office, Mr. Flores advised that he
11 had made a mistake and that the location of the offense had been
12 at 7600 S. Kau Bo-oh and not 7700 S. Kau Bo-oh. At the time the
13 Victim reported this offense and gave a statement to Officer
14 Pettis, Officer Pettis reported "Mr. Flores was not sure of the
15 address where the assault took place, however, Mr. Flores was
16 able to point out the address on a street map of the Pascua Yaqui
17 Indian Reservation." The assault took place at the victim's
18 niece's house (Josie Valencia) and the place he pointed to on the
19 map was 7700 S. Kau Bo-oh. The Victim later confirmed that his
20 niece's address was 7600 S. Kau Bo-oh, next door to 7700, and so
21 informed both parties during the pre-trial interview. Appellant
22 then requested Officer Pettis to re-interview the victim and
23 provide a supplemental police report and revised Affidavit with
24 the correct incident location. Officer Pettis re-interviewed the
25 Victim and prepared a supplemental report (see Exhibit C, Page 3,
26 last Paragraph, Follow Up) and new Affidavit with the correct
27 address, which was disclosed to Appellee. On February 20, 2001,
28

1 Appellant filed a Motion to Amend Complaint requesting that
2 Appellant be allowed to amend the location of the incident, and
3 attached an Amended Complaint and Affidavit, attached hereto as
4 Exhibit G. The amended Criminal Complaint contained the correct
5 date and location of the offense. The supporting Affidavit
6 contained the correct location of the offense, but Officer Pettis
7 had used the original Affidavit he had prepared in CR-00-166 to
8 make the address change, and forgot to also make the change to the
9 date of the offense from April 5th to April 4th. The Court then
10 issued a Minute Entry Order on February 21, 2001, a copy of which
11 is attached as Exhibit H, ordering Appellee to respond to
12 Appellants motion on or by February 28, 2001. Note that it is
13 common practice of the Pascua Yaqui Tribal Court when Motions are
14 filed by either party to enter a Minute Entry Order advising the
15 parties of the due date for the response and the reply. On
16 February 22, 2001, Appellee filed its Response to Tribe's Motion to
17 Amend Complaint and Motion to Dismiss With Prejudice, attached
18 hereto as Exhibit I, claiming that Appellee was prejudiced because
19 mistakes were being made in the date and location of the offense.
20 Without issuing a Minute Entry Order giving Appellant a deadline to
21 reply to the Response or a deadline or opportunity to respond to
22 the Motion to Dismiss With Prejudice, and without allowing
23 Appellant an opportunity to contest the requests, the Court ordered
24 that the Tribe's Motion to Amend the Criminal Complaint was denied,
25 and granted Appellee's Motion to Dismiss With Prejudice. The Court
26 found that Appellant would not be allowed to amend their errors
27 which can prejudice the defendant, even though the charge is
28

1 serious in nature (see Exhibit A).

2 **C. TRIAL COURT'S ABUSE OF DISCRETION**

3 Appellant then filed its Notice of Appeal to the Court
4 of Appeals on March 15, 2001, claiming that the Trial Court
5 abused its discretion by dismissing the charges with prejudice
6 and by not permitting Appellant to amend the complaint, as
7 Ordered March 2, 2001 (see Exhibit A attached).

8 **D. LAW AND AUTHORITIES**

9 **Pascua Yaqui Tribal Code and Rules of Criminal Procedure**

10 A complaint is a written charge by any person presented to
11 the Pascua Yaqui Court having jurisdiction, that a person has
12 committed a specified offense with an offer to prove the fact to
13 the end that prosecution may be instituted. 1 PYTC Sec. 1.29.
14 Each complaint must contain (a) the name of the Jurisdiction
15 where it is filed, (b) the name of the party, if the defendants
16 be known, and if not, then such names as may be given them by the
17 complainant, and (c) a statement signed by the complainant of the
18 acts constituting the offense, and the time and place of the
19 commission of the offense, as near as may be ascertained. 1PYTC
20 Sec. 1.30. No criminal prosecution shall be maintained under
21 this ordinance unless the action shall have been commenced within
22 one (1) year after the commission of the offense. 1 PTYC Sec.
23 1.28. The Trial Court reviews the Criminal Complaint and the
24 attached Affidavit to make a determination whether there is
25 probable cause to believe that a crime has been committed. PYT
26 Rules of Criminal Procedure, Rule 3.1(D).

27 The complaint must be set aside by the Trial Court upon the
28

1 defendant's motion in the following cases: a) where it is found
2 not to comply with the requirements of Sec. 1.29 or 1.30 of this
3 Ordinance, b) the defendant has been charged without reasonable
4 or probable cause, c) upon a determination that the Court has no
5 jurisdiction over the person or the offense. 1 PYTC Sec. 1.57.
6 An order to set aside the complaint, as provided for in this
7 chapter, is **no bar to further prosecution for the same offense**
8 (emphasis added), except in the case wherein the Trial Court has
9 no jurisdiction. 1 PYTC Sec. 1.58. Neither a departure from the
10 form or mode prescribed in this chapter in respect to any
11 pleading or proceedings nor an error or mistakes therein renders
12 it invalid unless it has prejudiced the defendant. 1 PYTC Sec.
13 1.60.

14 Federal Rules of Criminal Procedure and Case Law

15 In any indictment it is required that the accused be
16 definitely informed as to the charges against him so that he may be
17 able to present his defense and so as not to be taken by surprise
18 by the evidence offered at trial, and also that the indictment be
19 sufficiently definite that he shall not again be subjected to
20 another prosecution for the same offense. If the indictment
21 complies with these requirements, it ordinarily may be amended
22 provided that the amendment does not violate such requirements.
23 Williams v. U.S. 179 F.2d 656, affd (1951) 341 US 97, 95 L.Ed 774,
24 71 S.Ct. 576 (CA5, Fla, 1950).

25 The Federal Rules of Criminal Procedure address the indictment
26 or information (Pascua Yaqui Tribal Code uses the term complaint)
27 in Rule 7 and Rule 12. Rule 7(c) does away with the precision and
28

1 detail formerly demanded and today the rule is that common sense
2 and reason prevail over mere technicalities. U.S. v. Orbiz, 358
3 F.Supp. 200, (DC Puerto Rico, 1973) Pursuant to Rule 7(e),
4 Amendment of Information, the court may permit an information to be
5 amended at any time before the verdict or finding if no additional
6 or different charges are amended. Silence of Rule 7(e) on
7 permissibility of amendments to indictments has clearly not been
8 taken as a prohibition on all such amendments; prior case law
9 dealing with express amendments deemed "matters of form" rather
10 than "matters of substance" is still followed. U.S. v. Goldstein,
11 386 F.Supp. 833 (DC Del, 1973). An amendment to an indictment is
12 permitted when the change concerns a matter of form rather than
13 substance. Russell v. U.S., 369 US 749, 8 L.Ed.2d 240, 82 S.Ct.
14 1038, (1962). Ordinarily, a mere change in the date of an
15 indictment is not considered a substantial variation, but an
16 exception exists when a particular day may be made material by the
17 statute creating the offense. U.S. v. Goldstein, 502 F.2d 526 (CA3
18 Del, 1974). An indictment which contains an obvious typographic
19 error so as to reflect incorrect date of the offense could be
20 amended judicially by changing the figures since this could not
21 mislead or prejudice the defendant in any degree nor affect any
22 substantial right of defendant, being merely matter of form. U.S.
23 v. Stapleton, 271 F.Supp. 59 (ED Tenn, 1967).

24 A dismissal of the indictment is authorized if the allegations
25 do not suffice to charge an offense, however such dismissal may not
26 be predicated upon the insufficiency of the evidence. FRCP Rule
27 12(b)(2), 18 U.S.C.A., U.S. v. De Laurentis, 230 F.3d 659 (CA3 NJ,
28

1 2000). The sole function of a motion to dismiss an indictment is
2 to test the sufficiency of the indictment to charge an offense. It
3 is not a device for a summary trial of the evidence and the court
4 may not speculate as to whether the government can sustain its
5 burden of proof. U.S. v. Clark, 123 F.Supp.2d 314. If the court
6 grants a motion to dismiss based on a defect in the indictment or
7 information, it may also order that the Defendant be continued in
8 custody or that bail be continued for a specified time pending the
9 filing of a new indictment or information. FRCP Rule 12(h). A
10 motion to quash an indictment on grounds of insufficiency may be
11 made if a particular count does not state an offense, but this will
12 only result in a pyrrhic victory because so long as the statute of
13 limitations has not run, the Prosecutor will simply amend the
14 indictment. Legislative comments to FRCP Rule 7. A Federal Grand
15 Jury may return a second indictment for the same offense when the
16 first indictment has been dismissed or otherwise found to be
17 defective. An order to dismiss a count of an indictment due to an
18 insufficiency or defect in the indictment is not an adjudication of
19 facts that would preclude the filing of a superceding indictment.
20 U.S. v. Root, 366 F.2d 377, cert.den. 1967, 386 U.S. 912, 17
21 L.Ed.2d 784, 87 S.Ct. 861 (CA9, Cal, 1966). U.S. v. Manetti, 323
22 F.Supp. 683, (DC Del, 1971).

23 It is a general rule that where time is not an element of the
24 offense, a variance between the date alleged and the date proved is
25 not material and that proof of the commission of the crime on any
26 day from a finding of the indictment, and within the statute of
27 limitations, is sufficient. U.S. v. Krepper, 159 F.2d 958,
28

1 cert.den. (1947), 330 US 824, 91 L.Ed. 1275, 67 S.Ct. 865 (CA3, NJ,
2 1946). An obvious error in the date alleged in an indictment where
3 the mistake is not prejudicial to the defendant does not invalidate
4 the indictment. U.S. v. Aloowsine, 15 Alaska 483, 17 FRD 211 (DC
5 Alaska, 1955). Generally, the difference between the date charged
6 in the indictment and the date shown by the evidence at trial is
7 not fatal to the prosecution. Lelles v. U.S., 241 F.2d 21, cert.
8 den. (1957) 353 US 974, 1 L.Ed.2d 1136, 77 S.Ct. 1059, reh.den.
9 (1957), 354 U.S. 944, 1 L.Ed.2d 1543, 77 S.Ct. 1422. It is not
10 necessary to prove that the offense was committed on the exact date
11 charged in the indictment if proof that the crime was committed on
12 a date other than that alleged, if it is within the period of
13 limitations and before the filing of the indictment, is sufficient.
14 Alexander v. U.S., 271 F.2d 140 (CA8 Minn 1959). A defendant was
15 not prejudiced where the information charging him with larceny
16 cited the date of the incident incorrectly where the correct date
17 was specified in the arraignment, at preliminary hearing, and in
18 testimony given at trial, including that of defendant and his two
19 alibi witnesses. Government of Canal Zone v. Green C., 521 F.2d
20 241 (CA5, Canal Zone, 1975).

21 It is not necessary to prove the exact location of the offense
22 alleged in an indictment, provided it is proved to be within the
23 jurisdiction of the court. Norris v. U.S., 152 F.2d 808, cert.den.
24 (1946), 328 US 850, 90 L.Ed. 1623, 66 S.Ct. 1118.

25 **State of Arizona Statutes, Rules, and Case Law**

26 A complaint is a written statement of the essential facts
27 constituting a public offense, made upon oath. Arizona Rules of
28

1 Criminal Procedure (ARCrImP), Rule 2.3. If the magistrate
2 determines from the complaint, any affidavits filed, and any
3 testimony taken, that there is reasonable cause to believe an
4 offense has been committed and the defendant committed it, the
5 magistrate shall proceed under Rule 3.1; if not, the magistrate
6 shall dismiss the complaint. ARCrImP Rule 2.4. The complaint may
7 be amended at any time to conform to the evidence, but the
8 magistrate shall not hold the defendant to answer for a crime
9 different from that charged in the original complaint. ARCrImP,
10 Rule 5.4(b). The charge in an indictment may be amended only to
11 correct mistakes of fact or remedy formal or technical defects,
12 unless the defendant consents to the amendment. The charging
13 document shall be deemed amended to conform to the evidence adduced
14 at any court proceeding. ARCrImP, Rule 13.5.

15 A proceeding before an examining magistrate is not a judicial
16 trial but merely a judicial inquiry. A magistrate's dismissal of
17 the complaint is not an absolute bar to further prosecution. State
18 v. Elling, 19 Ariz.App. 317, 506 P.2d 1102 (Div. 2, 1973).

19 A technical or formal defect in an indictment may be remedied
20 by amendment. A defect is technical or formal if it does not
21 change the nature of the offense charged or prejudice the defendant
22 in any way. An error as to the date of the offense alleged in the
23 indictment does not change the nature of the offense, and therefore
24 may be remedied by amendment. State v. Jones, 188 Ariz. 534, 937
25 P.2d 1182, rev. den., cross rev. granted (App.Div.1 1996).

26 A trial court did not err in allowing the state to amend an
27 indictment at the close of trial to permit a change of the date of
28

1 the alleged perjury, in view of an indication from the record that
2 all parties understood the correct date, on the basis of
3 unequivocal testimony of one of the state's witnesses, that
4 defendant was aware that perjury charge related to a hearing on a
5 date other than that stated in the indictment, and that no
6 prejudice arose from allowance of the amendment, which was "formal
7 or technical" within the meaning of this rule providing for
8 altering of charges and amendment to conform to the evidence.
9 State v. Self, 135 Ariz. 374, 661 P.2d 224 (App. 1983).

10 **E. CONCLUSION AND REQUESTED RELIEF**

11 Appellant's request for relief is supported by the Codes of
12 The Pascua Yaqui Tribe, and the Rules and case law of both the
13 United States and the State of Arizona. To summarize, Appellant is
14 allowed to amend a complaint to correct a technical or formal
15 defect. A correction to the date of the offense so long as it is
16 not an essential element of the offense, the location of the
17 offense so long as it is within the proper jurisdiction, and a
18 typographical error so long as it does not charge the defendant
19 with a new or different crime, is a technical or formal defect and
20 can be amended without prejudice to the Appellee. In any event, no
21 dismissal of a charge due to a technical or formal defect can be a
22 bar to further prosecution. A trial court does not make a judgment
23 on the merits or facts of the case when determining probable cause,
24 and therefore the charge cannot be dismissed with prejudice. Rule
25 1.58 of the Pascua Yaqui Tribe Rules of Criminal Procedure prohibit
26 the Court from dismissing the charges with prejudice.

27 There was no prejudice to Appellee. Appellee was well aware
28

1 that the date of the offense was August 4th from the police reports,
2 pretrial interviews, notification by the Appellant, and the filing
3 of a Motion to Dismiss Without Prejudice and a re-filing of the
4 Complaint with the date of the offense changed to August 4th and
5 obvious typographical and clerical errors. Appellee also was not
6 prejudiced by an amendment to the location of the offense.
7 Appellee was well aware of the error in the address, and the
8 mistake was excusable. The police report stated that the victim
9 was not certain of the address but it was his niece Josie
10 Valencia's house and he pointed to a map but pointed at the house
11 next door to his niece's house. The location of the offense was in
12 the near proximity and within the jurisdiction of the Pascua Yaqui
13 Indian Reservation. Appellee's attorney was the one conducting the
14 interview of the victim when this was discovered, so he clearly was
15 on notice. Neither of these changes would be a surprise to
16 Appellee.

17 Appellant should not be punished by having to make amendments
18 to the Complaint for reasons that have been adequately explained
19 herein. The one that has been prejudiced is the victim, who
20 received a battery from the Appellee and now can receive no justice
21 because his case was dismissed with prejudice for no legal or
22 substantial reason.

23 The Trial Court clearly abused its discretion by not allowing
24 Appellant to amend the Complaint, and/or by dismissing the charge
25 with prejudice. The Statute of Limitations period had not expired,
26 and has not. It is requested that this Court vacate the Order of
27 the Trial Court dated March 2, 2001 denying amendment to the
28

EXHIBIT A

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

1
2
3 PASCUA YAQUI TRIBE)
4 Plaintiff)
5 VS.)
6 BALTAZAR, Randy)
Defendant)

CASE NO: CR-01-024

ORDER

7
8 Defendant through legal counsel filed their response to the Tribe's motion to amend
9 the complaint; defendant objects to the Tribe's motion and moves the Court to dismiss
10 the above matter with prejudice; that upon reviewing the motion it is determine by the
11 Court that the charge is serious in nature and upon review of the Court's file the Court
12 cannot allow the Tribe to continue to amend their errors which can prejudice the
13 defendant; good cause has been shown to grant defendant's motion.

14 **IT IS ORDERED THAT** the Tribe's motion to amend the criminal complaint is denied
15 and the above matter is dismissed with prejudice; trial hearing scheduled for March 6,
16 2001 at 9:30 a.m. is vacated.

17 SO ORDERED THIS 2nd DAY OF March, 2001.

18 
19 Judge, Pascua Yaqui Tribal Court

20 cc:
21 Date: 3-2-01
22 Defendant / Tribe Counsel of
23 Clerk: RS

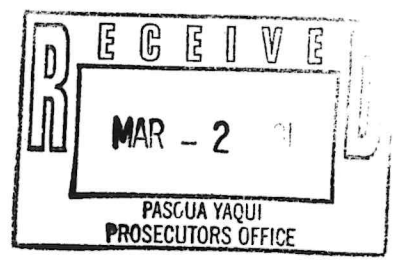


EXHIBIT B

IN THE PASCUA YAQUI TRIBAL COURT
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA

00 SEP 28 AM 9:22

PASCUA YAQUI TRIBE,
Plaintiff,

v.

BALTAZAR, RANDY
Defendant.

No. CR-00-166

CR-00-166

DN

CRIMINAL COMPLAINT

THE PASCUA YAQUI TRIBE, hereby complains and alleges, upon information and belief, that the above named defendant, an Indian, did commit the following offense(s):

COUNT 1: BATTERY 1 PYTC §3.8

On or about August 5, 2000 at approximately 8:30 p.m., at or near 7700 S. Kau Bo-oh, willfully struck or otherwise inflicted bodily injury to Ernesto Flores.

And such violation(s), upon conviction is, punishable under the Pascua Yaqui Tribal Codes.

DATED this 28th day of September, 2000.

The undersigned hereby swears and affirms that this complaint is based upon information and belief, and the attached Affidavit and Verification.


Complainant/Office of the Prosecutor

DEFENDANT: Randy Baltazar

ADDRESS: 7500 Tuivet, Tucson, Az. 85746

DOB: 03-10-68

SSN: 600-12-5892

ORIGIN: Indian

ENR #: 2694U05311

SEX: Male

HT: 5'9"

WT: 190

EYES: Brown

HAIR: Black

\$750 bond
susp.

1-16-01 @ 10am

AFFIDAVIT

STATE OF ARIZONA)
) SS
COUNTY OF PIMA)

CR-06-166
[Signature]

I, VINCENT S. PETTIS, being a duly Authorized Law Enforcement Officer of the Pascua Yaqui Indian Tribe and for the Pascua Yaqui Indian Reservation, do hereby swear and affirm as follows;

- 1. ON OR ABOUT AUGUST 5, 2000, AT APPROXIMATELY 2030 HOURS RANDY BALTAZAR (DOB: 3-10-68) COMMITTED THE CRIME OF ASSAULT AT 7700 SOUTH KAU BO-OH, WHICH IS WITHIN THE EXTERIOR BOUNDARIES OF THE PASCUA YAQUI INDIAN RESERVATION.
2. RANDY BALTAZAR COMMITTED ASSAULT BY STRIKING THE VICTIM, ERNESTO FLORES, (TRIBAL MEMBER/ DOB: 11-9-49) IN THE FACE WITH HIS FISTS. RANDY BALTAZAR ALSO COMMITTED ASSAULT BY STRIKING ERNESTO FLORES WITH HIS FEET.
3. RANDY BALTAZAR IS AN ENROLLED TRIBAL MEMBER WITH THE PASCUA YAQUI INDIAN TRIBE AND WAS IN VIOLATION OF SECTION 3.6 (ASSAULT) OF THE PASCUA YAQUI LAW AND ORDER CODE.

The information contained herein is true and accurate to the best of my knowledge and belief.

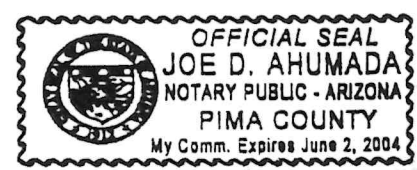
Further, this statement is made in support of the attached Criminal Complaint(s), number [blank], and pursuant to the Pascua Yaqui Code of Laws, Title 10, Chapter 3, Section 3.1 (E) & (G).

[Signature]
AFFIANT

Subscribed and sworn to me before this 23 day of August, 2000

My Commission expires. June 2, 2004

[Signature: Joe D. Ahumada]



LAW SCREEN

EXHIBIT C

Nature:
ASSAULT

Responsible Officer:
VINCENT PETTIS

Agency:
PASCUA YAQUI POLICE

Incident Number:
PYPD-2000-736

Address 7700 KAU BOOH TUCSON, ARIZONA 85746

Reported Date: 13:06:56 08/05/2000 Disposition: ACTIVE	Received By: GENYVEVE MUNN Disposition Date: 08/05/2000	How Received: OFFICE Law ID: 1367
---	--	--------------------------------------

Complainant

Name: FLORES, ERNESTO
Name Type: INDIVIDUAL
Total Aliases:

Name ID: 1578

Address 4831 WEST WICHALAKAS PASCUA YAQUI TRIBE, ARIZONA 85741
--

Personal Information SSN: 527-78-6462 DOB: 11/09/1949 DL#:	Deceased: State:
---	---------------------

Offenses

Reported Offense:

Observed Offense:

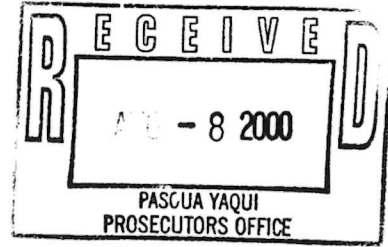
Offense	Amount
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Circumstances

Circumstance	Comments
--------------	----------

Modus Operandi

Factor	Method
--------	--------



Responding Officers

VINCENT PETTIS

Narratives

VINCENT PETTIS

SYNOPSIS:

ON 8-5-00 AT ABOUT 1306 HOURS ERNESTO FLORES WALKED INTO THE PASCUA YAQUI POLICE DEPARTMENT REFERENCE TO AN ASSAULT THAT ALLEGEDLY OCCURRED AT 7700 SOUTH KAU BO-OH ON 8-4-00 BETWEEN 8:30 P.M.-9:00 P.M.

VICTIM: ERNESTO FLORES (DOB: 11-7-49)

I MADE CONTACT WITH MR FLORES WHO TOLD ME THAT HE HAD BEEN ASSAULTED BY RANDY BALTAZAR ON THE PREVIOUS EVENING. MR FLORES WAS NOT SURE OF THE ADDRESS WHERE THE ASSAULT TOOK PLACE, HOWEVER, MR FLORES WAS ABLE TO POINT OUT THE ADDRESS ON A STREET MAP OF THE PASCUA YAQUI INDIAN RESERVATION. MR FLORES SAID THAT AT ABOUT 2030 HOURS HE ARRIVED AT 7700 SOUTH KAU BO-OH, HIS NIECE'S RESIDENCE. MR FLORES SAID HE KNOCKED ON THE FRONT DOOR OF THE RESIDENCE AND MADE CONTACT WITH HIS NIECE, JOSIE VALENCIA, AND RANDY BALTAZAR. MR FLORES SAID THAT MR BALTAZAR SUDDENLY BEGAN TO STRIKE HIM WITH HIS (RANDY BALTAZAR) FISTS, EVENTUALLY KNOCKING MR FLORES TO THE GROUND. AT THIS POINT MR BALTAZAR CONTINUED TO STRIKE MR FLORES WITH HIS FEET. MR FLORES TOLD ME THAT HE ATTEMPTED TO ESCAPE FROM THE ATTACK BUT THAT MR BALTAZAR WAS TOO STRONG. MR FLORES ADDED THAT WHILE THE ATTACK WAS TAKING PLACE THE MOTHER OF MR BALTAZAR, FRANCES BALTAZAR, WAS ENCOURAGING RANDY TO CONTINUE STRIKING MR FLORES. MR FLORES SAID HE SUFFERED A FEW MINOR CONTUSIONS TO HIS RIGHT BICEP AREA. MR FLORES ALSO ADDED THAT MR BALTAZAR APPEARED TO BE INTOXICATED AT THE TIME OF THE ASSAULT. PLEASE SEE WITNESS STATEMENT BY MR FLORES AND PHOTOGRAPHS OF HIS RIGHT BICEP.

eslwo 8-7-00

LAW SCREEN

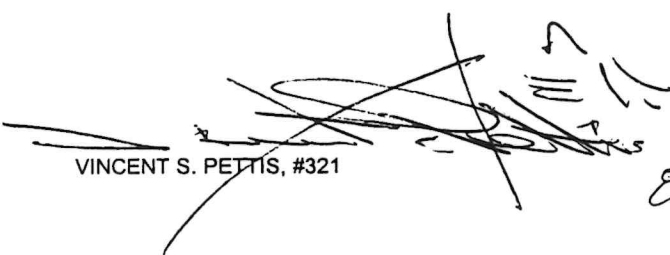
SUSPECT: RANDY BALTAZAR (DOB: 3-10-68)

SUSPECT'S LAST KNOWN ADDRESS IS 7500 SOUTH TUIVIT, WHICH IS WITHIN THE EXTERIOR BOUNDARIES OF THE PASCUA YAQUI INDIAN RESERVATION.

RECOMMENDATIONS:

COUNSELING

THE INFORMATION CONTAINED HERIN IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE. THIS CONCLUDES M Y ACTIVITY CONCERNINGTHIS MATTER.


VINCENT S. PETTIS, #321

Elbeo 8-7-00

CC: TRIBAL PROSECUTOR

Vehicles/Property

Declared Incident Status	Date	Reported Value
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ID Numbers

ID Number	ID Type	Comments
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Other

Occurred

After: 13:46:56 08/05/2000
Before: 13:46:56 08/05/2000

Additional Information

Clearance:
Judicial Status:
Area:

Involvements

Involvement	User	Record ID	Date	Comments
NAMES				
BALTAZAR, RANDY is suspect of ASSAULT(#PYPD-2000-736)	Yes	906		
FLORES, ERNESTO is complainant of ASSAULT(#PYPD-2000-736)	No	1578		
BALTAZAR, FRANCES is witness of ASSAULT(#PYPD-2000-736)	Yes	1579		
VALENZUELA, JOSIE is witness of ASSAULT(#PYPD-2000-736)	Yes	607		

LAW SCREEN

MR FLORES AND PHOTOGRAPHS OF HIS RIGHT BICEP.

SUSPECT: RANDY BALTAZAR (DOB: 3-10-68)

SUSPECT'S LAST KNOWN ADDRESS IS 7500 SOUTH TUIVIT, WHICH IS WITHIN THE EXTERIOR BOUNDARIES OF THE PASCUA YAQUI INDIAN RESERVATION.

RECOMMENDATIONS:

COUNSELING

THE INFORMATION CONTAINED HERIN IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE. THIS CONCLUDES MY ACTIVITY CONCERNING THIS MATTER.

VINCENT S. PETTIS, #321

CC: TRIBAL PROSECUTOR

FOLLOW UP:

ON 2-3-01 AT ABOUT 1708 HOURS I MADE TELEPHONE CONTACT WITH THE VICTIM, ERNESTO FLORES. I ASKED ERNESTO IF HE HAD MADE AN ERROR WITH REGARD TO THE ADDRESS OF THE ASSAULT ON 8-5-00. ERNESTO SAID, "YES". ERNESTO SAID THAT WHEN HE ORIGINALLY REPORTED THE INCIDENT ON 8-6-00 HE INCORRECTLY IDENTIFIED THE ADDRESS AS 7700 SOUTH KAU BO-OH. ERNESTO STATED THAT THE CORRECT ADDRESS WHERE HE WAS ASSALUTED BY RANDY BALTAZAR, IS 7600 SOUTH KAU BO-OH. ERNESTO ADDED THAT ABOUT ONE WEEK AFTER THE ASSAULT HE DROVE BY THE RESIDENCE LOCATED AT 7700 SOUTH KAU BO-OH AND REALIZED THAT IT WAS NOT THE CORRECT ADDRESS WHERE THE ASSAULT TOOK PLACE. NO FURTHER INFORMATION AVAILABLE.

PLEASE NOTE: THIS INTERVIEW WAS CONDUCTED PER REQUEST OF DEPUTY TRIBAL PROSECUTOR, ALCYIA TAPIA.

Vehicles/Property

Declared Incident Status	Date	Reported Value

EXHIBIT D



NOV 14 AM 10:01
CR-00-166
R11

1 ~~PASCUA YAQUI TRIBE~~
2 7474 S. Camino de Oeste
3 Tucson, Az. 85746

4 Alycia M. Tapia
5 Lay Advocate

6 **IN AND FOR THE PASCUA YAQUI TRIBAL COURT**

7 **IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**

8 Pascua Yaqui Tribe,

: Case No. CR-00-166

9 Plaintiff,

: MOTION TO DISMISS

10 Vs.

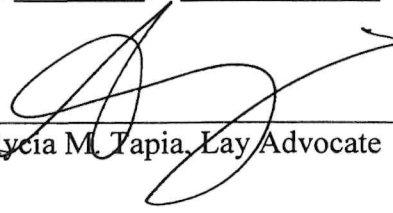
11 **BALTAZAR, RANDY**

12 Defendant

13 The Pascua Yaqui Tribe, by and through counsel undersigned, hereby requests
14 that the above captioned matter be dismissed without prejudice on the grounds of
15 prosecutorial discretion. The Defense Counsel has been contacted and has no objections.

16 Further, the Tribe respectfully requests that the trial hearing scheduled for January
17 16, 2001 at 10:00 a.m. be vacated.

18 Dated this 14th of November, 2000.

19 
20 _____
21 Alycia M. Tapia, Lay Advocate

22
23 A copy of the foregoing mailed to:
24 Vince Gonzalez, Public Defender

25
26 BY: 
27 _____
28

EXHIBIT E

IN THE PASCUA YAQUI TRIBAL COURT
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION



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PASCUA YAQUI TRIBE)
Plaintiff)
VS.)
BALTAZAR, RANDY)
Defendant)

CASE NO: CR-00-166
ORDER

The Tribe filed a Motion to Dismiss on this 14th day of November, 2000.

The Court finds that the defendant's legal counsel has been contacted and has no objections to the Motion; good cause has been shown to grant the Tribe's motion.

IT IS ORDERED THAT the Motion to Dismiss is granted; the trial hearing scheduled for January 16, 2001 at 10:00 a.m. is hereby vacated.

SO ORDERED THIS 14th DAY OF November, 2000.

B. V. Figueroa
Judge, Pascua Yaqui Tribal Court

cc:
Date: 11.14.00
Defendant Tribe Defense Counsel
Clerk: [Signature]

IN THE PASCUA YAQUI TRIBAL COURT
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA

EXHIBIT F

00 NOV 16 PM 4:15

PASCUA YAQUI TRIBE,
Plaintiff,

No. CR-01-024

DOCKET NO. CR-01-024

v.

CRIMINAL COMPLAINT

BALTAZAR, RANDY
Defendant.

THE PASCUA YAQUI TRIBE, hereby complains and alleges, upon information and belief, that the above named defendant, an Indian, did commit the following offense(s):


COUNT 1: BATTERY: 1 PYTC §3.8

On or about August 4, 2000 at approximately 8:30 p.m., at or near 7700 S. Kau Bo-oh, willfully struck or otherwise inflicted bodily injury to Ernesto Flores.

And such violation(s), upon conviction is, punishable under the Pascua Yaqui Tribal Codes.

DATED this 16th day of November 2000.

The undersigned hereby swears and affirms that this complaint is based upon information and belief, and the attached Affidavit and Verification.


Complainant/Office of the Prosecutor

DEFENDANT: Randy Baltazar

ADDRESS: 7650 S. Camino Huivisim, Tucson, Az. 85746

DOB: 03-10-68

SSN: 600-12-5892

ORIGIN: Indian

ENR #: 2694U05311

SEX: Male

HT: 5'9"

WT: 190

EYES: Brown

HAIR: Black

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

AFFIDAVIT

NOV 16 PM 4:15

STATE OF ARIZONA)
) SS
COUNTY OF PIMA)

CR 01-024
[Signature]

I, VINCENT S. PETTIS, being a duly Authorized Law Enforcement Officer of the Pascua Yaqui Indian Tribe and for the Pascua Yaqui Indian Reservation, do hereby swear and affirm as follows;

1. ON OR ABOUT AUGUST 4, 2000 AT APPROXIMATELY 2030 HOURS RANDY BALTAZAR (DOB: 3-10-68) COMMITTED THE CRIME OF ASSAULT AT 7700 SOUTH KAU BO-OH, WHICH IS WITHIN THE EXTERIOR BOUNDARIES OF THE PASCUA YAQUI INDIAN RESERVATION.
2. RANDY BALTAZAR COMMITTED ASSAULT BY STRIKING THE VICTIM, ERNESTO FLORES, (TRIBAL MEMBER/ DOB: 11-9-49) IN THE FACE WITH HIS FISTS. RANDY BALTAZAR ALSO COMMITTED ASSAULT BY STRIKING ERNESTO FLORES WITH HIS FEET.
3. RANDY BALTAZAR IS AN ENROLLED TRIBAL MEMBER WITH THE PASCUA YAQUI INDIAN TRIBE AND WAS IN VIOLATION OF SECTION 3.6 (ASSAULT) OF THE PASCUA YAQUI LAW AND ORDER CODE.

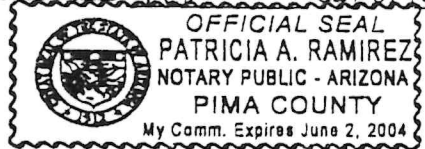
The information contained herein is true and accurate to the best of my knowledge and belief.

Further, this statement is made in support of the attached Criminal Complaint(s), number _____, and pursuant to the Pascua Yaqui Code of Laws, Title 10, Chapter 3, Section 3.1 (E) & (G).

[Signature]
AFFIANT

Subscribed and sworn to me before this 16th day of NOVEMBER, 2000

My Commission expires.



[Signature]

1 PASCUA YAQUI TRIBE
2 7474 S. Camino de Oeste
3 Tucson, Az. 85746

EXHIBIT G

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

01 FEB 20 PM 4:49

3 Alycia M. Tapia
4 Lay Advocate

IN AND FOR THE PASCUA YAQUI TRIBAL COURT

CR-01-024

5 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

RL

6 ~~Pascua Yaqui Tribe,~~

: Case No. CR-01-024

7 Plaintiff,

:
: MOTION TO AMEND
: COMPLAINT

8 vs.

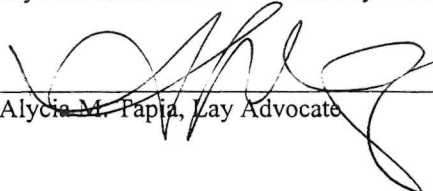
9 **BALTAZAR, RANDY**

10 Defendant

11 The Pascua Yaqui Tribe, by and through counsel undersigned, hereby motions this Honorable
12 Court to allow the Tribe to amend the Criminal Complaint in the above captioned matter. Title 1
13 PYTC§1.60 states that "Neither a departure from the form or mode prescribed in this chapter in respect to
14 any pleading or proceedings nor as error or mistakes therein renders it invalid unless it has prejudiced the
15 defendant." The criminal complaint filed November 16, 2000 listed the incident occurred at 7700 S. Kau
16 Bo-oh. After interviewing the alleged victim, Ernesto Flores, he has indicated that when he reported the
17 incident to Officer Pettis, he gave the incorrect address of where the incident took place. Since then Officer
18 Pettis has re-interviewed Mr. Flores and has submitted a follow up police report indicating the correct
19 address as 7600 S. Kau Bo-oh. This information has been disclosed defense counsel.

20 The Tribe respectfully requests that the Court allow the Tribe to amend the criminal complaint to
21 reflect the correct address as the error does not prejudice the defendant. Attached is an amended complaint
22 and affidavit.

23 Respectfully submitted this 20th of February 2001.

24
25 
Alycia M. Tapia, Lay Advocate

26 A copy of the foregoing mailed to:

27 Vince Gonzalez, Public Defender

28 By: 

IN THE PASCUA YAQUI TRIBAL COURT
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA

PASCUA YAQUI TRIBE,
Plaintiff,

No. CR-01-024

v.

CRIMINAL COMPLAINT

BALTAZAR, RANDY
Defendant.

THE PASCUA YAQUI TRIBE, hereby complains and alleges, upon information and belief, that the above named defendant, an Indian, did commit the following offense(s):

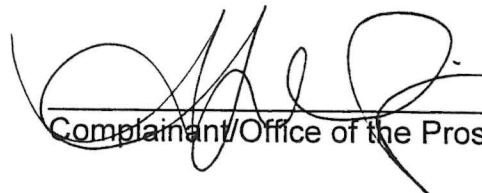
COUNT 1: BATTERY: 1 PYTC §3.8

On or about August 4, 2000 at approximately 8:30 p.m., at or near 7600 S. Kau Bo-oh, willfully struck or otherwise inflicted bodily injury to Ernesto Flores.

And such violation(s), upon conviction is, punishable under the Pascua Yaqui Tribal Codes.

DATED this 20th day of February 2001.

The undersigned hereby swears and affirms that this complaint is based upon information and belief, and the attached Affidavit and Verification.


Complainant/Office of the Prosecutor

DEFENDANT: Randy Baltazar

ADDRESS: 7650 S. Camino Huivisim, Tucson, Az. 85746

DOB: 03-10-68

SSN: 600-12-5892

ORIGIN: Indian

ENR #: 2694U05311

SEX: Male

HT: 5'9"

WT: 190

EYES: Brown

HAIR: Black

AFFIDAVIT

STATE OF ARIZONA)
) SS
COUNTY OF PIMA)

I, VINCENT S. PETTIS, being a duly Authorized Law Enforcement Officer of the Pascua Yaqui Indian Tribe and for the Pascua Yaqui Indian Reservation, do hereby swear and affirm as follows;

- 1. ON OR ABOUT AUGUST 5, 2000 AT APPROXIMATELY 2030 HOURS RANDY BALTAZAR (DOB: 3-10-68) COMMITTED THE CRIME OF ASSAULT AT 7600 SOUTH KAU BO-OH, WHICH IS WITHIN THE EXTERIOR BOUNDARIES OF THE PASCUA YAQUI INDIAN RESERVATION.
2. RANDY BALTAZAR COMMITTED ASSAULT BY STRIKING THE VICTIM, ERNESTO FLORES, (TRIBAL MEMBER/ DOB: 11-9-49) IN THE FACE WITH HIS FISTS. RANDY BALTAZAR ALSO COMMITTED ASSAULT BY STRIKING ERNESTO FLORES WITH HIS FEET.
3. RANDY BALTAZAR IS AN ENROLLED TRIBAL MEMBER WITH THE PASCUA YAQUI INDIAN TRIBE AND WAS IN VIOLATION OF SECTION 3.6 (ASSAULT) OF THE PASCUA YAQUI LAW AND ORDER CODE.

The information contained herein is true and accurate to the best of my knowledge and belief.

Further, this statement is made in support of the attached Criminal Complaint(s), number, and pursuant to the Pascua Yaqui Code of Laws, Title 10, Chapter 3, Section 3.1 (E) & (G).

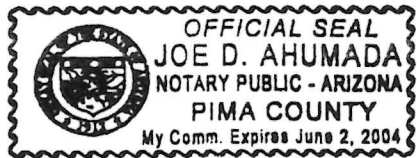
[Handwritten signature of Vincent S. Pettis]

AFFIANT

Subscribed and sworn to me before this 14 day of FEBRUARY, 2001

My Commission expires. JUNE 2, 2004

[Handwritten signature of Joe D. Ahumada]



NOTE: THIS IS AN AMENDED AFFIDAVIT PER REQUEST OF THE TRIBAL PROSECUTOR'S OFFICE.

EXHIBIT H
IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

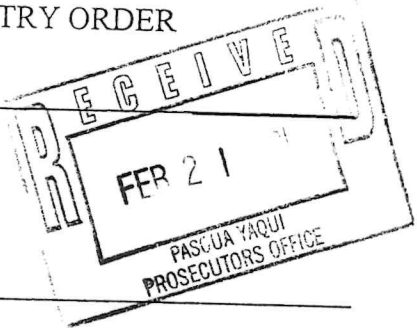
PASCUA YAQUI TRIBE
Plaintiff

CASE NO: CR-00-024 ^{21 April}

VS.

MINUTE ENTRY ORDER

BALTAZAR, RANDY
Defendant



DATE: February 21, 2001

SUBJECT: Motion to Amend Complaint

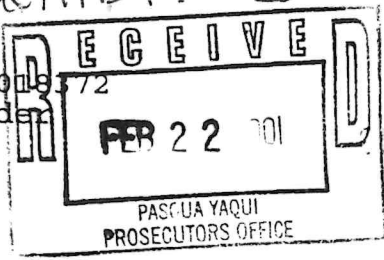
The Tribe filed the above request.

IT IS ORDERED THAT the defendant shall respond to the Tribe's motion on or by **FEBRUARY 28, 2001.**

R. V. Guerrero
Judge, Pascua Yaqui Tribal Court

cc:
 Tribe Defendant Probation Officer
Clerk SP
Date 2-21-01

EXHIBIT I



JUDICIAL COURT
PASCUA YAQUI
FEB 22 PM 3:53

CR-01-024
CMU

1 J. Vincent González, SBN 019,72
2 Pascua Yaqui Public Defender
3 7474 S. Camino de Oeste
4 Tucson, AZ 85746

Attorney for Defendant

5 IN THE PASCUA YAQUI TRIBAL COURT
6 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

8 PASCUA YAQUI TRIBE,	) Case No.: CR-01-024
9 Plaintiff,	) RESPONSE TO TRIBE'S MOTION TO
10 vs.	) AMEND COMPLAINT
11 BALTAZAR, RANDY,	) MOTION TO DISMISS WITH
12 Defendant	) PREJUDICE
13)

14 COMES NOW, Defendant, Randy Baltazar, by and through
15 counsel undersigned to respond to Tribe's Motion to Amend
16 Complaint. Defendant objects to Tribe's motion and moves this
17 Court to dismiss this matter with prejudice.

18 The Tribe originally filed this same matter against
19 defendant on September 28, 2000, case number: CR-00-166. On
20 November 14, 2000, the Tribe moved this Court to dismiss the
21 matter for prosecutorial discretion, after the Tribe discovered
22 a discrepancy in the alleged date of incident, August 5, 2000,
23 and the date of incident indicated by its own witnesses, August
24 4, 2000, during its pre-trial investigation. The court granted
25 that motion.

26 The Tribe then re-filed this charge in the case at bar.
27 This Court found probable cause using a *second* sworn statement
28 by Officer Vincent Pettis. Now, the Tribe is requesting that

1 this Court consider a *third* sworn affidavit in prosecuting this
2 case.

3 Officer Pettis has essentially sworn to three sets of "true
4 and accurate" facts for the same case. These separate
5 affidavits, listing multiple dates of incident and multiple
6 locations, prejudices defendant. At the very least, these
7 separate affidavits are grounds to challenge probable cause.

8 In addition to the unfair practice of submitting multiple
9 affidavits to convict Mr. Baltazar, the amended affidavit still
10 does not support sufficient probable cause. The "amended
11 complaint alleges that the offense occurred on August 4, 2000,
12 and the amended affidavit states that the incident occurred on
13 August 5, 2000.

14 To cure this error, the Tribe will, again, need to submit a
15 *fourth* affidavit swearing that the information is true and
16 accurate. It is unfairly prejudicial to try defendant on four
17 different sets of sworn facts.

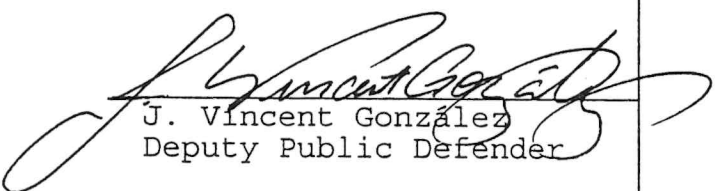
18 This case has been flawed since the beginning: witnesses
19 have changed stories, officers have conveniently corrected
20 mistake after mistake, and the prosecutor's office has pursued
21 this matter without first thoroughly investigating the facts
22 surrounding the case. The Tribe's solution is just to submit
23 amended pleadings in the form of amended complaints and
24 affidavits. And in the balance, is Mr. Baltazar awaiting a
25 "fair" trial.


26 Furthermore, the Tribe has not requested that this Court
27 accept the amended affidavit, only the complaint. However, if
28 this Court does accept both amended documents, will the court

1 schedule another Initial Appearance since this is all
2 essentially new material?

3 The only just solution in this matter is to dismiss this
4 case with prejudice. Granting the Tribe's motion, or dismissing
5 this case without prejudice would only allow the Tribe to make
6 its amendments free from any professional accountability. This
7 court should not allow the Tribe to continue to fix its mistakes
8 until it gets it right when somebody's life and liberty are at
9 stake. Defendant therefore requests that this Court deny the
10 Tribe's motion and dismiss this matter with prejudice.

11 RESPECTFULLY Submitted this 22nd day of February 2001.

12
13 
14 J. Vincent Gonzalez
15 Deputy Public Defender

16 COPY of the foregoing hand-delivered this date to
17 Prosecutor's Office, PY Ct. In-box by: 
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PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

01 MAR 15 PM 4:54

DOCKET NO. CA-01-003

BY [Signature]

1 PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR
2 7474 S. Camino de Oeste
Tucson, Arizona 85746
3 (520) 879-5780

4 Tamara Walters, SBN 10510
Chief Prosecutor

5 **IN THE PASCUA YAQUI TRIBE COURT OF APPEALS**
6 **IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA**

8 PASCUA YAQUI TRIBE,)
Appellant,)
9 Vs.)
10 BALTAZAR, RANDY,)
Appellee.)
11 _____)

NO. CA-01-003
(Tribal Court No. CR-01-024)

**NOTICE OF APPEAL TO THE
COURT OF APPEALS**

12 COMES NOW The Pascua Yaqui Tribe, by and through counsel
13 undersigned, and hereby timely files its Notice of Appeal to the
14 Court of Appeals, asking appellate review of an Order of
15 Dismissal With Prejudice of Cause Number CR-01-024 made March
16 2nd, 2001. Appellant contends that the Court abused its
17 discretion when it dismissed the matter with prejudice, and did
18 not permit the Tribe to amend the Complaint or re-file after a
19 dismissal without prejudice.

20 The Tribe is requesting a three-Justice appellate
21 proceeding.

22 **Respectfully submitted this 15th day of March, 2001.**

24 OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE

26 [Signature]
27 Tamara Walters
28 Chief Prosecutor

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Original of the foregoing delivered/mailed

This date to:

Clerk of the Court, Pascua Yaqui Tribe Court of Appeals

Copy delivered/mailed to:

Vincent Gonzalez

Deputy Public Defender

7474 S. Camino de Oeste

Tucson, Arizona 85746

Attorney for Appellee

Attorney General, Pascua Yaqui Tribe

7474 S. Camino de Oeste

Tucson, Arizona 85746

By: 

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)
Plaintiff)
VS.)
BALTAZAR, Randy)
Defendant)

CASE NO: CR-01-024

ORDER

Defendant through legal counsel filed their response to the Tribe's motion to amend the complaint; defendant objects to the Tribe's motion and moves the Court to dismiss the above matter with prejudice; that upon reviewing the motion it is determine by the Court that the charge is serious in nature and upon review of the Court's file the Court cannot allow the Tribe to continue to amend their errors which can prejudice the defendant; good cause has been shown to grant defendant's motion.

IT IS ORDERED THAT the Tribe's motion to amend the criminal complaint is denied and the above matter is dismissed with prejudice; trial hearing scheduled for March 6, 2001 at 9:30 a.m. is vacated.

SO ORDERED THIS 2nd DAY OF March, 2001.



Judge, Pascua Yaqui Tribal Court

cc:
Date: 3.2.01
 Defendant Tribe Counsel Clerk
Clerk: RN