

January 8, 2002, as he “had no pretrial, from a preliminary It went stright [sic] to a trial. Leaving me with no witness & no lawyer. in court.” Notice of Appeal, January 16, 2002.

From the trial transcript, it appears that the defendant also attempted to explain his misunderstanding of what was to occur on January 8 to the trial judge, though there is a tape change that occurs during his request for a continuance; “Yes your honor, I’d like to ask for the court’s ... if, ah, you could grant me another 30 days for you know so that I could prepare myself, I did not, well get a chance to prepare at any time and I, I thought at this time we, (tape change) I came unprepared. I have as you see no legal counsel, no ... can’t call no witnesses or nothing for that matter to defend on my behalf.” Transcript at 1-2.

The Tribe objected to the request for a continuance, stating that the defendant had been present in court at the arraignment when the trial date was set, that he had been informed by the court that trial would occur on January 8, and that the Tribe had three witnesses present and was ready to proceed. The trial judge then asked the defendant whether he was actively seeking legal counsel or did he simply want more time to prepare for the trial. The defendant answered that he was going to try to acquire counsel, and to prepare also, or perhaps find someone who could assist him in preparing his case, “cause as you can see I am very, well, unprepared ... and I have no way of defending myself in that position right now ... you know I would not like to put myself in that position right now.” Transcript at 2. The trial judge then denied the request for continuance, stating that the Tribe’s witnesses were present, that the defendant had been given sufficient time to “read the paperwork” and enough time since the arraignment in October 2001 “to either get counsel or get prepared for today’s date.” *Id.*

Pleading for the trial court's mercy one last time, the defendant stated that he had attempted to get counsel through the Tribe's public defender's office, but that "they weren't able to help me at that time for whatever reason they had ... the Tribe denied me counsel." Transcript at 2. In fact, as this Court was informed at oral argument, only a small percentage of criminal defendants are provided legal counsel by the Tribe. Further, as this Court was told, the Prosecutor's office does not, as a matter of policy, agree to a continuance in a criminal case simply because the defendant has no legal counsel to represent him, has requested but been refused legal counsel by the Tribe's public defender's office, and might be facing the prospect of considerable jail time (in this case, as the Court was informed, the defendant was sentenced to and claims that he in fact served 180 days in jail).

II.

We conclude that under the circumstances of this case, the defendant's due process rights under tribal law (Pascua Yaqui Tribe Constitution, Art. I, Sec. 1(h)) and the ICRA (25 U.S.C. § 1302(8) ("no Indian tribe ... shall—deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law")) were violated. The trial conducted by the defendant was a travesty of justice. Except for the defendant's own repeated self-incriminating statements made during the course of the trial, there was no evidence presented sufficient to convict him of guilt beyond a reasonable doubt on at least three of the four charges.

The Tribe presented three witnesses: Mr. Erwin Whitelance, the defendant's alleged victim; Mr. Tyrone Carrel, an independent witness; and Officer Catherine Sakonyi, the arresting officer. Mr. Whitelance essentially testified that he could not

recall the alleged fight between himself and the defendant because he was very drunk. Mr. Whitelance also testified that he hit the defendant on the back with a shovel for no reason other than that the defendant was in the immediate vicinity. Mr. Whitelance could not recall whether the defendant struck him. Mr. Whitelance's testimony does not provide sufficient evidence to prove the defendant's guilt on any of the crimes charged beyond a reasonable doubt.

Officer Sakonyi testified that she arrested the defendant and found a marijuana pipe in the defendant's pocket, but she did not witness the defendant's alleged assault, battery or disorderly conduct. Mr. Carrel testified that he saw the events from "three houses down." Transcript at 14. The following is the relevant dialogue between the prosecutor and Mr. Carrel:

Prosecutor: Okay. And as he was swinging it [the shovel], what were the other two individuals [defendant and David Baltazar] doing?

Witness: Um... Trying to get a shot at him [the victim] I guess.

Prosecutor: Okay. Then what did you see?

Witness: Ah.. then he... Then the... The young lady got in between them and took the shovel from him [the victim] and then um ... the other two individuals ah ... one hit him high, one hit him low. They got him on the ground.

Prosecutor: Okay the victim? And who hit the victim? Who did you see hit the victim?

Witness: Ah... The defendant and the other big burly guy.

Prosecutor: Okay. And what specifically did you see the defendant do?

Witness: He took a couple of swings at him and ...

Prosecutor: With? How?

Witness: With his hands.

Prosecutor: With his hands, okay. And did you see any contact?

Witness: Um... I couldn't tell if he actually made contact. I just saw him swinging down.

Prosecutor: And where, in which area of the body of the victim was the defendant swinging?

Witness: The ... Around the mid-riff.

Prosecutor: And did you see the defendant do... make any other actions towards the victim other than the swinging?

Witness: Um...

Prosecutor: When he was on the ground or later?

Witness: No.

Transcript at 15-16. While Mr. Carrel testified earlier that he saw the defendant hit the victim low, he later testified that he could not tell if the defendant had made contact with the victim.

For the most part, it was defendant's own repeated incriminating statements made during the course of his *pro se* defense that provided the weight of the evidence at trial on the charges of Assault, Battery, and Disorderly Conduct. Beginning with his opening statement, continuing on throughout his cross-examination of the Tribe's witnesses, and concluding with his own defense when he took the stand (the defendant presented no other witnesses on his own behalf), the defendant earnestly completed the job of proving the prosecution's case on the Assault, Battery and Disorderly Conduct charges. Having let the defendant prove its case on these three charges, the Tribe's Prosecutor then cited the defendant's own self-incriminating statements on the Possession of Drug Paraphernalia charge in her closing argument to the court to argue for conviction on that count.

The defendant was informed of his right to remain silent at the opening of the trial when he was given a perfunctory reading of his rights. He then immediately went on to incriminate himself on the charges in his opening statement. He was reminded of his rights again by the trial judge when he took the stand in his own defense, and again immediately went on to incriminate himself, this time on the witness stand. It is clear from the record that the trial judge failed to adequately warn the defendant of the dangers he would encounter by representing himself at the trial.

While we conclude that the trial court did not abuse its discretion in denying the defendant's motion for a continuance, at the same time, we want to make it equally clear that it would not have been an abuse of discretion at all if the court had granted a 30-day continuance to the defendant. This would have been the first such continuance granted to either side in this trial. The defendant stated that he had tried to secure counsel already, but had been refused by the Tribe's public defender's office. Had a continuance been granted by the trial judge, the defendant would have been clearly put on notice to come fully prepared or represented by counsel the next time he was scheduled to have his case heard. Concededly, the time spent by the prosecutor in coming prepared to trial on January 8 and the day's time spent by each of the witnesses would have to have been considered lost had such a continuance been granted. But at the same time, the defendant was facing charges that led to his imprisonment for 180 days. While we are not prepared to say that the court abused its discretion in this case, that does not mean we feel that that discretion was exercised most wisely under the circumstances.

Here, once the court had decided to exercise its discretion in the manner which it did, it was a violation of defendant's due process rights to watch him serially incriminate

himself throughout the trial. Clearly in the interests of justice, the court should have taken the time, repeatedly if need be, to better explain to the defendant his fundamental rights and how to protect them in the course of his defense. Failing to do so adequately in this case denied the defendant a fair trial and his rights to due process.

We recognize the limited financial resources made available to the Tribe's public defender's office, and the limited financial resources of many of the criminal defendants who appear in our courts. Our holding here is limited to those circumstances where a criminal defendant, as in this case, is required by the trial judge to proceed involuntarily, *pro se*, without legal counsel or an advocate in his or her defense in a criminal trial and there is a possibility of a jail sentence being imposed upon conviction for any offense by the court.

There are steps which we believe can be taken at an earlier stage in the proceedings that can perhaps minimize, or at least reduce the risks of the types of due process violations that occurred in this case. The Pascua Yaqui Tribe Constitution grants defendants in criminal cases a number of rights which a trial judge should explain thoroughly, in layman's terms, to all defendants who appear for arraignment. After the rights have been explained, defendants should sign a form indicating that they understand their rights, as listed on the form. A copy of this form, once signed, should be provided to all defendants, after the arraignment proceeding. The trial judge must explain to all defendants, on the record, at least the following rights of a criminal defendant in the Pascua Yaqui courts:

Article I, Sections 1 and 2 — Rights.

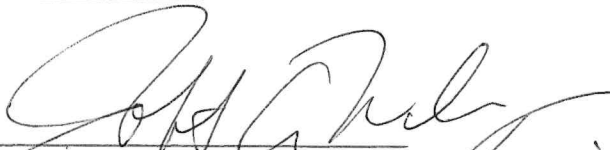
- 1) A right not to be a witness against himself or herself;

- 2) A right to a speedy and public trial;
- 3) A right to be informed of the nature and cause of the accusation;
- 4) A right to be confronted with the Tribe witnesses against him or her;
- 5) A right to have compulsory process for obtaining witnesses in his or her favor;
- 6) A right to have the assistance of counsel for defense at his or her expense. The trial judge must explain the resources the tribe has available for obtaining free counsel (including public defender's office) and give the defendant a list of members of the Pascua Yaqui bar who charge for their services. The trial judge should advise the defendant to immediately begin searching for counsel and keep a record of the attempts made. The trial judge should advise the defendant of the possible consequences of self-representation at trial. Should the defendant desire additional time to find counsel, a motion for continuance should be filed at least one week before the scheduled trial date.
- 7) A right to jury trial of not less than six (6) persons (if the criminal statute calls for imprisonment). The jury trial request should be made at arraignment or as soon as possible after arraignment.

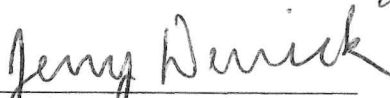
The trial judge should feel free to advise the criminal defendant of other rights granted by the Pascua Yaqui Tribe Constitution (Article I, Sections 1 and 2) and the Indian Civil Rights Act, 25 U.S.C. § 1302 upon arraignment.

Accordingly, since the defendant was convicted by his own statements and not by the Prosecutor's evidence, and such a result occurred due to the defendant representing himself, the defendant's convictions of the four crimes for which he was charged are reversed and the charges are dismissed.

Filed this 25 day of August, 2006.



Chief Justice



Associate Justice



Associate Justice

1 PASCUA YAQUI TRIBE
2 OFFICE OF THE PROSECUTOR
3 7474 S. Camino de Oeste
4 Tucson, Arizona 85746
5 (520) 879-6251

6 Tamara Walters, SBN 10510
7 Chief Prosecutor

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CA-02-003



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

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

10 RAMIREZ, JERRY,)
11 Appellant,)

NO. CA-02-003
(Tribal Court No. CR-02-007)

12 Vs.)
13 PASCUA YAQUI TRIBE,)
14 Appellee.)

**APPELLEE'S RESPONSE TO
BRIEF ON APPEAL**

15 COMES NOW The Pascua Yaqui Tribe, Appellee, by and through
16 counsel undersigned, and hereby responds to Appellant's Brief on
17 Appeal. Appellee opposes any relief requested by Appellant and
18 asks that the Court of Appeals uphold the Rulings and Orders of the
19 Trial Court. The Trial Court did not err in not granting
20 Appellant's motion to continue trial, and Appellant did receive a
21 fair trial. Appellee's response is supported by the following
22 facts and law.

23 I. Jurisdiction

24 Appellee concurs that this Court has jurisdiction to hear this
25 matter.

26 II. Summary of the Facts

27 Appellant appeared before the Trial Court on October 7, 2001
28 in custody for an unscheduled Initial Hearing. Appellant was

1 released that date on a \$150.00 bond and certain release
2 conditions, one of which was to appear for the Arraignment on
3 October 15, 2001. (See Order dated October 7, 2001, attached
4 hereto as Exhibit 1 and incorporated herein by reference.)

5 Appellant appeared for the Arraignment on October 15, 2001
6 without legal counsel. The Court advised Appellant of his legal
7 rights, one being the right to have counsel at his own expense for
8 any of the proceedings. Appellant plead not guilty to all four
9 charges, and the matter was set for Trial on January 8, 2002 at
10 2:30 p.m. Appellant was ordered to return for Trial on January 8,
11 2002. Appellant was also served with a copy of the Order with
12 Trial Date by the Court Process Server on October 22, 2001. (See
13 Exhibit 2 attached hereto and incorporated herein by reference.)

14 On the date of Trial, January 8, 2002, Appellant appeared
15 without counsel. When the Court convened for Trial, Appellant
16 stated that he was not aware that this was the Trial date, and that
17 he was not prepared for Trial and wanted a thirty day continuance
18 so he could prepare. When asked if he was seeking legal counsel or
19 just needed time to prepare, Appellant stated that he needed more
20 time to prepare and maybe try to find someone to help him prepare
21 for trial. Appellant did not say that he was going to retain
22 counsel to appear on his behalf at the Trial. Appellant just
23 stated that he needed more time to prepare for Trial. Appellee
24 objected to a continuance since Appellant had over two and one-half
25 months to prepare for trial and three witnesses were prepared to
26 give testimony that day. The Court denied Appellant's request,
27 stating that Appellant had ample time to prepare for trial and seek

1 | legal counsel. Appellant then responded that he tried to get
2 | counsel through the Tribe but was denied counsel through the Tribe.
3 | Appellant did not state that he had contacted other attorneys or
4 | that there was an attorney that he was going to retain, or when he
5 | would have the funds available to hire a particular attorney. He
6 | merely stated that he needed to save money to get an attorney.
7 | Appellant never stated that he made "several attempts" to retain
8 | counsel, as he now argues in his Brief on Appeal. (See Pages One
9 | and Two of the Trial Transcript attached hereto as Exhibit 3 and
10 | incorporated herein by reference.)

11 | Appellant wanted to buy more time. On the date of Trial he
12 | had no real intention of hiring an attorney to represent him within
13 | thirty days, based upon his responses to the Court. Even now,
14 | thirty days after the Trial, Appellant still does not have counsel
15 | to represent him in the Appellate Proceedings. Appellant has filed
16 | his Brief on Appeal *Pro Per*. The Court rightfully denied
17 | Appellant's request for a continuance so he could have more time to
18 | get prepared. Witnesses were present and the Court cannot allow
19 | parties to just buy time. Appellant had sufficient time to prepare
20 | and make arrangements to retain counsel in advance. Appellant was
21 | given adequate notice that a trial had been set and would go
22 | forward on January 8th. Appellant did not file a Motion to
23 | Continue the Trial prior to the Trial date, nor did Appellant
24 | inform Appellee that he would be asking for a continuance to seek
25 | legal counsel.

26 | Appellant had a fair trial without counsel. Appellant gave an
27 | opening statement and closing argument, cross examined all

1 witnesses, testified on his own behalf, and raised defenses of self
2 defense and mistaken identity. Appellant admitted during his own
3 testimony that he was guilty of Count Four, Possession of Narcotic
4 Paraphernalia. Appellee presented overwhelming testimony from the
5 victim, an unbiased eye witness, and a police officer that
6 Appellant was guilty of assault, battery, and disorderly conduct.
7 The Trial Judge rightfully found Appellant guilty of all four
8 counts. Appellant was found guilty not because he did not have an
9 attorney. A review of the Trial Transcript will show that
10 Appellant had a fair trial and was not "ambushed" by the
11 Prosecuting attorney.

12 III. Law and Authorities

13 Title 1 Section 1.55 of the Pascua Yaqui Tribal code does not
14 mandate the Court to grant every continuance made by a defendant or
15 any other party for that matter. The Court has the discretion to
16 grant or deny any motion made by either party. If the Court does
17 grant a defense motion to continue, then the length of continuance
18 shall be a reasonable time not to exceed thirty days, unless for
19 good cause. The Court in this case used its discretion and denied
20 Appellant's motion to continue trial. There was no affirmative
21 proof that Appellant had spoken to a particular attorney and got a
22 quoted fee for services that he would be able to earn and pay and
23 have the attorney present in thirty days for trial. Appellant
24 merely stated he needed more time to prepare and implied that he
25 needed to speak to counsel to help him prepare. Appellant stated
26 he had only spoken to the Tribe's counsel. Appellant did not
27 provide reasonable notice, as the trial proceedings had begun when
28

1 he asked for a continuance. The ends of justice did not require a
2 continuance, as Appellant participated in an opening statement,
3 closing argument, cross examination, testified on his own behalf,
4 and raised defenses of self defense and mistaken identity.

5 Appellant is making arguments in his Brief that are not part
6 of the Record and not brought to the Court's attention when the
7 Ruling was made. Appellant never informed the Court that he had
8 made several attempts to obtain legal counsel. He only stated that
9 he had attempted to get a counsel through the Tribe. He did not
10 say that he contacted anyone else, only that he wanted to continue
11 so he could try to get legal counsel and to prepare or have legal
12 counsel or someone else help him out. Appellant argues in his
13 Brief that he was still short of the fees requested, but the Record
14 holds no such statement by Appellant. He only stated that he was
15 working and needed more money but he never said how much, or how
16 long it would take to get, or who his attorney would be, or who all
17 he saw and what fees were quoted, or that he would be able to ever
18 afford counsel. Appellant is still proceeding *pro per* in these
19 proceedings.

20 The Trial Court has the discretion to grant continuances of
21 trial, based upon the circumstances of each individual case. There
22 are times when defendant's motion to continue trial to obtain legal
23 counsel are granted on the date of trial, and times when they are
24 not. There are times when the Tribe's motion to continue on the
25 day of trial are granted and some when they are not. It is a case
26 by case analysis, and not a rule of procedure that every time a
27 defendant asks for a continuance on the date of trial it must be

1 granted, especially to try to get counsel to be prepared.
2 Appellant's motion was denied because he did not provide
3 "affirmative proof".

4 IV. Conclusion

5 Appellee respectfully disagrees with Appellant's
6 interpretation of the Pascua Yaqui Tribal Code Title 1 Section
7 1.55. Every defendant who files a motion to continue on the day of
8 trial is not entitled to a continuance, no matter what the reason.
9 In that case, a defendant could come to every trial hearing and ask
10 for a continuance for another thirty days and never go to trial.
11 The correct interpretation is that if the Court in its discretion
12 finds that the defendant has made an affirmative proof in open
13 Court, upon reasonable notice, that the ends of justice require a
14 continuance, then the defendant shall be entitled to a reasonable
15 period of time to continue not to exceed thirty days, unless for
16 good cause to extend beyond the thirty days.

17 The Trial Court, in its discretion, rightfully found that
18 based upon Appellant's lack of affirmative proof, lack of
19 reasonable notice, and lack of the ends of justice requiring a
20 continuance, Appellant's motion to continue should have been
21 denied. The Court of Appeals can only consider what information
22 was actually provided to the Trial Judge on the Record.

23 Appellee respectfully requests this Court to deny any relief
24 to Appellant, and dismiss these proceedings.

1 **Respectfully submitted this 19th day of February, 2002.**

2
3 OFFICE OF THE PROSECUTOR
 PASCUA YAQUI TRIBE

4 

5 _____
 Tamara Walters
 Chief Prosecutor

6
7 Original and four copies of the foregoing delivered
8 this date to:

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

10 Copy delivered/mailed to:

11 Jerry Ramirez
12 4951 W. Vai Sevoi
 Tucson, Arizona 85746
 Appellant

13 By: tw

APPELLEE'S EXHIBIT 1

ORDER DATED OCTOBER 7, 2001

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION @ 4:30

PASCUA YAQUI TRIBE)
Plaintiff,)
VS.)
RAMIREZ, JERRY)
Defendant.)

CASE NO: CR-02-NEW

ORDER

The above matter came before this Court for the unscheduled Initial appearance hearing on this 7th day of October 2001. Present for the Tribe was Patricia Castro. The Defendant appeared in custody and without legal counsel.

The Court finds that upon hearing oral testimony for probable cause that there is sufficient probable cause to believe that the Defendant may have committed the offenses of Assault, Battery, Disorderly Conduct and Possession of Drug Paraphernalia. The Court will schedule a separate Arraignment hearing date. The Tribe recommended that the Defendant be released only upon posting a bond of \$150.00 as the charges are serious in nature involving allegations of assault and battery. The Tribe recommended that if the Defendant is able to post bond that the Defendant not have any contact with Irwin White Lance and that the Defendant consume any alcoholic beverages and be subject to random breathalyzer tests. The Tribe also recommended that the Defendant not possess any narcotics or dangerous drugs or possess any drug paraphernalia. After hearing the Defendant's objection and recommendations the Court finds good cause to grant the Tribe's release recommendations as the allegations are serious in nature involving assault and battery. The Court further finds that the Defendant has signed a detention questionnaire and the Court finds no medical reason why the Defendant can not be held in detention at this time.

IT IS ORDERED THAT:

- a.) Probable Cause exists for the charges of Assault 1 PYTC §3.6, Battery 1 PYTC §3.8, Disorderly Conduct 1 PYTC §3.26 and Possession of Drug Paraphernalia 1 PYTC §5.2.
- b.) The Defendant shall return for **Arraignment** hearing on **OCTOBER 15, 2001 AT 9:00 A.M. THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.**
- c.) The Defendant shall be released only upon posting bond in the amount of \$150.00. If the Defendant is able to post bond **the Defendant shall not have any contact with Irwin White Lance** and shall not consume any alcoholic beverages and shall be subject to random breathalyzer tests by law enforcement or the probation officers. The Defendant shall not possess any narcotics or dangerous drugs and shall be subject to random urinalysis tests.

SO ORDERED ON THIS 7th DAY OF October, 2001.

Margaret A. Lane
Judge, Pascua Yaqui Tribal Court

cc: Defendant Tribe Defense Counsel Probation Detention Other PYLES.
Date: 10/15/01
Clerk: J. [Signature]

APPELLEE'S EXHIBIT 2

COURT PROCESS LOG AND
ORDER DATED OCTOBER 15, 2001

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

1			
2			
3	PASCUA YAQUI TRIBE)	
4	Plaintiff,)	CASE NO: CR-02-007
5	VS.)	
6	RAMIREZ, JERRY)	ORDER
7	Defendant.)	

The above matter came before this Court for Arraignment hearing on this 15th day of October 2001. Present for the Tribe was Alycia T. Gomez. The Defendant appeared without legal counsel.

The Court finds that after advising the Defendant of his rights the Defendant plead not guilty to all counts in this matter.

11	Count 1: Assault 1 PYTC §3.6	Plea: Not Guilty
12	Count 2: Battery 1 PYTC §3.8	Plea: Not Guilty
13	Count 3: Disorderly Conduct 1 PYTC §3.26	Plea: Not Guilty
14	Count 4: Possession of Drug Paraphernalia 1 PYTC §5.2	Plea: Not Guilty

The Court finds that this matter will be scheduled for Trial hearing. The Tribe recommended that one condition of release be modified so that the Defendant is restrained from harming or harassing Erwin White Lance rather than no contact with Mr. White Lance. The Defendant had no objections to the modification. The Court finds good cause to grant the Tribe's release recommendations with the modification.

IT IS ORDERED THAT:

- a.) The Defendant shall return for **Trial** hearing on **JANUARY 8, 2002 AT 2:30 P.M. THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.**
- b.) The Defendant shall be released on the posted bond of \$150.00. **The Defendant shall not harm or harass Erwin White Lance** and shall not consume any alcoholic beverages and shall be subject to random breathalyzer tests by law enforcement or the probation officers.
- c.) The Defendant shall not possess any narcotics or dangerous drugs and shall be subject to random urinalysis tests.

SO ORDERED ON THIS 15th DAY OF October, 2001.

Margaret A. Flores
Judge, Pascua Yaqui Tribal Court

cc: Defendant Tribe Defense Counsel Probation Attention Other
 Date: 10-16-01
 Clerk: [Signature]

Subp 11-30-01
DISC- 10-25-01

16 2001
4:15 pm

PASCUA YAQUI TRIBAL COURT

7474 S CAMINO DE OESTE TUCSON AZ 85746 PHONE (520) 879-6276

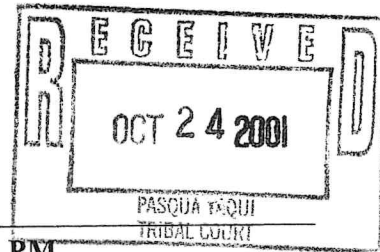
COURT PROCESS LOG

DOCKET NO. CR-07-007

NAME: JERRY RAMIREZ
ADDRESS: (Physical) 4951 W VAI SEVOI TUCSON AZ 85746

TYPE OF PROCESS:

- CRIMINAL: ORDER WITH TRIAL HEARING
- CIVIL: _____
- TRAFFIC _____
- JUVENILE _____
- CHILD WELFARE _____
- OTHER: _____



DATE AND TIME OF COURT: JANUARY 8, 2002 AT 2:30 PM

DATE PROCESS ISSUED: OCTOBER 16, 2001 CLERK Rene Garcia

FIRST ATTEMPT

DATE: 10-22-01 TIME: 12:22

- SERVICE INCOMPLETE: (REASON) _____
- SERVICE COMPLETE: (SIGNATURE) [Signature]

SERVED BY: _____ TITLE _____

SECOND ATTEMPT

DATE: _____ TIME: _____

- SERVICE INCOMPLETE: (REASON) _____
- SERVICE COMPLETE: (SIGNATURE) _____

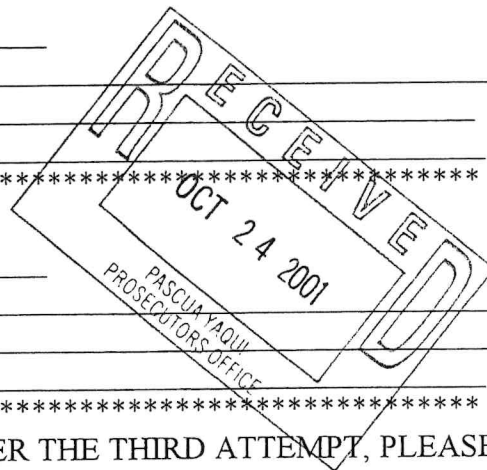
SERVED BY: _____ TITLE _____

THIRD ATTEMPT

DATE: _____ TIME: _____

- SERVICE INCOMPLETE: (REASON) _____
- SERVICE COMPLETE: (SIGNATURE) _____

SERVED BY: _____ TITLE _____



NOTE: IF SERVICE IS NOT COMPLETED AFTER THE THIRD ATTEMPT, PLEASE RETURN THIS LOG TO THE ISSUING CLERK.

CC: TRIBE
PO

[Handwritten initials]

APPELLEE'S EXHIBIT 3

TRIAL TRANSCRIPT PAGES 2 AND 3

**PASCUA YAQUI TRIBAL COURT
TRANSCRIPTION**

PASCUA YAQUI TRIBE
VS
RAMIREZ, JERRY
CR-02-007 CA-02-003
01/08/02

PRESIDING JUDGE: MARGARET A FLORES
CHIEF PROSECUTOR-TAMARA WALTERS
DEFENDANT-JERRY RAMIREZ

JUDGE: THE PASCUA YAQUI TRIBAL COURT IS NOW IN SESSION, IN THE MATTER OF THE PACUA YAQUI TRIBE VERSUS JERRY IN DOCKET NUMBER CR-02-007. TODAY'S DATE IS TUESDAY, JANUARY 8, 2002. THIS IS THE SCHEDULED HEARING IN THIS MATTER. REPRESENTING THE TRIBE IS CHIEF PROSECUTOR TAMARA WALTERS. THE DEFENDANT JERRY RAMIREZ APPEARS AND WITHOUT LEGAL COUNSEL. THE COURT WILL ADVISE YOU OF YOUR FOR THE TRIAL HEARING MR. RAMIREZ. YOU DO HAVE THE RIGHT TO REMAIN SILENT, ANYTING YOU SAY BE USED AGAINST YOU. YOU HAVE THE RIGHT TO LEGAL COUNSEL AT YOUR OWN EXPENSE AND YOU ALSO THE RIGHT TO A HEARING IN THIS MATTER. THE RIGHT TO EXAMINE ANY WITNESSESS AND EVIDENCE THAT TRIBE PRESENTS AND THE RIGHT TO PRESENT WITNESSESS AND EVIDECNE IN YOUR BEHALF. YOUR ALSO HAVE RIGHT TO APPEAL TO THE PASCUA YAQUI COURT OF APPEALS. DO YOU UNDER STAND YOUR RIGHTS?

DEFENDANT: YES I DO.

JUDGE: THE COURT WILL ASK IF THE PARTIES ARE READY TO PROCEED WITH TRIAL HEARING IN THIS MATTER?

PROSECUTOR: YES YOUR HONOR THE TRIBE IS READY.

JUDGE: AND THE COURT WILL ASK MR. RAMIREZ IF YOU WISH TO REMAIN WITH YOUR PLEAS OF NOT GUILTY FOR ALL FOUR COUNTS IN THIS MATTER?

DEFENDANT: YES YOU HONOR.

JUDGE: ALL RIGHT, THIS TIME THEN THE COURT WILL ADVISE YOU OF HOW THE COURT WILL PROCEED TODAY FOR THE TRIAL HEARING. THE COURT WILL HEAR OPENING STATEMENTS FROM THE TRIBE, MRS. WALTERS AND WILL HEAR OPENING STATEMENT FROM YOU IF YOU HAVE ONE. AFTER OPENING STATEMENTS ARE HEARD THEN THE COURT WILL SEWAR IN THE TRIBE'S FIRST WITNESS AND UH IF THERE ANY ONTHER WITNESSES THE COURT WILL SWEAR IN THOSE WITNESSES ALSO. TESTIMONY WILL BE HEARD FROM THE WITNESS UH, TRIBE WILL ASK QUESTIONS OF THAT WITNESS OR THOSE WITNESSES IF THE TRIBE HAS MORE THAN ONE, AND UH, THEN YOU WILL HAVE A CHANCE AFTER THE TRIBE IS DONE ASKING FIRST QUESTIONS, THEN YOU WILL HAVE A CHANCE TO ASK QUESTIONS, CROSS EXAMINATION QUESTIONS OF THAT WITNESS, AND UHM, AFTER THE TRIBE'S WITNESSES ARE DONE WITH THEN THE COURT WILL ALLOW YOU TO BRING FORTH ANY WITNESSES OR FOR YOU TO TESTIFY IN YOUR BEHALF AND AGAIN IF YOU HAVE ANYTHING UHM TO TESTIFY ABOUT THEN THE COURT WILL, THE TRIBE HAS AN OPPORTUNITY THEN TO ASK YOU CROSS EXAMINATION QUESTIONS. AFTER ALL THOSE WITNESSES ARE HEARD THEN THE COURT WILL HEARING CLOSING STATEMENTS FROM YOU AND THE TRIBE, AND THEN WILL HEARING UH, THEN THE COURT WILL MAKE ITS DECISION IN THIS MATTER. DO YOU HAVE ANY QUESTION?

DEFENDANT: YES YOUR HONOR, I'D LIKE TO ASK FOR THE COURTS IF AH, YOU COULD GRANT ME ANTOHER 30 DAYS FOR YOUR KNOW SO THAT I COULD PREPARE MYSELF, I DID NOT, WELL GET A CHANCE TO PREPARE AT ANY TIME AND I, I THOUGHT THAT AT THIS TIME WE , (tape change) I CAME UNPREPARED. I HAVE AS YOU SEE NO

LEGAL COUNSEL, NO CAN'T CALL NO WITNESSES OR NOTHING OF THAT MATTER TO DEFEND ON MY BEHALF.

JUDGE: MS WALTERS DO YOU HAVE A RESPONSE TO THAT REQUEST?

PROSECUTOR: UHM, YES YOUR HONOR THE TRIBE WOULD OBJECT AS THE DEFENDANT WAS PRESENT IN COURT AT ARRAIGNMENT AND WHEN THE TRIAL DATE WAS SET. HE WAS INFORMED BY THE COURT THAT IT WAS THE TRIAL DATE SET ON THIS DATE AND TIME. THE TRIBE'S THREE WITNESSES ARE PRESENT AND UHM, WE'RE READY TO PROCEED YOUR HONOR.

JUDGE: MR. RAMIREZ YOU HEARD WHAT THE TRIBE HAS JUST UM, STATED UHM THAT YOU WERE AWARE OF TODAY'S DATE AND INCLUDED IN YOUR RELEASE ON YOUR BOND TRIAL HEARING ON JANUARY 8, 2002 AT 2:30 PM AND THIS IS THE DATE AND TIME FOR THE TRIAL HEARING, HOWEVER, THE COURT ON, IS AWARE THAT YOU DO HAVE RIGHT TO CONTINUANCES, THE ACTUAL DATE OF TRIAL, BUT AH, ARE YOU, ... ONE QUESTION FROM THE COURT ARE YOU SEEKING LEGAL COUNSEL OR ARE YOU JUST WANT TO PREPARE FOR THE TRIAL?

DEFENDANT: I, I AM GOING TO TRY TO GET ME A LEGAL COUNSEL AND ALSO TO PREPARE OR, OR YOU KNOW AT LEAST HAVE MY LAWYER OR WHOEVER, THAT CAN HELP ME OUT TO PREPARE THE CASE, CAUSE AS YOU CAN SEE I AM VERY WELL UNPREPARED AN UH, AND I HAVE NO WAY OF DEFENDING MYSELF RIGHT NOW, OTHER THAN TO WHAT, YOU KNOW I WOULD JUST NOT LIKE TO PUT MYSELF IN THAT POSITION RIGHT NOW, TO CONTINUE THIS HEARING FOR NOW I WOULD LIKE TO GET MORE PREPARED, AND I WOULD APPRECIATE IT IF YOU COULD GIVE ME A CONTINUANCE.

PROSCUTOR: YOUR HONOR THE ARRAIGNMENT WAS OCTOBER 15, SO HE'S HAD OVER TWO AND A HALF MONTHS TO OBTAIN COUNSEL AND PREPARE FOR TODAY'S TRIAL.

JUDGE: MR. RAMIREZ AT THIS TIME THE COURT UH, FINDS THAT THE COURT WILL DENY YOUR REQUEST THE, TRIBE IS READY TO PROCEED THE WITNESSES ARE HERE. MR. RAMIREZ YOU HAD ENOUGH TIME TO READ THE PAPERWORK AND KNOW THAT IT IS TRIAL DAY AND UHM, THE COURT IS AWARE THAT THERE HAVE BEEN CONTINUANCES GRANTED ON THE SAME DAY, HOWEVER THIS MATTER IS GOING TO PROCEED WITH TRIAL TODAY. UM, AND YOU'VE HAD ENOUGH TIME SINCE OCTOBER TO EITHER GET COUNSEL OR GET PREPARED FOR TODAY'S DATE. ORDERS HAVE SAID THAT THIS IS THE TRIAL SCHEDULED FOR TODAY.

DEFENDANT: YEAH YOUR HONOR I DID TRY TO GET A COUNSEL THROUGH THE TRIBE BUT THEY WEREN'T ABLE TO HELP ME AT THAT TIME FOR WHATEVER REASON THEY HAD. AND THEREFORE I COULDN'T YOU KNOW, I MEAN I'AM WORKING BUT IT'S YOU KNOW, I NEED TO SAVE TO GET ME A ATTORNEY AN AND YOU KNOW THE TRIBE DENIED ME COUNSEL. SO IT'S KIND OF HARD FOR ME YOU KNOW GET ONE RIGHT OFF THE BACK AND NOT HAVING ANY MONEY TO YOU KNOW, PAY HIM UP SO THAT HE CAN UH, UH BE MY COUNSEL.

JUDGE: AT THIS TIME THEN THE COURT WILL DENY YOUR REQUEST MR. RAMIREZ AND WILL PROCEED WITH THE TRIAL HEARING TODAY AND FOR THE REASON THAT YOU'VE HAD OVER TWO MONTHS TO PREPARE FOR THIS. EITHER TO, TO ASK FOR A CONTINUANCE BEFORE TODAY'S DATE OR UH TO FIND SOMEONE ASIDE FROM THE PUBLIC DEFENDER'S TO REPRESENT YOU. THE COURT THEN WILL HEAR, PROCEED WITH THE TRIAL HEARING TODAY AND WILL HEAR FROM MS. WALTERS ON OPENING STATEMENT THEN WILL ALLOW MR. RAMIREZ TO MAKE HIS OPENING STATEMENT. IF YOU HAVE AN OPENING STATEMENT FOR TODAY, MS. WALTERS?

PROSECUTOR: THANK YOU YOUR HONOR. THE EVIDENCE THAT WILL BE PRESENTED TODAY THROUGH VARIOUS WITNESSES WILL SHOW THAT ON, THAT ON OCTOBER SIXTH OF TWO THOUSAND ONE AT

explained that although he was working, he needed more time to save the money that an outside attorney would charge to represent him. Appellant's request for a continuance would have been the first continuance requested by either party in the matter.

Counsel for Appellee objected to the request for a 30-day continuance on the grounds that Appellant was present in court at the arraignment when the date for trial was set. Counsel for Appellee further argued that the Tribe's witnesses were present and that the Tribe was ready to proceed. Counsel also argued that Appellant had over two months to prepare. No objections were raised which would contradict that the ends of justice required continuance to allow Appellant sufficient time in which to afford private counsel.

After acknowledging on the record that "the court is aware that there have been continuances granted on the same day," the trial court denied Appellant's request for continuance without reason. The trial proceeded on the serious offenses alleged. Appellant was found guilty on all charges.

Appellant timely filed a Notice of Appeal on January 16, 2002 on the issue of the denial of a continuance to obtain counsel.

III. LAW AND AUTHORITIES

Title 1, Section 1.55 of the Pascua Yaqui Tribal Code mandates, in part that

"No continuances of the trial shall be granted *except* upon affirmative proof in open Court, upon reasonable notice, *that the ends of justice require continuance. The defendant shall be entitled to a reasonable continuance ... not [to] exceed thirty (30) days, unless for good cause.*"

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IV. ARGUMENT

The Trial Court Erred In Denying Appellant's Request For Continuance

Appellant provided the requisite proof in open court, as required by the PYT Code in Section 1.55, that the ends of justice required continuance. He informed the court that he had made several attempts to obtain legal counsel. He informed the court that although he is employed, he needed more time to save enough money to hire private counsel. His request for continuance was reasonable. It was his first request for continuance, not an on-going request for an inappropriate delay. The purpose of the request was to allow additional time for Appellant to obtain counsel that he could afford. He had made good faith efforts to obtain counsel, although he was still short of the fees requested.

Appellant's request for continuance on the day of trial, which was his first opportunity to provide "affirmative proof in open Court" was not unreasonable, nor was it unusual. The court below acknowledged that, in other cases, continuances had been granted on the day of trial. Yet, for whatever reason, Appellant's request was denied. The court, however, is correct in its assertion that 'day-of-trial' continuances are often granted. Further, they are often granted for several purposes, and at the request of either party. They are often granted at the request of the Tribe when their witnesses have failed to appear. See Attachment A, *PYT v. Montiel*, #CR-01-184 Motion to Continue Trial and Order granting Tribe's request for continuance on day of trial for failure of Tribe's witnesses to appear. See also Attachment B, *PYT v. Molina*, #CR-01-171 Order granting Tribe's request for continuance on day of trial for failure of alleged victim to appear. In *Molina*, the court recognized that the request for continuance was the Tribe's first such motion and therefore granted the Tribe's Motion to Continue. In *Montiel*, the court

granted the day-of-trial Motion to Continue filed on the morning of trial. The Tribe alleged the need for continuance because one of the Tribe's witnesses had previously been subpoenaed to appear in another jurisdiction's court, and the other witness was out of town on job-related training. Continuance was granted even though these were reasons that could have been anticipated by the Tribe in advance of the trial date. The ends of justice did not warrant a continuance in either of those matters.

In this matter, on the other hand, Appellant was unable to obtain affordable legal counsel prior to the date of trial, in spite of his efforts. He was charged with serious offenses. His liberty is potentially at stake. He is untrained in the law. Counsel for the Tribe is an attorney who is trained in the law. There was no level playing field. Fundamental fairness along with public policy and the PY Tribal Code would dictate that *a first request by a defendant* for a continuance to obtain legal counsel is reasonable and would at the very least allow an extended time to obtain counsel.

After Appellant's motion for continuance was denied, the court proceeded with his trial. Appellant did not receive a fair trial. He was ambushed by his lack of knowledge in the courtroom. The court erred in denying him a continuance.

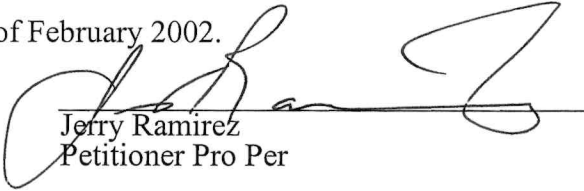
V. CONCLUSION AND RELIEF SOUGHT

The lower court erred in denying Appellant's first request for a 30-day continuance. Appellant was forced to represent himself, which resulted in an unfair trial. Appellant properly requested a continuance for trial in open court as required by the PY Tribal Code. He provided affirmative proof that the ends of justice required continuance. The trial court has regularly granted day-of-trial continuances for the Tribe, although the Code does not *entitle* the Tribe to such. On the contrary, as a criminal defendant,

Appellant *was entitled* to a reasonable continuance not to exceed 30 days. *That* was all he requested: a 30-day continuance to afford him the additional time he required to be able to afford private counsel. The request was reasonable, and continuance would clearly have been in the interests of justice. Justice does not prevail where such a reasonable request is denied, especially where a person's liberty is at stake.

Based on the foregoing, Appellant respectfully requests this Court to reverse his conviction and to order the lower court to provide Appellant with the means of a fair trial by granting him a new trial with sufficient time in which to obtain counsel.

Respectfully submitted this 6th day of February 2002.


Jerry Ramirez
Petitioner Pro Per

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR
7474 S. Camino de Oeste
Tucson, Arizona 85746
(520) 879-6251

Tamara Walters, SBN 10510
Chief Prosecutor

PASCUA YAQUI TRIBAL COURT
DATE AND TIME

01 NOV 15 AM 8:34

CASE NO. CR-01-184

FILED AS

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA

PASCUA YAQUI TRIBE,)
Plaintiff,)

NO. CR-01-184

Vs.)

MONTIEL, CARMEN,)
Defendant)

MOTION TO CONTINUE TRIAL

COMES NOW The Pascua Yaqui Tribe, by and through counsel undersigned, and hereby moves to continue the Trial in this matter, now set November 15, 2001, at 9:30 a.m. for the reason that two of the Tribe's necessary witnesses cannot be available for Trial. Officer A. Lopez, the primary investigating officer, was served first with a Pima County Subpoena to appear and give testimony at a Trial set for the same date and time as the trial in this case. Officer Lopez is the primary witness of a serious incident in the Pima County case and must be present. Officer A. Woods is out of town on job related training.

This is the first request for a continuance of the Trial date. Speedy trial limits have not expired. It is respectfully requested that the Trial be continued to a date within the speedy trial limits.

Attachment A

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Respectfully submitted this 15th day of November, 2001.

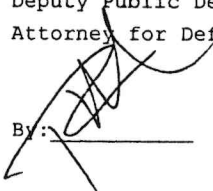
OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE



Tamara Walters
Chief Prosecutor

Original of the foregoing delivered/mailed
This date to:
Clerk of the Court, Pascua Yaqui Tribal Court

Copy to:
Daniel Anderson
Deputy Public Defender
Attorney for Defendant



By: _____

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

PASCUA YAQUI TRIBE)
Plaintiff,)
VS.)
MONTIEL, CARMEN)
Defendant.)

CASE NO: CR-01-184

ORDER

The above-captioned matter came before this Court for Trial hearing on this 15th day of November 2001. Tamara Walters appeared for the Tribe and the Defendant appeared with legal counsel, Daniel Anderson.


The Court finds that Defense Counsel presented their Motion To Set Aside The Complaint. After hearing arguments the Court finds that the affidavit is sufficient to determine probable cause and will deny the Motion To Set Aside The Complaint.

The Court further finds that the Tribe filed a Motion To Continue earlier this morning and after hearing arguments from the parties the Court finds good cause to grant the Tribe's motion.

IT IS ORDERED THAT:

- A.) The Motion To Set Aside Complaint is denied.
- B.) The Motion to Continue shall be granted and the Trial hearing shall be heard on **NOVEMBER 26, 2001 AT 2:30 P.M. THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.** The conditions of release shall remain as ordered and all subpoenas shall remain in full force and effect.

SO ORDERED THIS 15th DAY OF November 2001.


Judge, Pascua Yaqui Tribal Court

cc:
 Tribe Defendant Counsel Other
Date: 11-21-01
Clerk: DD

Attachment
A
NOV 2001

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)
Plaintiff)
VS.)
MOLINA, ARMANDO)
Defendant)

CASE NO: CR-01-171

ORDER

The above matter was scheduled for trial hearing on this 8th day of January, 2001. Defendant appeared with Legal Counsel, Daniel Anderson. Appearing for the Tribe was Chief Prosecutor, Tamara Walters.

The Court finds that the Tribe moves the Court for a brief recess, as the victim in the above matter is not presented. Defense counsel objects to the recess and the Court will allow a five-minute recess. The Tribe moves the Court for a continuance, as the victim is interested in pursuing the above matter. Defense Counsel objection to the Tribe's motion for a continuance. The Court will grant the Tribe's motion for a continuance, as this is the Tribe's first motion for a continuance. Time limits are deemed waived and the same conditions of release will remain in full force and effect.

IT IS ORDERED THAT the trial hearing is rescheduled for **FEBRUARY 11, 2002 AT 3:30 P.M.** Defendant's conditions of release shall remain as ordered by the Court. The Tribe and Defense Counsel's subpoenas shall remain in full force and effect. Time limits are deemed waived.

SO ORDERED THIS 8th DAY OF January, 2002

[Signature]

Judge, Pascua Yaqui Tribal Court

cc:
Date: 1-10-02
 Defendant Tribe P.O.
Clerk: [Signature]



Attachment
B

IN THE APPELLATE COURT OF THE YAQUI NATION

Appellant or Petitioner,

Jerry Ramirez

Vs.

Lasqua Yaqui Tribe
Appellee or Respondent.

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No. CA-02003

NOTICE OF APPEAL

APPELLATE COURT
CASE AND TIME
02 JAN 16 AM 11:37
CA 02-003
Remela

1. If the appeal is from the entire judgment:

"Notice is hereby given that the above named Jerry Ramirez
appeals to the Appellate Court of the Yaqui Nation from the judgment entered in this action by
Lasqua Yaqui Tribe on the 16 day of
(Name of court or agency) Jan., 20 02

2. If the appeal is from part of the judgment:

"Notice is hereby given that the above named Jerry Ramirez appeals to
the Appellate Court of the Yaqui Nation from the following part of the judgment entered by the
Lasqua Yaqui Tribe on the 16 day of Jan., 20 02
(Name of the court or agency)

(Specify the part of the judgment appealed from here.)

I feel my trial was unfair. I had no lawyer
I was denied a continuance to prepare my case
I had no pretrial, from a preliminary I went
straight to a trial. leaving me with no witness & no
lawyer in court, causing me to lose my case

Jerry Ramirez
Name of the Attorney or Party taking appeal
if not represented by Attorney

1 The Court, on its own motion will order that a separate sentencing hearing be set and a
2 pre-sentencing report will be completed. The Court will order that the same release conditions
3 remain in effect.

3 IT IS ORDERED THAT:

- 4 a.) The Defendant, Jerry Ramirez is found guilty of Count 1: Assault 1 PYTC §3.6, Count 2:
5 Battery 1 PYTC §3.8, Count 3: Disorderly Conduct 1 PYTC §3.26, and Count 4: Possession
6 of Drug Paraphernalia 1 PYTC §5.2
7 b.) The Defendant shall return for **Sentencing** hearing on counts 1,2, 3, and 4 on **FEBRUARY**
8 **11, 2002 AT 2:00 P.M. THIS IS THE ONLY NOTICE OF HEARING YOU WILL**
9 **RECEIVE.**
10 a.) The conditions of release shall remain as ordered and the Defendant shall be released on a
11 posted **\$150.00** bond. **The Defendant shall not harm or harass Erwin WhiteLance** and
12 shall not consume any alcoholic beverages and shall be subject to random breathalyzer tests
13 by law enforcement or the probation officers.
14 b.) The Defendant shall not possess any narcotics or dangerous drugs and shall be subject to
15 random urinalysis tests.
16 c.) The pre-sentencing investigation shall be conducted by the Office of Probation and shall be
17 due on February 4, 2002.

12 SO ORDERED ON THIS 8th DAY OF January, 2002.

14 W. J. H. H. H.
15 Judge, Pascua Yaqui Tribal Court

17 cc: Defendant Tribe Defense Counsel Chief Probation Officer
18 Date: 1-11-02
19 Clerk: Ramirez