

No. CA-06-011
Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellant,

v.

Julianna McAdams, Defendant/Appellee.

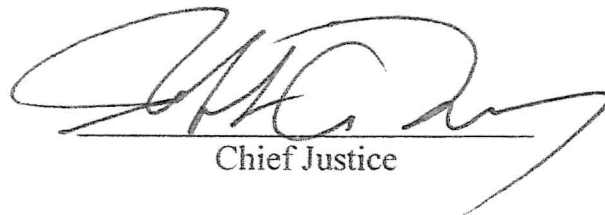
ORDER

Petition for Reconsideration of Court of Appeals order dated June 21, 2007; and concerning Appeal of a Pascua Yaqui Tribal Court decision, Case No. CR-06-183, the Honorable Melvin Stoof presiding.

Yancy Jencsok, Esq., Interim Chief Prosecutor, Pascua Yaqui Tribe Office of the Prosecutor, Tucson, Arizona, for the Tribe.

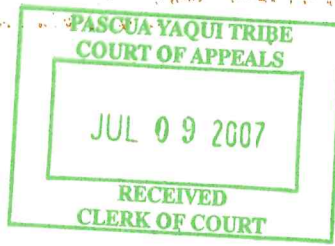
The Chief Justice reviewed the Appellant's Petition for Reconsideration of this Court's order dated June 21, 2007 and finds as follows: 1) The June 21, 2007 order is a decision denying an appeal to this Court because the Appellant had a remedy available in the trial court; and 2) The PYTRAP, Rule 19(D), does not permit a petition for reconsideration of a decision denying an appeal. Accordingly, the Appellant's Petition for Reconsideration is denied and dismissed.

So Ordered this 2nd day of October, 2007.



Chief Justice

Pascua Yaqui Tribe
Office of the Prosecutor
7474 S. Camino de Oeste
Tucson, AZ 85757
(520) 879-6251



PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

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DOCKET NO. CA-06-011

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Yancy A. Jencsok
Deputy Prosecutor

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION


| | | |
|---------------------|---|-------------------------------------|
| PASCUA YAQUI TRIBE, |) | Appellate Case No. CA-06-011 |
| Plaintiff, |) | |
| |) | Trial Court Case No. CR-06-183 |
| vs. |) | |
| |) | PETITION FOR RECONSIDERATION |
| McADAMS, JULIANNA, |) | |
| Defendant. |) | |
| _____ |) | |

The Tribe is in receipt of this Court's order denying and dismissing the notice of appeal. The tribe requests a reconsideration of the order based on the following:

1. The Tribe filed its opening brief and requested oral argument before the full panel.
2. No reply brief has been filed.
3. The Tribe's concern is that the order resolves a crucial and recurring legal issue without addressing it.
4. The government respectfully urges this Honorable Court to reconsider its ruling and/or permit the Tribe an opportunity to argue its case the next time the Court convenes.

RESPECTFULLY SUBMITTED this 9th day of July, 2007.

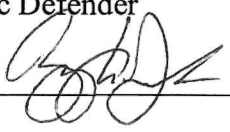
OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE



Yancy A. Jencsok
Deputy Prosecutor

Copy delivered to:

Pascua Yaqui Public Defender

On July 9, 2007 by  _____

No. CA-06-011
Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellant,

v.

Julianna McAdams, Defendant/Appellee.

ORDER

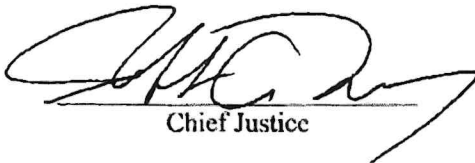
Appeal of a Pascua Yaqui Tribal Court decision, Case No. CR-06-183, the Honorable Melvin Stoof presiding.

Micah Schmit, Esq., Chief Prosecutor, Pascua Yaqui Tribe Office of the Prosecutor, Tucson, Arizona, for the Tribe/Appellant.

Nicholas Fontana, Esq., Public Defender, Pascua Yaqui Tribe Office of the Public Defender, Tucson, for the Defendant/Appellee.

The Chief Justice reviewed the appeal pursuant to PYTRAP 15(A) and finds as follows: A motion for consolidation of this case with a juvenile case is pending, but unlike this case, the trial court record in the juvenile case is not before this Court. The trial court dismissed this case without prejudice upon finding lack of probable cause to charge the Defendant/Appellee because her first name was misspelled in both the probable cause affidavit and the charging complaint. The trial court in its final order said that the charges can be re-filed under the correct name. Order, *Pascua Yaqui Tribe v. Juliana [sic] McAdams*, No. CR-06-183 (May 30, 2006). Incorrectly spelled names should be corrected before the trial court to prevent waste of party and judicial resources. Here, the Tribe has a remedy below — it can re-file the charges under the Defendant/Appellee's correct name. Accordingly, the notice of appeal is denied and dismissed.

So Ordered this 21st day of June 2007.


Chief Justice

No. CA-06-011
Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellant,

v.

Julianna McAdams, Defendant/Appellee.

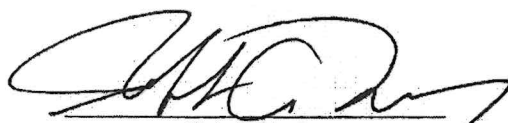
ORDER

Appeal of a Pascua Yaqui Tribal Court decision, Case No. CR-06-183, the Honorable Melvin Stoof presiding.

Micah Schmit, Esq., Chief Prosecutor, Pascua Yaqui Tribe Office of the Prosecutor, Tucson, Arizona, for the Tribe.

The Chief Justice reviewed the appeal pursuant to PYTRAP 15(A) and finds as follows: A motion for consolidation of this case with a juvenile case is pending, but unlike this case, the trial court record in the juvenile case is not before this Court. The trial court dismissed this case without prejudice upon finding lack of probable cause to charge the Defendant/Appellee because her first name was misspelled in both the probable cause affidavit and the charging complaint. The trial court in its final order said that the charges can be re-filed under the correct name. Order, *Pascua Yaqui Tribe v. Juliana [sic] McAdams*, No. CR-06-183 (May 30, 2006). Incorrectly spelled names should be corrected before the trial court to prevent waste of party and judicial resources. Here, the Tribe has a remedy below — it can re-file the charges under the Defendant/Appellee's correct name. Accordingly, the notice of appeal is denied and dismissed.

So Ordered this 11th day of June 2007.


Chief Justice

Pascua Yaqui Tribe
Office of the Prosecutor
7474 S. Camino de Oeste
Tucson, AZ 85757
(520) 879-6251

Yancy A. Jencsok
Juvenile Presenting Officer

PASCUA YAQUI TRIBE COURT
FILED DATE AND TIME

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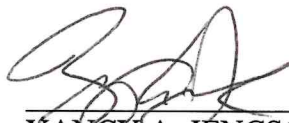
IN THE PASCUA YAQUI TRIBE COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

| | | |
|-----------------------|---|------------------------------|
| PASCUA YAQUI TRIBE, |) | |
| Plaintiff/Appellant, |) | |
| |) | CA-06-011, CR-06-183 |
| Julianna McAdams, |) | CA-07-002, JD-07-002 |
| Juvenile V.R., |) | |
| Defendants/Appellees. |) | MOTION TO CONSOLIDATE |
| |) | |
| _____ |) | |

Appellant moves this Honorable Court to consolidate the above referenced cases. This motion is supported by the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 5th day of June, 2007.

MICAH SCHMIT
CHIEF PROSECUTOR, By



YANCY A. JENCOSK
Deputy Prosecutor
Counsel for Appellant

STATEMENT OF FACTS

Each of these cases involves the same basic set of facts. The cases were dismissed by Judge Melvin Stoof for the sole reason that the defendants' first names were misspelled by one letter. In each case, a Notice of Appeal was timely filed.

In the Julianna McAdams case, Defendant's first name was misspelled in the police Affidavit and the subsequent government Complaint as "Juliana" (with one "n"). The correct spelling of Defendant's first name is "Julianna" (with two "n"s). All other indicia of identity (i.e., notice) were accurate. The Tribe filed its opening brief September 20, 2006. Defendant/Appellee has not filed a response brief.

In the Juvenile V.R. case, Defendant's first name was correctly spelled in the police Affidavit, but was misspelled in the government's charging Petition. The affidavit spelled the Defendant's first name as "Valentin" (with no "e" on the end). The Petition spelled his name as "Valentine" (with an "e" on the end). The Tribe has not yet filed a brief in this case, as the issues, law and circumstances are fundamentally identical with those of the McAdams case. Noteworthy, in both cases the errant spellings both comported with Microsoft's spellchecker (i.e., Juliana and Valentine).

Should this motion be granted, the Tribe will simply defer to the legal brief already filed in the McAdams case.

ARGUMENT

Both cases involve identical sets of facts and an identical issue of law and should be consolidated to promote judicial economy.

The Pascua Yaqui Tribe Rules of Appellate Procedure do not address the consolidation of appeals. However, it is a common practice in the tribal trial court to consolidate cases involving the same parties. Also, many jurisdictions allow the consolidation of appeals when there are common sets of fact or legal issues.¹ In addition, this Honorable Court has previously seen the prudence of consolidating five earlier cases together because they all dealt with virtually identical facts and legal issues.²

¹ For example, the Arizona Rules of Criminal Procedure provide that "[a]ppeals which raise a common question of law or fact may be consolidated at any time." Rule 31.4(b)(1).

² In an order dated April 26, 2007, the court consolidated five cases involving application of 2 PYTC §3.9(B)(4) [now 5 PYTC § 7-110(4)].

CONCLUSION

The cases should be consolidated in the interests of justice and economy, as they share a very similar set of facts and an identical legal issue.

RESPECTFULLY SUBMITTED this 5th day of June, 2007.

MICAH SCHMIT
CHIEF PROSECUTOR, By



YANCY A. JENCOSK
Deputy Prosecutor
Counsel for Appellant

Original and 5 copies delivered to:

Clerk, Pascua Yaqui Tribe Court of Appeals

Additional Copies mailed to:

PYT Public Defender
Attorneys for Julianna McAdams

Parents of Juvenile V.R.

PYT Attorney General

On June 5, 2007 by:



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

PASCUA YAQUI TRIBE,) Trial Court case no.: CR-06-183
)
Plaintiff/Appellant,) Appeals Court case no: CA-06-
)
vs.)
)
McADAMS, Julianna,)
)
Defendant/Appellee,)
_____)

ON APPEAL FROM THE PASCUA YAQUI TRIBAL COURT

APPELLANT'S OPENING BRIEF

MICAH SCHMIT
CHIEF PROSECUTOR

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COUNSEL FOR APPELLANT

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APPENDIXES

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STATEMENT OF THE CASE

This is an appeal from an order dismissing a criminal narcotics case. The case was dismissed by Judge Melvin Stoof, in an order dated May 30, 2006 for the sole reason that, in the officer's probable cause Affidavit and the Tribe's subsequent Complaint, Defendant's first name was missing one letter.¹ A notice of appeal was timely filed on June 21, 2006. Appendix A. This Court has jurisdiction to hear the appeal pursuant to PYT Code, Title 3, Chapters 2 & 3.

The opening brief is timely filed. The deadline for filing an opening brief is triggered by the mailing of a notice by the appellate court clerk to the Appellant that the record was satisfactorily forwarded ("filed") with the Appellate Court. PYTRAP Rules 10(A) and 12(A). When the appellate court clerk sends notice of having received the lower court record, an appellant then has thirty days to file his/her opening brief. Rule 12(A). To date, Appellant has not received any notice from the appellate court clerk regarding receipt of the full record on this case. However, in recognition that all clerical procedures may not yet be fully mechanized, and in the interest of maintaining diligent progress in the appeal, Appellant hereby files its opening brief. The Tribe merely raises this issue to pre-address any objection to the brief by Appellee. Indeed, this Court has the discretion to accommodate this very circumstance, via Rule 3, enabling application or suspension of any of their rules, as necessary to ensure justice.²

¹ Appellee spells her name Julianna (with two "n"s) and the Tribe first spelled it incorrectly as "Juliana."

² The PYT lower court recently dismissed another case because of an inadvertently misspelled first name in *In re the matter of Isacc N.*, (where the police affidavit listed the offender's name as "Isacc" rather than Isaac), again, all other indicia of his identity in the charging petition were accurate. Rather than appeal that case, however, the Tribe had shortened (juvenile) time-frames and a victim to be initially concerned with and scrambled to correct and refile it. The Tribe points this all out only to indicate that this is likely to recur – and may recur where victim-safety is not so readily maintained. Consequently, the question today carries with it heightened appellate merit. *See for e.g., State vs. Brown*, 212 Ariz 225, 129 P.3d 947 (2006)

STATEMENT OF PROCEEDINGS AND FACTS

Appellee/Defendant is Pascua Yaqui enrolled Julianna McAdams. In the early evening of April 7, 2006, a Tribal-court-authorized search warrant was executed upon the residence of Julianna McAdams. Both drugs and paraphernalia were located and the owner, Julianna McAdams (present when the search warrant was executed), was arrested and booked in to custody at that same time. Photographs of Appellee and her residence were taken concurrently with the execution of the search warrant³ and her subsequent arrest.

Within 24 hours Appellee duly had her Initial Hearing (IH)⁴ wherein she reviewed the instant Affidavit and Complaint and, after routine advisories by the Court, signed papers ratifying her IH on the case and her agreed-to conditions of release. Appendix E. Defendant uttered no objections to either the Tribe's charging Complaint or Affidavit, Appendixes C and D, nor did she make any spelling or "notice" objections regarding her identity, the charges, any of the Tribe's paperwork or the proceedings initiated against her. Defendant subsequently posted the \$750 bond, as imposed at the IH and as memorialized in the court's paperwork. Ironically, the lower court's own documents similarly misspelled Defendant/Appellee's name. Appendix E.

Within 10 days, on April 18, 2006, Defendant had her arraignment. She was advised of various rights and procedures and of the next hearing, this time a pretrial. Appendix F.

where the Az Supreme Court found "special action" appeal jurisdiction was appropriate due to the question being one of first (and likely recurring) impression and the state-wide importance of the issue presented).

³ Appendix B

⁴ It is not disputed that the person in the residence during the search warrant is the same person booked in to PYT custody, which is the same person transported for the initial hearing the following day, which is the same person that appeared for all the subsequent hearings on this case.

Again, there were no objections made by Appellee regarding either the charging documents or any previous pleadings, paper work or orders.⁵

Finally, on May 30th, 2006 at her pretrial almost 2 months after her initial arrest, Appellee for the very first time made a (verbal) motion to dismiss the Complaint and probable cause Affidavit on the grounds that they had misspelled her first name as “Juliana” with only one “n,” rather than the correct spelling, “Julianna” with two “n”s. Without first requesting a written motion on the matter, as he customarily requires of the government, Judge Melvin Stoof *sua sponte* found that the misspelling was a “misnomer” and that created a (retroactive) failure of probable cause. See order, Appendix G. As that order evidences, Judge Stoof never found charging-notice to be insufficient, actual prejudice to exist, nor did Appellee even enunciate any prejudice.

Nonetheless, at that pretrial hearing, the Tribe still attempted to argue that this was merely a Scribner’s error, having no impact on notice of the charges to Appellee (i.e., it did not present any genuine issue as to identity of the accused nor any ambiguity as to the nature of the charges she was accused of). And, although this concept was immediately raised by the Tribe in its oral argument,⁶ Judge Stoof made no reference-to or distinction-from this Scribner’s error savings clause, found in the PYT Criminal Code at §1.60. Instead, Judge Stoof held that the one letter omitted in Defendant’s otherwise full and correct name was a legal “misnomer,” creating a fatal insufficiency under due process and probable cause. Ironically, the caption on Judge Stoof’s own order regarding the merits of this dismissal had Appellee’s name misspelled as well. Appendix G.

⁵ This time the lower court’s order did spell Defendant’s name correctly (see Appendix F), even though still no issue had been raised by Defendant/Appellee regarding her first name being misspelled by either the Tribe or the lower court.

⁶ Page 2, mid-way down, pretrial hearing transcript (PTH Tr), Appendix H (first sentence of prosecutor AO’s response).

DISPOSITION BY THE LOWER COURT

The tribal court dismissed the case by Order dated May 30, 2006.

STATEMENT OF ISSUES

Does a complaint bearing merely a first-name misspelling require a finding of “no probable” cause under any procedural Due Process analysis when: (1) Defendant was not summoned but instead directly arrested, booked and initialed in uninterrupted succession; &/or (2) when Defendant waives any notice claims by not objecting at the initial hearing, or even at the arraignment, instead properly appearing as the identified Defendant at all subsequent hearings; &/or (3) when *no* case law, state or federal, indulges minor misspellings as grounds for due process dismissal - even if asserted by the defendant at the initial hearing; &/or (4) when the PYT code (unusually) carries a special provision which in essence prohibits dismissals for any non-prejudicial (clerical) errors; &/or (5) when both Appellee and the lower court failed to identify *any* actual prejudice in the criminal process caused by the single-letter variance in Defendant’s name. The answer to each of these is a collective and resounding “no.”

ARGUMENT

A. There is no Due Process Violation.

(1) “Misnomer” versus “Misspelling.”

In his holding Judge Stoof used the term “misnomer” to describe the misspelling of Defendant/Appellee’s first name in the charging Complaint and Affidavit. Crucially, however, a misnomer actually implies a “wrong name” entirely rather than an incorrect spelling of a *recognized name*. Black’s Law Dictionary defines “misnomer” as a

“[m]istake in name; giving incorrect name to person in accusation, indictment, pleading, deed or other instrument.” Likewise, Merriam-Webster defines “misnomer” as “the misnaming of a person in a legal instrument; a use of a wrong name; or designation.”

By contrast, a misspelling actually contemplates the correct person, and correct name, but for a minor typo in that name. With a simple misspelling, the identity of the person is not in real question. A misnomer is significantly worse than a misspelling.

By way of pop-example, a misnomer would be akin to naming (rookie) Matt Leinert as the starting quarterback in an Arizona Cardinals football program, when obviously intending to identify (veteran) Kurt Warner as the starting QB. In other words, there is genuine question about the accuracy of that statement. On the other hand, if the program spelled Curt Warner or Kurt Warnar, you are clearly more likely to have a mere misspelling of a known, recognized and intended individual. Add to that other surrounding and reliable indicia (the intended person’s photograph in the program, his lengthy veteran player’s statistics, his age, height/weight and college origin, etc., etc.) and they all combine to give any reasonable person assurance that this is only a misspelling of Kurt Warner, the veteran, not Matt Leinert, the rookie. The key difference is that a mere misspelling plainly contemplates a known and intended person and all can reasonably discern that from the totality of circumstances. And, in fact, this is how Merriam-Webster distinguishes “misspellings”: they are a misspelling of a *recognizably intended* person; or, simply, “to spell incorrectly” a known object or entity. *Id.*

Since “Juliana” McAdams clearly contemplated the recognizable and intended Julianna McAdams this is only a misspelling (not a misnomer) and the decision to

dismiss was inappropriate.⁷ Had the error truly been a misnomer then, hypothetically, a prima facie argument could be made regarding the adequacy of notice about the charges. However, even in that circumstance, the prima facie argument is easily rebutted by the fact that there is a wealth of other identifying indicia accompanying the charging documents in this case.⁸

Probably more apropos to the circumstance at bar than misnomer, is a rule that Black's Law Dictionary calls *idem sonans*. This precept (like all of the state and federal case law cited below) specifically disfavors dismissals for mere Scribner's errors – an ancient yet still relevant reminder, not to lose the forest for the trees when practicing law.

“The rule of “*idem sonans*” is that *absolute accuracy in spelling names is not required in a legal document or proceedings either civil or criminal*; that if the name, as spelled in the document, though different from the correct spelling thereof, conveys to the ear, when pronounced according to the commonly accepted methods, a sound practically identical with the correct name as commonly pronounced, the name thus given is a sufficient identification of the individual referred to, and no advantage can be taken of the clerical error.”

Id. (emphasis added)⁹

(2) Misspellings By Themselves Do Not Automatically Create Due Process Violations.

The Court cited to the due process clause, by and through the Indian Civil Rights Act (ICRA),¹⁰ as authority for dismissing this case for lack of probable cause. But a thorough canvassing of both state and federal law reveals, unequivocally, that a minor

⁷ As in other jurisdictions, under the PYT Code, a name is not even necessary for charging purposes, so long as *an individual is reasonably discernable* at the probable cause level of proof. This makes a dismissal by misspelling, *or even by misnomer*, that much more ponderous. In other words, the Code does not even require *any* “name.” See PYTRCP §300(B)(1), discussed §4, *infra*.

⁸ This not only includes all of the personal information of Appellee, mentioned earlier, but also the contiguous “possession” of the body of Defendant by law enforcement, from search-warrant to booking to initial court hearing, without interruption.

⁹ The concept of *idem sonans* finds striking reincarnation in our own Code, Title 1, §1.60, discussed in detail, subsection 4, *infra*.

¹⁰ 25 U.S.C. § 1302(8).

misspelling of a person's name has never, by itself, offended either due process or sufficiency of probable cause in any criminal charging process.¹¹

First and foremost, courts around the land and at every level overwhelmingly hold that even a true misnomer in an indictment is *waived* if not objected to before entering one's plea at the initial-hearing. For example, *Lane v. State* held that "by entering [his] plea at arraignment, an accused waives any irregularities in the indictment unless the indictment *is so defective that it leaves the accused unaware of the nature and cause of the charges against him.*"¹² Similarly, the court in *State v. Brito* held that even a routine 'not guilty' plea uttered during initial hearing proceedings operates to waive any objection to the indictment on the grounds of misnomer.¹³

Once again, in the case at bar, not only are we only dealing with a misspelling (vs. actual misnomer) but Defendant McAdams proceeded through several preliminary hearings and failed to object every time. In so doing, the only rational conclusion is that Appellee ratified the accuracy and notice of the pending pleadings - waiving any superficial or technical objection - and thereby allowing the government to rely on that silence in proceeding with the lawful prosecution.

Many other jurisdictions have similarly addressed the issue of misspellings, and rejected dismissal claims by defendants. In a near mirror image of the case at bar, *State v. Patrick*,¹⁴ a criminal defendant's first name was misspelled "Linda" in the indictment, whereas the correct spelling of her name was "Lynda." She moved for dismissal based

¹¹ This may explain the absence of any case-law on point in the lower court's order.

¹² 644 So.2d 1318, 1320 (Ala.App. 1994) (*emphasis added*) (this is also another way of referring to a finding of actual prejudice).

¹³ 2006 WL 391890 (R.I.Super.), page 7.

¹⁴ 1994 WL 485568 (Ohio App. 4 Dist.).

on the misspelling. The trial court denied her motion and simply, and *sua sponte*, amended the indictment to correct the spelling. The appellate court affirmed on appeal.

Probably no appellate court put it more bluntly, or impatiently, as that in *State v. Owens*.¹⁵ There, in denying a defendant's motion to dismiss based on a claim of misnomer in an indictment, the court matter-of-factly held that "a name in an indictment is a matter of form and *not substance*." *Id. at 1031 (emphasis added)*.

There are countless other examples of criminal cases where a defendant's name was spelled incorrectly and the misspelling is simply noted and corrected *sua sponte* by the court at the initial hearing or arraignment, with no mention of due process or probable cause issues – or even a note as to the position of the parties.¹⁶ In other words, with any modicum of other accompanying indicia regarding identity, typos are such an incidental error that they rationally do not merit any interruption in the ordinary course of criminal complaint procedures. That is the impressive and emphatic message from all of these cases.

But the case at bar is even further compelling for the government. In this instance, not only did the Tribe have Appellee's singular, individual home-address, birth date, height/weight, correct last name and absolutely unique tribal enrollment number, but she was physically arrested, detained over night and brought before the trial court, all within 24 hours and without interruption to her individual custodial status. The critical advantage of this fact is that there can be *no reasonable doubt* about "who" has been accused – a woman in detention with *all* of the above-mentioned unique identifiers,

¹⁵ 334 F.Supp. 1030 (D. Minn. 1971).

¹⁶ *U.S. v. Freeman*, 150 Fed.Appx. 554, C.A.7 (Ill.), 2005; *U.S. v. Lujano-Santos*, 229 F.3d 1160, C.A.9 (Cal.), 2000; *U.S. v. Vaneaton*, 49 F.3d 1423, C.A.9 (Or.), 1995; *U.S. v. Contreras-Ceballos*, 999 F.2d 432, C.A.9 (Alaska), 1993; *U.S. v. Valdez*, 963 F.2d 381, C.A.9 (Cal.), 1992.

having a first-name sounding like “Juliana” and a last name of McAdams. She was continuously present during the warrant’s execution, the discovery of contraband and, obviously, her booking and first hearing before the lower court.¹⁷

For these many reasons alone, the Tribe asks that this honorable Court reverse the trial courts finding that (1) information at a probable cause level was insufficient and/or (2) that due process was lacking when charging Appellee under “Juliana” McAdams.

(3) Appellee McAdams was In Fact Sufficiently Identified in the Complaint and Affidavit, Thereby Negating any Reasonable Contention of Insufficient Notice.

As already touched on, the next due process threshold regards adequacy of notice -- sufficiency of identity (and the concomitant prejudice, if any, for inadequately noticing an accused of the charges pending against him/her). The Tribe will explain, and support, how this too was met by the existing charging documents.

The instant Complaint and Affidavit contained more than Defendant’s nearly-correct name. It also possessed numerous supporting identifiers to enable any reasonable person to be aware that (1) he or she was the intended recipient of accusations, and (2) the nature of those accusations. See Appendixes C and D. Many of those identifiers (precise enrollment number and PYT residential address) are so unique that, under any due process test and without even any name in the charging caption, just *one* of these should be singular enough to apprise a person with a slight typo in their name that the charging document was reasonably intended for him/her. The Tribe, instead, had *all* of these, arguably redundant, and exclusive, indicia in the charging documents. There can be no question that Defendant/Appellee was singularly being noticed with these charges.

¹⁷ Be it clear, this is not to say “she *is* guilty” of possession, etc., but merely to emphasize that her arrest, booking and appearance in court, should not be examined in an unrealistic or segmented vacuum.

Moreover, as evidence of the triviality of this misspelling (and, therefore, lack of prejudice) Defendant, *herself*, repeatedly failed to notice any misspelling to her own name -- through several court hearings and through multiple government and court documents.¹⁸ This not only recalls the logic behind all of the aforementioned case law that found such Scribner's errors immaterial, but ratifies the substantive insignificance of the error in this instance, as Appellee didn't even catch it. As a result, and with due sincerity, the Tribe genuinely struggles to conjure any circumstance that would less offend due process or legal prejudice.¹⁹

(4) Under the PYT Code, Typos and Even Actual Names Do Not Dictate Viability of any Pleading or Proceeding.

The Pascua Yaqui Tribal Code, uniquely, does not require literal perfection in any submissions or utterances before Tribal Court. PYT, Title 1, §1.60 reads as follows:

Irregularities, Mistakes, Omissions Have No Legal Effect Unless Actually Prejudicial

Neither a departure from the form or mode prescribed in this chapter²⁰ in respect to *any pleading or proceeding* nor as error or mistakes therein renders it invalid *unless it has prejudiced the defendant*.

Id. (emphasis added).

Maybe this was a nod to the wasteful and technical litigiousness of justice systems usually seen outside of a tribal court, but whatever its origin, the Code clearly contemplates, *and prohibits*, the kind of dismissals like the one that still occurred here.²¹

¹⁸ And, only to emphasize how accidental (and inconsequential) the instant typo really is, even the lower court captioned Defendant's name wrong, both before *and after* the very hearing in which the Court granted Defendant's dismissal for "misnomer." See Appendixes E and G.

¹⁹ If due process were at issue here, Defendant would better have claimed that she was not the person referred to in the charging document. But, clearly unable to assert that kind of prejudice, Defendant merely asserted that her first name was misspelled. Notwithstanding all of the other indicia of identity, as well as the concept of constructively-waived objections and an absence of actual prejudice, Judge Stoof found that the only remedy was full dismissal, rather than amendment, as the Tribe had sought.

²⁰ "This Chapter" includes, inter alia, *all* Complaints, Warrants, Arraignment and Pretrial procedures, i.e., all of the proceedings and pleadings that were involved in this case.

Interestingly, and even more expansively, the PYT Rules of Criminal Procedure (PYTRCP) don't even require the *name* of the individual to be identified when drafting a charging complaint. Rule 300 (B)(1) states:

(B) Complaints shall contain:

- (1) A written statement, describing in ordinary language the offense committed, including the time and place as nearly as may be determined, and the *name or description* of the person alleged to have committed the offense;

Id. (emphasis added).

The clarity and value of this provision should not be surprising given the true purpose of any charging document, which is simply to give reasonable notice as to (1) who is being charged and (2) with what offenses they are being charged with.

Reciprocally, genuine prejudice can only exist where these fundamentals are absent or (reasonably) indiscernible. That is plainly not the example at hand where the Tribal court found fatally irreparable “Juliana McAdams” over “Julianna McAdams,” This absence of prejudice is made even more emphatically true, under Rule 300(B)(1) when the Tribe coupled “Juliana McAdams” with a cornucopia of additional, and singular identifiers belonging exclusively to Appellee and that information existed in *both* the Affidavit and the Complaint, all filed with the lower court prior to the initial hearing.

Lastly, the lower court's various orders fail to note that Defendant made any objection at either her initial hearing, or the arraignment. In fact, under PYTRCP, Rule 309(B)(1) the judge has the obligation to determine the defendant's true name and address and, if necessary, amend the charges to conform to that information. If a judge

²¹ As mentioned earlier, in its oral argument the Tribe pointed out this provision of the Code. Judge Stoof, however, appears to ignore this rule in both his discussion and order. Transcript, bottom of page 2, Appendix H.

does not ask or a defendant does not comply, then what civilized justice has been served by an offender's quiet acquiescence or deception? Since there is no record in any of the orders noting any error or objections by Appellee regarding her name or charges, it is only reasonable to hold that either (1) it was trivial or (2) it was waived by Appellee's own failure to act timely.

In light of all of this procedural silence on the part of Defendant/Appellee, there is no reason why the Court could not have simply amended the Complaint to reflect the correct spelling of Defendant's first name or deemed the objection waived. Any error embodied in the Affidavit fails under a rational due process, and prejudice, analysis. This is particular true in light of the wealth of Scribner's-error case law and PYT provisions of Title 1, §1.60 and the further unimportance of *any* actual name, under PYRCP, Rule 300.

B. There Was No Finding of Prejudice, Nor was Defendant In-Fact Prejudiced, as Required by the PYT Code.

Even if the name-typo is some how deemed a serious enough misspelling to thwart even a probable-cause accusation, it does not render any pleading in Tribal Court invalid *unless* it genuinely prejudices the defendant. *See* 1 PYTC § 1.60. Appellee did not claim any prejudice due to the misspelling and the lower court neither solicited that information, nor described any in its order. The fact of the matter is, as the above discussion and authority already illustrate, there simply isn't any prejudice to a defendant situated the way Appellee is. Be that as it may, it was incumbent upon the lower court to follow the dictates of the Code and, under §1.60, make a true and reasonable finding of substantive or actual prejudice. The Tribe submits, since Appellee did not proffer any, the only finding the lower court could legally and procedurally make, is that there was

none. This would make dismissal inappropriate, even if the typo was egregious, for error and prejudice are twin necessities in this due process analysis.

For argument's sake, let's say that Appellee, or the lower court *sua sponte*, "found" prejudice and now the Tribe was appealing such a finding. Federal courts have articulated a test to determine whether any defendant would in fact be prejudiced by the spontaneous amendment of an indictment to correct a misspelling or misnomer. The largely regarded seminal case is *U.S. v. Fawcett*²² and it sets forth this time-honored threshold. "The test as to whether the defendant is prejudiced by an amendment to an indictment has been said to be whether a defense under an indictment, as it originally stood, would be equally available after the amendment is made, and whether any evidence the defendant might have would be equally applicable to the indictment in the one form as in the other."²³ Clearly, under this analysis, Defendant "Juliana" could not have rationally argued any difference in defenses that she had planned to avail herself of had the original Complaint been amended at the May 30th pretrial hearing as the Tribe had requested.²⁴ Appellee would still have had the full array of defenses rationally available in her case (and, notably, not even submitted by her, even though it was already past-due under defendant disclosure rule, PYTRCP, Rule 501(B)).

CONCLUSION

This case should not have been dismissed. First, there was no lack of substantive probable cause. Second, procedurally, the misspelling of Defendant's first name under a due process analysis does not create lack of notice or prejudice. A typo is a trivial error

²² 115 F.2d 764 (3d Cir. 1940).

²³ *Id.* at 767.

²⁴ This likely explains why these kinds of Scribner's amendments are so frequently done, *sua sponte*, by the courts, without even inquiry from the government or pause to solicit objections from a defendant.

in any charging Complaint and Affidavit, particularly where there is sufficient additional information to verify a defendant's probable-cause identity. Moreover, unlike many state or federal jurisdictions, there is a specific Tribal Code provision salvaging Scribner's errors from irrational action. This should have been dispositive. Notwithstanding all of the above, the Tribe further argues that a defendant waives any procedural charging error once s/he acknowledges pleadings at the initial hearing. Finally, it is the "reasonable notice" test that is the only applicably relevant due process inquiry. This is buttressed by Criminal Procedure Rule 300(B)(1) which does not even require any part of a suspect's actual name. Where there were ample indicia of identity and sufficiently-described accusations (charges) and no articulated prejudice by Defendant (or the lower court), due process cannot have been violated. For all, or any, of these reasons this case should be reinstated to its pretrial hearing status.

RESPECTFULLY SUBMITTED this 20th day of September, 2006.



Micah Schmit
Chief Prosecutor

Original and five copies delivered September 20th, 2006 to:

Pascua Yaqui Appellate Court

Additional copies mailed to:

Defendant Julianna McAdams c/o
Pascua Yaqui Public Defender

PYT Attorney General, Pilar Thomas

By 

Appendix A

Notice of Appeal
June 21, 2006

1 PASCUA YAQUI TRIBE

2 OFFICE OF THE PROSECUTOR

7474 S. Camino de Oeste

3 Tucson, AZ 85757

4 (520) 879-6251

5 Micah Schmit

Chief Prosecutor

FILED
06 JUN 21 PM 4:11
DOCKET NO CA-06-011
[Signature]

6
7 **IN THE PASCUA YAQUI TRIBE COURT OF APPEALS**

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

9 PASCUA YAQUI TRIBE,
10 Plaintiff/Appellant,

11 vs.

12 McADAMS, Julianna,

13 Defendant/Appellee.
14

)
) Trial Court Case No. CR-06-183

)
) Appeals Court Case No.

)
) NOTICE OF APPEAL

) (Oral argument requested before
) the full Appellate Panel)
)

15 NOTICE IS HEREBY GIVEN that the Pascua Yaqui Tribe appeals from the order of the
16 trial court dated May 30, 2006 (attached).¹ The trial court dismissed this case without prejudice
17 because Defendant's first name was misspelled (Juliana) in the probable cause affidavit and the
18 charging complaint.

19 It is the Tribe's position that the trial court's order was erroneous because Defendant was
20 a booked (in-custody, photographed) arrestee, because she waived the error by not objecting at
21 either the initial hearing or the arraignment (only at the pretrial), because neither she nor the trial
22 court identified any prejudice to preparing a rational defense, and/or because the affidavit and
23 complaint carried numerous other, singularly-describing indicia of identity, including unique
24 enrollment number, DOB, residence address, etc. For nearly every one of these individual
25 reasons, the Code is on point and this case should not have been dismissed.

26 For all the reasons, individually or collectively, the Tribe asks that time-limits be deemed
27 suspended, pending this Court's ruling on the request to reversal the lower court's dismissal.

28 The Tribe would request oral argument before a three Justice panel.

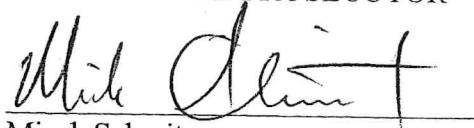
¹ Notably or ironically, the lower court captioned their own dismissal order using Appellee's incorrect name spelling.

PASCUA YAQUI
Received
JUN 23 2006
[Signature]

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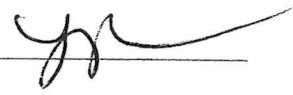
RESPECTFULLY SUBMITTED THIS 21st day of June, 2006.

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR



Micah Schmit
Chief Prosecutor, PYT

Original and copies delivered to:
Clerk of Court, Pascua Yaqui Tribe Court of Appeals (6 copies)
Pascua Yaqui Tribal Court
Pascua Yaqui Tribe, Office of the Attorney General
Defendant/Appellee, Julianna McAdams
4940 W. Neokae, Tucson, 85757

By 

Appendix B
Search Warrant

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

NO. SW-06-005
WARRANT TO SEARCH

TO ANY TRIBAL/BUREAU POLICE OFFICER OR OTHER AUTHORIZED LAW ENFORCEMENT OFFICER:

A sworn statement having been filed with this Court by DETECTIVE MICHAEL MCKENNA, charging that s/he has reason to believe that on the premises known as: 4940 W. NEOKAE, TUCSON, ARIZONA 85757, located within the jurisdiction of the court, there is located sizable property, namely:

1. SECRETE AND MAINTAIN ON HAND LARGE AMOUNTS OF U.S. CURRENCY IN ORDER TO MAINTAIN AND FINANCE THEIR ON-GOING NARCOTICS BUSINESS;
2. COMMONLY SELL CONTROLLED SUBSTANCES AND THEREFORE MAINTAIN RECORDS TO ACCOUNT FOR DRUGS PURCHASED AND SOLD,
3. MAINTAIN BOOKS RECORDS, RECEIPTS, NOTES, LEDGERS, ETC., RELATED TO DRUG TRANSACTIONS IN SECURE LOCATIONS WITHIN THEIR RESIDENCE, VEHICLES, CARTILAGE, THEIR BUSINESSES, AND/OR ON THEIR PERSON FOR READY ACCESS AND TO CONCEAL THESE ITEMS FROM LAW ENFORCEMENT AUTHORITIES;
4. SECRETE DRUG CONTRABAND, PROCEEDS OF DRUGS SALES, AND RECORDS OF DRUGS TRANSACTIONS IN SECURE LOCATIONS WITHIN THEIR RESIDENCE, VEHICLES, CARTILAGE, THEIR BUSINESSES, AND/OR ON THEIR PERSON FOR READY ACCESS AND TO CONCEAL THESE ITEMS FORM LAW ENFORCEMENT AUTHORITIES;
5. CONCEAL IN THEIR RESIDENCES, VEHICLES, BUSINESSES, OR WITHIN THE CARTILAGE OF THEIR RESIDENCE OR BUSINESS, PROCEEDS OF DRUG TRANSACTIONS INDICATING FINANCIAL TRANSACTIONS FROM OBTAINING, TRANSFERRING, SECRETING, OR SPENDING LARGE SUMS OF MONEY FROM ENGAGING IN DRUG TRAFFICKING ACTIVITIES;
6. TITLES ASSETS IN NOMINEE NAMES OR USE NOMINEES TO PURCHASE ASSETS IN ORDER TO AVOID DETECTION OF THESE ASSETS BY THE GOVERNMENT OR LAW ENFORCEMENT AUTHORITIES. NOMINEES USED FOR THIS PURPOSE MY CONSIST OF RELATIVES, FRIENDS, ASSOCIATES, FICTITIOUS PERSONS, BUSINESS FRONT, ETC. EVEN THOUGH ASSETS ARE IN ANOTHER PERSON'S NAME, THE DRUG DEALERS CONTINUE TO USE THOSE ASSETS AND EXERCISE DOMINION AND CONTROL OVER THEM;
7. MAINTAIN RECORDS REFLECTING NAMES, NICKNAMES, ADDRESSES AND TELEPHONE NUMBERS OF BOTH CURRENT AND PAST DRUG ASSOCIATES;

8. POSSESS PHOTOGRAPHS, AUDIO AND/OR VIDEOTAPES, AND/OR PHOTOGRAPHIC NEGATIVES OF THEMSELVES, THEIR ASSOCIATES AND THE PROPERTY AND/OR THE ASSETS PURCHASED WITH THE DRUG PROCEEDS;
9. THE SALE OF CONTROLLED SUBSTANCES GENERATES LARGE QUANTITIES OF U.S. CURRENCY. DRUG TRAFFICKERS WILL ATTEMPT TO LEGITIMIZE THE PROFITS FROM ILLEGAL DRUG TRANSACTIONS TROUGH MONEY LAUNDERING ACTIVITIES BY USING DOMESTIC BANKS AND THEIR ATTENDANT SERVICES (I.E. SAFE DEPOSIT BOXES, SECURITIES, CASHIERS, CHECKS, MONEY ORDERS, LETTERS OF CREDIT), BROKERAGE HOUSES, REAL ESTATE, SHELL CORPORATIONS AND BUSINESS FRONT.
10. KEEP PARAPHERNALIA FOR PACKAGING, CUTTING, WEIGHING, TRANSPORTING, AND DISTRIBUTING CONTROLLED SUBSTANCES. THIS PARAPHERNALIA INCLUDES, BUT IS NOT LIMITED TO SCALES, PLASTIC BAGS, STORAGE CONTAINERS, AND CUTTING AGENTS;
11. UTILIZED ELECTRONIC EQUIPMENT SUCH AS PAGER/BEEPERS, CELLULAR PHONES. PHONE LOGS, COMPUTERS, FACSIMILE MACHINES, CURRENCY COUNTING MACHINES, AND TELEPHONE ANSWERING MACHINES TO GENERATE, TRANSFER, COUNT AND RECORD AND/OR STORE INFORMATION RELATED TO THE ILLEGAL TRAFFICKING OF CONTROLLED SUBSTANCES;
12. COMMONLY HAVE IN THEIR POSSESSION, THAT IS, ON THEIR POSSESSION, IN THEIR VEHICLE, AT THEIR RESIDENCES, AND/OR BUSINESS/ FIREARMS;
13. PEOPLE WHO TRAFFIC NARCOTICS OFTEN KEEP RECORDS, LEDGERS, RECEIPTS, NOTES IN THEIR RESIDENCE, BUSINESSES AND BASED OF OPERATIONS.

ADDENDUM: THE OFFICER SERVING SUCH WARRANT SHALL LEAVE A COPY OF THIS WARRANT AND RECEIPT FOR THE PERSON OR PROPERTY TAKEN, AND SHALL PREPARE AN INVENTIORY OF THE PERSON OR PROPERTY SEIZED, AND PROMPTLY RETURN THIS WARRANT TO THE TRIBAL COURTS AS REQUIERED BY LAW.

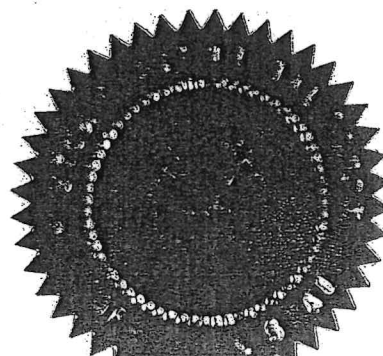
And that this Court is satisfied that there is probable cause to believe that such property is located as defined above.

YOU ARE HEREBY COMMANDED to search the premises named above for the property specified and to serve this Warrant, and if the property is found to seize it and bring it forthwith before this Court.

This warrant may be executed ^{MKA} [anytime] [between the hours of _____ and _____.] This warrant shall expire five (5) days from the date of issuance.

Melvin K. Hood
 Judge, Pascua Yaqui Tribal Court

4-7-06
 DATE



AFFIDAVIT AND APPLICATION
FOR SEARCH WARRANT

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

06 APR -7 PM 3:05

STATE OF ARIZONA)

)ss.

County of Pima)

DOCKET NO. SW 06 005

CLERK: [Signature]

I, DETECTIVE MICHAEL MCKENNA a duly authorized peace officer for the Pascua Yaqui Indian Reservation, due hereby make application for a search warrant, and swear and affirm as follows:

That on or about APRIL 7, 2006, within the Pascua Yaqui Indian Reservation, a violation of Title 1, Chapter 5 of the Pascua Yaqui Tribal Code was and/or is being committed by Juliana McAdams in the following manner: 5.1 NARCOTICS AND DANGEROUS DRUGS, AND SECTIONS 5.2, POSSESSION, MANUFACTURE, DELIVERY AND ADVERTISEMENT OF DRUG PARAPHERNALIA; AT RESIDENCE/ADDRESS KNOWN AS 4940 WEST NEOKEA, TUCSON, ARIZONA 85757.

That this officer has probable cause to believe and does believe that there is now in the possession of Juliana McAdams and in or upon the premises known as 4940 W. NEOKAE, TUCSON, ARIZONA 85757.

Including all rooms and buildings used in connection with or within the cartilage of said premises and building(s) described as A SINGLE STORY STRUCTURE, WITH LIGHT TAN STUCCO WALLS, A BROWN SHINGLE ROOF WITH THE ADDRESS OF 4940 IS ATTACHED TO THE CENTER FRONT SIDE OF THE RESIDENCE APPROXIMATELY SEVEN FEET FROM THE GROUND, THE REGISTERED OWNER OF THIS HOME IS IDENTIFIED AS JULIANA MCADAMS AN ENROLLED MEMBER OF THE PASCUA YAQUI INDIAN

NATION certain property or things described as;

- A. SECRETE AND MAINTAIN ON HAND LARGE AMOUNTS OF U.S. CURRENCY IN ORDER TO MAINTAIN AND FINANCE THEIR ON-GOING NARCOTICS BUSINESS;
- B. COMMONLY SELL CONTROLLED SUBSTANCES AND THEREFORE MAINTAIN RECORDS TO ACCOUNT FOR DRUGS PURCHASED AND SOLD,
- C. MAINTAIN BOOKS RECORDS, RECEIPTS, NOTES, LEDGERS, ETC., RELATED TO DRUG TRANSACTIONS IN SECURE LOCATIONS WITHIN THEIR RESIDENCE, VEHICLES, CARTILAGE,

THEIR RESIDENCE, BUSINESSES AND BASED OF OPERATIONS.

And which are in the possession of, JULIANA MCADAMS for the purpose of committing, furthering or concealing a crime, or which constitutes evidence tending to show that a crime has been committed or is being committed.

That the following facts establish probable cause for believing that grounds for the issuance of a search warrant for the aforementioned items exist:

1. MY NAME IS MICHAEL MCKENNA I HAVE BEEN A CRIMINAL INVESTIGATOR/POLICE OFFICER WITH THE PASCUA YAQUI POLICE DEPARTMENT FOR 6 1/2 YEARS. IN MY 6 1/2 YEARS IN LAW ENFORCEMENT I HAVE HAD THE OPPORTUNITY TO APPREHEND AND OR INVESTIGATE AND EVENTUALLY PRESENT FOR PROSECUTION NEARLY EVERY CATEGORY OF TRIBAL, STATE AND FEDERAL LAW VIOLATOR. I HAVE INVESTIGATED NUMEROUS SERIOUS DRUG CASES DURING MY EMPLOYMENT WITH THE PASCUA YAQUI POLICE DEPARTMENT. BASED ON MY TRAINING, I BELIEVE THE FOLLOWING:
2. THERE IS PROBABLE CAUSE TO BELIEVE THAT SOME OR ALL OF THE INDIVIDUALS WHO RESIDE AT A RESIDENCE LOCATED AT 4940 WEST NEOKAE, TUCSON, ARIZONA, 85757 WHICH FALLS WITHIN THE CONFINES OF THE PASCUA YAQUI NATION ARE INVOLVED IN DRUG DISTRIBUTION. THIS RESIDENCE IS LOCATED SEVEN HOUSES WEST OF THE INTERSECTION OF CAMINO BENEM AND NEOKAE, ON THE WEST SIDE OF NEOKAE AND IS DESCRIBED AS A SINGLE STORY STRUCTURE, WITH LIGHT TAN STUCCO WALLS, A BROWN SHINGLE ROOF THE ADDRESS OF 4940 IS ATTACHED TO THE CENTER FRONT SIDE OF THE RESIDENCE APPROXIMATELY SEVEN FEET FROM THE GROUND. THE REGISTERED OWNER OF THIS HOME IS IDENTIFIED AS JULIANA MCADAMS AN ENROLLED MEMBER OF THE PASCUA YAQUI INDIAN NATION.

5. SEVERAL INDIVIDUALS THAT RESIDE AT SAID RESIDENCE HAVE CRIMINAL HISTORIES INVOLVING NARCOTICS, AGGRAVATED ASSUALT AND WEAPONS OFFENSES. THE INFORMANT ADVISED USE THAT HE'S SEEN AT LEAST THREE WEAPONS IN THE RESIDENCE.

Therefore, this officer requests that a search warrant be issued commanding that an immediate search be made of the persons or premises described herein, for the property and things described herein, and that the same be retained in the custody of this officer or in the custody of the agency that has jurisdiction, and disposed of according to law.

And further, that this warrant be executed anytime of the day or night.



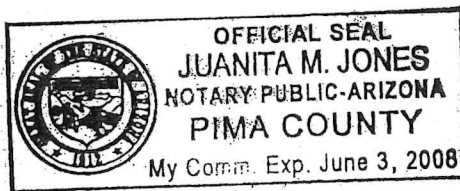
Officer/Badge Number

SWORN AND SUBSCRIBED BEFORE me this 7th day of April, 2006.

Notary Public

My Commission Expires:

June 3, 2008



Appendix C

Complaint
April 8, 2006

PASCUA YAQUI TRIBAL COURT
FILED DATE APR 7 2006

06 APR -8 AM 9:00

DOCKET NO. CR-06-183
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IN AND FOR THE PASCUA YAQUI TRIBAL COURT
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

Pascua Yaqui Tribe, : Case No. CR-06-183
Plaintiff, : CRIMINAL COMPLAINT
Vs. :
McADAMS, Juliana :
Defendant. :

The PASCUA YAQUI TRIBE, hereby complains and alleges, upon information and belief, that the above named defendant, an Indian, while on the Pascua Yaqui Reservation, did commit the following offense(s):

COUNT 1: NARCOTICS AND DANGEROUS DRUGS: 1 PYTC § 5.1

On or about April 7, 2006 at approximately 5:34 p.m., at or near 4940 W. Neokae, had under her control or used a narcotic drug, to wit: marijuana cigarette found in the living room area by the couch.

COUNT 2: POSSESSION OF DRUG PARAPHERNALIA, 1 PYTC § 5.2

On or about April 7, 2006 at approximately 5:34 p.m., at or near 4940 W. Neokae, used or possessed with the intent to use, drug paraphernalia, to store, contain, conceal, ingest, inhale or otherwise introduce into the human body a drug, to wit: plastic baggies to contain marijuana found in a vehicle in the carport area.

COUNT 3: POSSESSION OF DRUG PARAPHERNALIA, 1 PYTC § 5.2

On or about April 7, 2006 at approximately 5:34 p.m., at or near 4940 W. Neokae, used or possessed with the intent to use, drug paraphernalia, to store, contain, conceal, ingest, inhale or otherwise introduce into the human body a drug, to wit: small glass bowl with marijuana residue inside.

COUNT 4: POSSESSION OF DRUG PARAPHERNALIA, 1 PYTC § 5.2

On or about April 7, 2006 at approximately 5:34 p.m., at or near 4940 W. Neokae, used or possessed with the intent to use, drug paraphernalia, to store, contain, conceal, ingest, inhale or otherwise introduce into the human body a drug, to wit: plastic bong used to smoke marijuana.

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COUNT 5: NARCOTICS AND DANGEROUS DRUGS: 1 PYTC § 5.1

On or about April 7, 2006 at approximately 5:34 p.m., at or near 4940 W. Neokae, had under her control or used a narcotic drug, to wit: marijuana inside a plastic baggie.

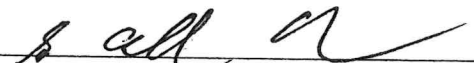
COUNT 6: POSSESSION OF DRUG PARAPHERNALIA, 1 PYTC § 5.2

On or about April 7, 2006 at approximately 5:34 p.m., at or near 4940 W. Neokae, used or possessed with the intent to use, drug paraphernalia, to store, contain, conceal, ingest, inhale or otherwise introduce into the human body a drug, to wit: glass pipe used to smoke marijuana.

And such violations, upon conviction, are punishable under the Pascua Yaqui Tribal Codes.

DATED this 8th day of April, 2006.

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


Complainant/Deputy Prosecutor

DEFENDANT: Juliana McAdams
ADDRESS: 4940 Neokae, Tucson, AZ 85757
DOB: 12/04/70 SSN: ORIGIN: Pascua Yaqui #2694U04336
SEX: female HT 5'6": WT 235: EYES: brown HAIR: brown

NOTE: Accused persons may obtain disclosure information about their case ten days after arraignment by contacting the Prosecutor's Office at 4725 West Tetakusim Bldg C, Tucson AZ 85757. [PYTC Title 10 Rule 5.1]

Appendix D

Affidavit
April 8, 2006

IN THE PASCUA YAQUI TRIBAL COURT

PASCUA YAQUI TRIBAL COURT
FILED DATE: 04/07/06

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION AM 9:03

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| <p>PASCUA YAQUI TRIBE, Plaintiff,</p> <p>Vs.</p> <p>Juliana McAdams, Defendant</p> | <p>DOCKET NO. CR06-18</p> <p>CLERK CR</p> |
| COURT USE ONLY | |
| <p>Case Number: 060407-1406</p> | |
| PROBABLE CAUSE AFFIDAVIT | |

AFFIDAVIT

1. I, Alfred Woods, 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:
 - A. I am the arresting officer in this case; OR
 I am a law enforcement officer and make this statement on information and belief.

2. SUSPECTED PARTY (Defendant)

Name: Juliana McAdams
 Driver's license number: N/A
 PY Enrollment number: 2694U04336
 Date of Birth: 12/04/1970

Juliana is is not an enrolled member of the Pascua Yaqui Tribe.

3. The defendant was arrested cited long formed without a warrant on 04/07/2006 at 8:35 A.M. P.M.

4. I have probable cause to believe that the defendant committed the following offense(s) at 4940 W. Neokae (address) which is within the exterior boundaries of the Pascua Yaqui Indian Reservation:
 - PYC / ARS , Title , Chapter 5, Section 5.1, Possession of Narcotics or Drugs
 - PYC / ARS , Title , Chapter 5, Section 5.2, Possession of Drug Paraphernalia

- PYC / ARS , Title , Chapter , Section ,
- PYC / ARS , Title , Chapter , Section ,
- PYC / ARS , Title , Chapter , Section ,
- PYC / ARS , Title , Chapter , Section ,
- PYC / ARS , Title , Chapter , Section ,
- PYC / ARS , Title , Chapter , Section ,

5. I believe that the defendant committed the above-listed offense(s) because: (Summarize facts to support probable cause claim)

At the above-stated date and time and at the above-referenced location within the exterior boundaries of the Pascua Yaqui Indian Reservation I did witness the following:

On 04/07/2006 at approximately 5:34 pm a search warrant was served at 4940 W. Neokae, the home of Juliana McAdams. Subsequent to the search warrant serves Juliana was spotted by patrol Officer A. Gastelum driving towards her residence. She was stopped and detained for further investigation by Officer A. Gastelum.

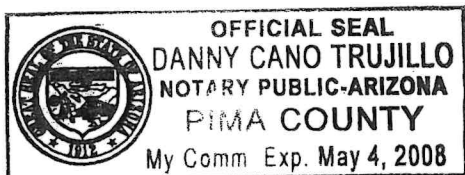
During the search of Juliana's residence a marijuana cigarette was found in the living room area near the family couch (which is a common area and Juliana had easy access to the area). Also I found two (2) plastic baggies (which were used for packaging) with marijuana residue in vehicle parked in the carport of said residence. The registered owner of the vehicle is Juliana McAdams. Also found in the master bedroom of the residence was a plastic bong (used for smoking marijuana), a plastic baggie containing marijuana, several plastic bags with marijuana residue, a small glass bowl with marijuana residue, a glass pipe with marijuana residue and a box of sandwich baggies (150 count with approximately 100 left).

At approximately 8:12 pm on 04/07/2006 Juliana was read her miranda warnings and was interviewed. During the interview she denied any knowledge of the drugs and paraphernalia. At approximately 8:35 pm I advised Juliana that she was being arrested for the marijuana and paraphernalia possession.

NOTE: Juliana is listed as the head of house hold.

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

6. I request that the Court make a probable cause determination and, if the defendant is in custody, that he be continued in custody, pending further proceedings.



Signature of Officer _____
 Date 04/08/06

SUBSCRIBED AND SWORN BEFORE ME ON _____
 Notary Signature _____

My Commission expires: May 04, 2008

Appendix E

Initial Hearing Order &
Appearance Bond Acknowledgment

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

PASCUA YAQUI TRIBE)
Plaintiff)
VS.)
McAdams Juliana)
Defendant)

NO. CR-06-183

INITIAL HEARING ORDER

In compliance with Rules 3.9 and 3.10 of the Pascua Yaqui Rules of Criminal Procedure, defendant appeared before this Court on April 8, 2006 for Initial hearing.

Present were: Alan Osburn for the Tribe; the defendant in custody and without legal counsel.

THE COURT FINDS: that probable cause exist to believe defendant may have committed the offenses of Narcotics and Dangerous Drugs, Possession Of Drug Paraphernalia, Possession of Drug Paraphernalia, Possession Of Drug Paraphernalia, Narcotics and Dangerous Drugs and Possession Of Drug Paraphernalia; that the arraignment hearing will be scheduled; that the Tribe makes release recommendations which include a bond of \$750.00 as given the serious nature of the charges defendant may re-offend if released; that the defendant objects to the conditions of release and states she has the money to post the bond, that she does not use drugs, that she has children she has to care for; that bond will be as recommended given the serious nature of the charges and the other recommended conditions of release will be imposed.

IT IS ORDERED:

Defendant shall be released upon posting bond of \$ 750.00

Defendant shall be held without bond

Defendant shall be released on his/her own recognizance

Defendant shall be released to the custody of

who shall be responsible for defendant's appearance at further hearings.

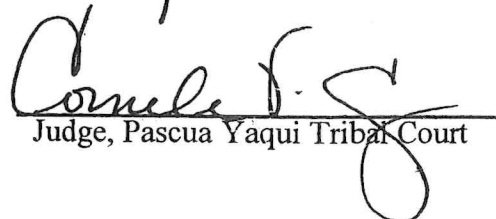
Defendant will be notified of the Arraignment date.

ARRAIGNMENT hearing is scheduled for TUESDAY, APRIL 18, 2006 AT 1:30 P.M.

THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE

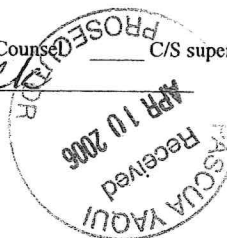
Other: bond shall be posted prior to release and the defendant shall not possess or use any narcotics or dangerous drugs or drug paraphernalia, shall be subject to random breathalyzer tests, shall obey all laws and appear for all hearings

SO ORDERED THIS 8th DAY OF April, 2006.


Judge, Pascua Yaqui Tribal Court

Date: 4-8-06

Tribe Defendant/Counsel C/S supervisor Other CADC
C. M. Valenzuela
Clerk



THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

THE PASCUA YAQUI TRIBE)
Plaintiff)
VS.)
MCADAMS, JULIANNA)
Defendant)

APPEARANCE BOND

CASE NO. CR-06-183

The above named defendant is hereby released on \$ 750.00 bond and is to appear before the Pascua Yaqui Tribal Court on the 18TH day of APRIL 20 06, at 1:30 P. M. for ARRAIGNMENT.

You are hereby commanded to refrain from any use of intoxicating liquor in any form or manner whatsoever; nor engage in misconduct or violate any laws or ordinance of the Pascua Yaqui Tribe, State of Arizona, or the United States during the term of this bond.

If you fail to appear or it is determined by this Court that you have violated the provision of this bond, you will be subject to further prosecution and a warrant for your arrest will be issued by this Court. Any bonds posted will be forfeited.

Other conditions: SHALL NOT POSSESS OR USE ANY NARCOTICS OR DANGEROUS DRUGS
OR DRUG PARAPHERNALIA, SHALL BE SUBJECT TO RANDOM
BEREATHALYZER TEST, SHALL OBEY ALL LAWS AND APPEAR
FOR ALL FUTURE HEARING

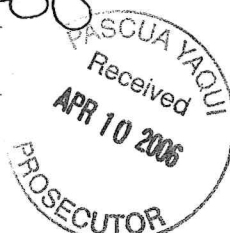
- Charges: Ct 1 NARCOTICS AND DANGEROUS DRUGS
- Ct 2 POSSESSION OF DRUG PARAPHERNALIA
- Ct 3 POSSESSION OF DRUG PARAPHERNALIA
- Ct 4 POSSESSION OF DRUG PARAPHERNALIA
- CT 5 NARCOTICS AND DANGEROUS DRUGS
- CT 6 POSSESSION OF DRUG PARAPHERNALIA

Dated this 9th day of APRIL, 20 06.

Melba R. Alford
Judge, Pascua Yaqui Tribal Court

I have read and understand the above:

[Signature] 4-10-06
Defendant Date
[Signature] 4-9-06
Signature of surety placing bond Date



Date: 4-10-06
Cc: Prosecutor Defendant/Counsel Surety
Clerk: [Signature]

Appendix F

Order Setting Pre-Trial Conference
April 18, 2006

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE
Plaintiff,

VS.

MCADAMS, JULIANNA,
Defendant.

CASE NO. CR-06-183

ORDER SETTING PRE-TRIAL
CONFERENCE

On April 18, 2006, the defendant, Julianna McAdams, appeared for an arraignment, without legal counsel, and Rebecca Figueroa appeared for the Tribe.

The defendant was read her rights, was read the criminal complaint, and she entered a plea of not guilty to the charges of Count One, Narcotics and Dangerous Drugs, Counts Two through Four, Possession of Drug Paraphernalia, Count Five, Narcotics and Dangerous Drugs, and Count Six, Possession of Drug Paraphernalia. The Tribe recommends she be released on a \$750.00 cash bond, previously posted, to which the defendant did not object. The court should grant the Tribe's recommendations as to bond and release conditions.

IT IS ORDERED that the Defendant, Julianna McAdams, shall be released on a \$750.00 cash bond, previously posted, pending her pre-trial conference. She shall not consume nor possess narcotics or dangerous drugs, nor possess drug paraphernalia, and she shall be subject to random breathalyzer and urinalysis testing by probation or the police department.

A PRE-TRIAL CONFERENCE is scheduled for Tuesday, May 30, 2006 at 9:30 a.m..

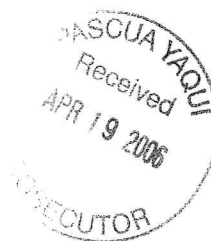
grs

THIS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

SO ORDERED THIS 18th DAY OF APRIL, 2006.

Melvin R. Atwood
Associate Judge, Pascua Yaqui Tribal Court

Date: 04.18-06
Clerk: Tribe Defendant/Counsel _____ Other _____



Appendix G

Order of Dismissal and Exoneration of Bond
May 30, 2006

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

| | | |
|---------------------|---|-------------------------|
| PASCUA YAQUI TRIBE, |) | |
| Plaintiff, |) | CASE NO. CR-06-183 |
| Vs. |) | |
| McADAMS, JULIANA, |) | ORDER OF DISMISSAL |
| Defendant. |) | AND EXONERATION OF BOND |

This matter came before the court on May 30, 2006, for a pre-trial conference. The defendant, appeared without legal counsel, and she waived her right to same. G. Allen Osburn appeared on behalf of the Tribe.

The court should dismiss the matter due to lack of probable cause, because the name of the defendant in both the probable cause affidavit and complaint are incorrect. The court should grant the defendant's motion to dismiss due to misnomer, due to the incorrect spelling of her name in the probable cause affidavit, and she indicated that her first name was Julianna and not Juliana as alleged by the Tribe in its complaint and that the correctly spelled name is in the tribal census records as Julianna. The court, without objection from the Tribe, reviewed documentation submitted by the defendant, including a certified copy of the Pascua Yaqui Tribal Census Records certifying that Ms. McAdams was an enrolled member of the Tribe and that the official tribal enrollment record reflects her legal name as "Julianna" and not as "Juliana," as is contained in the Tribe's complaint and officer's probable cause affidavit. Additionally, Ms. McAdams submitted correspondence from the federal government listing her legal name as "Julianna." Although the Tribe requested to amend the complaint to reflect her correct name as "Julianna," the court still cannot find probable cause due to the defendant's name being misspelled as "Juliana" in the probable cause affidavit.

A court's finding of probable cause, evidenced either through an officer's sworn testimony in open court or by an affidavit signed by the arresting officer and notarized, supports whether further detention is necessary.

The Indian Civil Rights Act, 25 U.S.C. § 1302 provides, in pertinent part:
No Indian Tribe in exercising powers of self-government shall:

PASCUA YAQUI
MAY 31 2006

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(8) 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**. (Emphasis added).

Before the Tribal Court may issue an order to further detain individuals, or to deprive them of their liberty, the Court must find that probable cause exists to do so, and such a finding is part of the defendants' rights to due process of law.

Probable cause must be established by an officer in an arrest without a warrant, or pursuant to an arrest warrant and/or against whom a verified complaint has been filed. Rule 3.10 (A) and (B). Because the probable cause affidavit incorrectly states the defendant's legal name as "Juliana McAdams" rather than "Julianna McAdams", whose spelling was readily available through the Pascua Yaqui tribal census records, the case should be dismissed without prejudice to re-filing, based on a misnomer.

Because there is no further necessity to maintain the appearance bond, the court should exonerate the bond and return same to the surety.

IT IS ORDERED that based on lack of probable cause being established, the case is dismissed, due to a misnomer. This matter is dismissed without prejudice to re-filing.


IT IS FURTHER ORDERED that the \$750.00 cash bond posted on April 9, 2006 by Kelly Kay Alvarez shall be exonerated and returned to the surety.

SO ORDERED THIS 30th DAY OF MAY, 2006.



Judge, Pascua Yaqui Tribal Court

CC: Date 05.30.06
X Tribe X defendant



Clerk

Appendix H

Transcript of Pretrial Hearing

JS = Judge Stoof

AO = Allen Osburn

JM = Julianna McAdams

JS: Morning Ms. McAdams. Where you here when I read everybody there rights?

JM: Inaudible

JS: Understand those rights?

JM: Inaudible

JS: And were you also here when I read what rights you have at Pre-Trial Conference, what motions you can make?

JM: I wanted to request, No I wasn't really paying attention but I wanted to request to see if I could have this dismissed. Due to the fact that my name is Julianna, (J-U-L-I-A-N-N-A) McAdams and on the affidated (sic) it has (J-U-L-I-A-N-A). I have my enrollment right here with me.

JS: Show the tribe and then the Bailiff can bring that up to the court.

JM: I have my tribal ID and on the affidated (sic) it has just one (N) and on the search warrant it has one (N) on the search warrant. Because on the police report and this it's just not accurate, on the warrant it has one (N) on the warrant, see if I can find it.

JS: Do you want the court to review your enrollment papers?

JM: Yes

JS: Officer could you please bring that up to the court, thanks.

JM: My enrollment is right there and my tribal ID, and I specifically told them, when Officer Woods asked me what was my name, he made me spell it out to him... I spelled it out to him. When I receive letters this is what is on the letters that I receive when I receive letters.

JS: Any response from the tribe on the motion?

AO: At this time the tribe will move to include Julianna McAdams, her names also known as (AKA) Juliana McAdams.

JS: Any response to the motion Ms. McAdams?

JM: I'm sorry but I use two (N's). I don't use J-U-L-I-A-N-A. I use Julianna and I specifically told them. On the same papers here, on my history things it has my full name on here but on the affidated (sic)

JS: So you object to the motion?

JM: Yes, I do.

AO: Your honor, I believe that the motion was to have two (N's) and she indicated just now that she does have two (N's) in her name so I would interpret that as a no objection to the correction of the spelling.

JS: Well, even if the court were to grant the motion to amend the complaint, the affidavit is still defective and Probable Cause affidavit supports the complaint so not with standing the fact even if the court were to grant your motion to amend the criminal complaint the probable cause affidavit is still defective, it is a misnomer, so I'm going to grant a dismissal based on (interrupted)

AO: Your honor

JS: Go ahead

AO: Your honor, if I may, there is a prevision which allows for typographical errors and this clearly is that situation. We are dealing with the vary person. The enrollment information the court has been provided by defendant indicates an enrollment number and that number is in coordination with the number on the affidavit and the number on the complaint. Your honor, we are dealing with other information. I didn't look at the date of birth it was to quick before I was able to see that but I believe that date of birth is correct as well. Your honor, so we have the information to indicate that we are dealing with the very person that the crime is accused of the crimes is the very person before us today. The fact that we have a typo, we believe that, that is no something that is subject to having the matter dismissed and I believe the code provides for typographical errors and this is clearly that situation.

JS: There was no objection made when she submitted her birth, the name that's listed on her certificate of Indian blood, which is a certified copy of a tribal court has recognized in the past. That if there are any certified copies from business records from the tribe, they are admitted and there was no objection made when she asked me to review that. It has been admitted into evidence so the court has already reviewed that as well as some legal documents which she indicates, Social Security, Administration, has provided to her under her legal name that she must provide through proof of either birth certificate or some kind of identification before they can send it through to social security. So I got a federal document certifying that her name is Julianna McAdams and I have a certified certificate of Indian Blood from the tribe membership enrollment paper and I have to base it on that, those facts presented. Based on that her name is Julianna (A-N-N) Mc Adams and the affidavit says Julianna with on (N) and based on that there is a defect in the affidavit. I can not find probable cause because it lists an improper

name. Again, dismissal due to misnomer. Misnomer means a name which is misspelled. Now understand Ms. McAdams that this is dismissed with out prejudice for re-filing. If the tribe wishes to re-file at a later date to correct those matters they can do so.

JM: Is there a way I can request to get my bond back? I have a \$750 bond.

JS: Yes, the court will go ahead and grant that request for the \$750 bond to be exonerated, Kelly K. Alvarez is the original person who posted that cash bond. So it will be exonerated and returned to Kelly K. Alvarez. Motion to Dismiss is granted in this case CR-06-183.

PASCUA YAQUI TRIBAL COURT
FILED DATE
06 JUL 11 PM 12:21
BUCKET NO. CA-06-011
FILED

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

3 Nicholas A. Fontana, Esq.
4 State Bar No. 014429
Attorney for Appellee

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

8
9 PASCUA YAQUI TRIBE,
10 Appellant,
11 vs.
12 McADAMS, JULIANNA,
13 Appellee.

Case No. CA-06-011


Tribal Court No. CR-06-183

NOTICE OF APPEARANCE

14
15 Pursuant to Title 1, Pascua Yaqui Judicial Titles and Codes, § 1.26, the Pascua Yaqui Public
16 Defender, by and through counsel undersigned hereby enters his appearance in this case on behalf of
17 Appellee

18 DATED this 11th day of July, 2006.

19 PASCUA YAQUI PUBLIC DEFENDER

20 
21 Nicholas A. Fontana
22 Chief Public Defender

23 ORIGINAL hand-delivered this date
24 PY Ct. of Appeals In-box by: FF

25 COPY of the foregoing hand-delivered this date
26 PY Prosecutor's In-Box by: FF

PASCUA YAQUI TRIBAL COURT
FILED DATE 06 JUN 21 PM 4:14
DOCKET NO. CA-06-011
CLERK [Signature]

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR
7474 S. Camino de Oeste
Tucson, AZ 85757
(520) 879-6251

Micah Schmit
Chief Prosecutor

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

| | | |
|----------------------|---|---------------------------------|
| PASCUA YAQUI TRIBE, |) | |
| Plaintiff/Appellant, |) | Trial Court Case No. CR-06-183 |
| |) | |
| vs. |) | Appeals Court Case No. |
| |) | |
| McADAMS, Julianna, |) | NOTICE OF APPEAL |
| |) | (Oral argument requested before |
| Defendant/Appellee. |) | the full Appellate Panel) |
| _____ |) | |

NOTICE IS HEREBY GIVEN that the Pascua Yaqui Tribe appeals from the order of the trial court dated May 30, 2006 (attached).¹ The trial court dismissed this case without prejudice because Defendant's first name was misspelled (Juliana) in the probable cause affidavit and the charging complaint.

It is the Tribe's position that the trial court's order was erroneous because Defendant was a booked (in-custody, photographed) arrestee, because she waived the error by not objecting at either the initial hearing or the arraignment (only at the pretrial), because neither she nor the trial court identified any prejudice to preparing a rational defense, and/or because the affidavit and complaint carried numerous other, singularly-describing indicia of identity, including unique enrollment number, DOB, residence address, etc. For nearly every one of these individual reasons, the Code is on point and this case should not have been dismissed.

For all the reasons, individually or collectively, the Tribe asks that time-limits be deemed suspended, pending this Court's ruling on the request to reversal the lower court's dismissal.

The Tribe would request oral argument before a three Justice panel.

¹ Notably or ironically, the lower court captioned their own dismissal order using Appellee's incorrect name spelling.

1
2 RESPECTFULLY SUBMITTED THIS 21st day of June, 2006.

3
4 PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR

5
6 

7 Micah Schmit
8 Chief Prosecutor, PYT
9

10 Original and copies delivered to:
11 Clerk of Court, Pascua Yaqui Tribe Court of Appeals (6 copies)

12 Pascua Yaqui Tribal Court

13 Pascua Yaqui Tribe, Office of the Attorney General

14 Defendant/Appellee, Julianna McAdams
15 4940 W. Neokae, Tucson, 85757

16 By 
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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

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|---------------------|---|-------------------------|
| PASCUA YAQUI TRIBE, |) | |
| Plaintiff, |) | CASE NO. CR-06-183 |
| Vs. |) | |
| McADAMS, JULIANA, |) | ORDER OF DISMISSAL |
| Defendant. |) | AND EXONERATION OF BOND |
| |) | |

This matter came before the court on May 30, 2006, for a pre-trial conference. The defendant, appeared without legal counsel, and she waived her right to same. G. Allen Osburn appeared on behalf of the Tribe.

The court should dismiss the matter due to lack of probable cause, because the name of the defendant in both the probable cause affidavit and complaint are incorrect. The court should grant the defendant's motion to dismiss due to misnomer, due to the incorrect spelling of her name in the probable cause affidavit, and she indicated that her first name was Julianna and not Juliana as alleged by the Tribe in its complaint and that the correctly spelled name is in the tribal census records as Julianna. The court, without objection from the Tribe, reviewed documentation submitted by the defendant, including a certified copy of the Pascua Yaqui Tribal Census Records certifying that Ms. McAdams was an enrolled member of the Tribe and that the official tribal enrollment record reflects her legal name as "Julianna" and not as "Juliana," as is contained in the Tribe's complaint and officer's probable cause affidavit. Additionally, Ms. McAdams submitted correspondence from the federal government listing her legal name as "Julianna." Although the Tribe requested to amend the complaint to reflect her correct name as "Julianna," the court still cannot find probable cause due to the defendant's name being misspelled as "Juliana" in the probable cause affidavit.

A court's finding of probable cause, evidenced either through an officer's sworn testimony in open court or by an affidavit signed by the arresting officer and notarized, supports whether further detention is necessary.

The Indian Civil Rights Act, 25 U.S.C. § 1302 provides, in pertinent part:

No Indian Tribe in exercising powers of self-government shall:

PASCUA YAQUI
Prosecutor
MAY 31 2006

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(8) 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**. (Emphasis added).

Before the Tribal Court may issue an order to further detain individuals, or to deprive them of their liberty, the Court must find that probable cause exists to do so, and such a finding is part of the defendants' rights to due process of law.

Probable cause must be established by an officer in an arrest without a warrant, or pursuant to an arrest warrant and/or against whom a verified complaint has been filed. Rule 3.10 (A) and (B). Because the probable cause affidavit incorrectly states the defendant's legal name as "Juliana McAdams" rather than "Julianna McAdams", whose spelling was readily available through the Pascua Yaqui tribal census records, the case should be dismissed without prejudice to re-filing, based on a misnomer.

Because there is no further necessity to maintain the appearance bond, the court should exonerate the bond and return same to the surety.

IT IS ORDERED that based on lack of probable cause being established, the case is dismissed, due to a misnomer. This matter is dismissed without prejudice to re-filing.

IT IS FURTHER ORDERED that the \$750.00 cash bond posted on April 9, 2006 by Kelly Kay Alvarez shall be exonerated and returned to the surety.

SO ORDERED THIS 30th DAY OF MAY, 2006.



Judge, Pascua Yaqui Tribal Court

CC: Date 05-30-06
X Tribe X defendant



Clerk