

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

Yancy A. Jencsok
Deputy Prosecutor

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

07 JUN 25 PM 4: 20

DOCKET NO. CA-06-015

CLERK JS

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

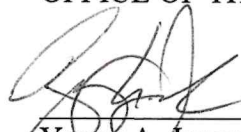
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)	Trial Court Case No. CR-06-133
Plaintiff/Appellant,)	
)	Appeals Court Case No. ⁰⁶ CA-07-015
vs.)	
)	TRIBE'S MOTION FOR EXTENSION
REYNALDO CANEZ,)	OF TIME TO FILE BRIEF
Defendant/Appellee.)	
_____)	

The Tribe motions the court for an extension of time to file its opening brief pursuant to 3 PYTRAP Rule 5(B). The tribal court recently transmitted the records for this and several other appeals altogether, causing a number of briefs to come due at once. The Tribe is unable to timely prepare the briefs that are due. The Tribe asks for a 60 day extension.

RESPECTFULLY SUBMITTED this 25th day of June, 2007.


PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR



Yancy A. Jencsok
Deputy Prosecutor

Copy mailed/delivered to:

Reynaldo Canez, Jr.
5360 W. Koni
Tucson, AZ 85757

On June 25, 2007, by  _____

Pascua Yaqui Tribe
Office of the Prosecutor
7474 S. Camino de Oeste
Tucson, AZ 85746
(520) 879-6251

06 AUG 11 PM 2:23
CR-06-133
HBM

Yancy A. Jencsok
Deputy Prosecutor

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

PASCUA YAQUI TRIBE,)	Trial Court Case No. CR-06-133
Plaintiff,)	
)	Appeals Court Case No. CA-06-015
vs.)	
)	NOTICE OF APPEAL AND MOTION
CANEZ, Jr., Reynaldo,)	TO SUSPEND RULES
Defendant.)	
_____)	

NOTICE IS HEREBY GIVEN that the Pascua Yaqui Tribe appeals from the order of the trial court dated July 13, 2006. The trial court granted Defendant's Motion for Directed Verdict and found that Defendant was not guilty. The Tribe is not appealing the judgment of acquittal as such an appeal is prohibited pursuant to PYTRAP Rule 7(G). Rather, the Tribe intends this appeal to be of the trial court's underlying findings and evidentiary rulings. Specifically, the Tribe appeals the findings and rulings that (1) scientific testing or chemical lab results or expert testimony are "necessary" to prove that a particular substance is a dangerous drug or narcotic, and (2) that an experienced law enforcement officer's opinion testimony is not sufficient to prove that a particular substance is a dangerous drug or narcotic.

The Tribe motions the court to accept this Notice of Appeal pursuant to PYTRAP Rule 3. Rule 3 allows the court to "suspend the requirements or provisions" of the appellate rules in a particular case. The Tribe requests that the PYTRAP Rule 7(G) prohibition against government appeals be suspended. Suspension of the rules to allow an appeal is appropriate in this case for the following reasons:

1. At trial in this case, Officer Thomas Schenek, an experienced law enforcement officer, testified to finding a substance that smelled, looked like, and was packaged like

marijuana in defendant's vehicle. Upon questioning by Officer Schenek, the defendant admitted that the substance was marijuana and that it belonged to him. However, there was no laboratory test of the substance to confirm that it was marijuana due to a breakdown between all tribes and Arizona's DPS lab.


2. At the trial, Officer Schenek also testified to finding several tablets labeled "Roche" in the defendant's possession. Roche is the name of a commonly abused prescription narcotic drug. Defendant did not present Officer Schenek with a prescription. Again, there was no laboratory test of the tablets to confirm that they were narcotic drugs. The trial court judge, Melvin Stoof, did not even allow Officer Schenek to testify regarding his knowledge of the drug Roche.
3. There was no testimony or evidence presented indicating that the "marijuana-like" substance might be something other than actual marijuana; however, Judge Stoof opined that the substance could be grass clippings. There was also no testimony or evidence presented indicating that the tablets labeled "Roche" might be something other than a narcotic drug or that Defendant had a prescription.
4. Currently, the Pascua Yaqui Police Department does not have access to a chemical laboratory for the testing of suspected drugs/narcotics. This situation may change in the future, but it is uncertain when.
5. It is not the practice of the Tribe to certify law enforcement officers as expert witnesses at trial. State law similarly does not require this as anyone may testify from their training and/or life experiences.
6. It is the Tribe's contention that there was ample evidence presented at trial to prove beyond a reasonable doubt that Defendant had marijuana in his possession. The Tribe also contends that had Officer Schenek been allowed to testify fully regarding the drug "Roche," it would have been proven beyond a reasonable doubt that Defendant was in possession of an illegal narcotic.

Given the above, it is very likely that similar evidentiary issues will arise in cases involving narcotics and dangerous drugs in the future. The Tribe fears that without guidance from the Pascua Yaqui Appellate Court, similar decisions will be rendered and, without any ability to challenge such acquittals, the interests of justice will be frustrated.

WHEREFORE, the Tribe requests that the Court grant its motion and accept its Notice of Appeal.

RESPECTFULLY SUBMITTED this 11th day of August, 2006.

OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE.



Yaney A. Jencsok
Deputy Prosecutor

ORIGINAL delivered to:

Clerk of the Court
Pascua Yaqui Tribe Court of Appeals

Copy delivered/mailed to:

Clerk of the Court
Pascua Yaqui Tribal Court

Reynaldo Canez, Jr.
5360 W. Koni
Tucson, AZ 85757

On August 11, 2006 by:



1 IN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 PASCUA YAQUI TRIBE,)
4 PLAINTIFF,)
5 vs.)
6 CANEZ, JR., REYNALDO,)
7 DEFENDANT.)

CASE NO. CR-06-133
JUDGMENT AND
DIRECTED VERDICT, AND ORDER
ALLOWING WITHDRAWAL
OF COUNSEL

8 The defendant, Reynaldo Canez, Jr. appeared for a bench trial, on July 13, 2006, and
9 he was represented by legal counsel, M. June Harris. Appearing for the Tribe was Micah
Schmit and Yancy Jencsok, and officer Thomas Schenek

10 The court held a trial, heard testimony, reviewed documentary evidence, and it finds
11 the defendant is not guilty beyond a reasonable doubt to Count One, Narcotics and
12 Dangerous Drugs, Count Two, Narcotics and Dangerous Drugs Count Three, Possession of
13 Drug Paraphernalia, and Count Four, Possession of Drug Paraphernalia. The court should
grant the defendant's motion for directed verdict.

14 The Tribe's Exhibit One, a certificate of Indian blood and tribal enrollment
15 department record, was admitted, without objection.

16 As to all of the counts, the court finds the Tribe has **not** met its burden of beyond a
17 reasonable doubt in that although the court finds that the officer made a valid traffic stop,
18 and that he confiscated what he believed to be suspected marijuana and suspected narcotics,
19 the Tribe could not provide through any scientific testing or chemical lab results or expert
20 testimony that the substances were in fact narcotics and dangerous drugs. Although the
21 Tribe attempted to introduce opinion testimony of the officer related to the alleged narcotics,
22 he was not designated as an expert in toxicology, or a chemist, or any other expert who
would normally render an expert opinion as to whether a particular substance was in fact a
dangerous drug or narcotic. The court allowed his lay opinion as to the alleged substance,
but because he was not qualified as an expert nor designated as such in the Tribe's
disclosure, his testimony was limited to his observations and lay opinion and not as a
forensic expert on pharmacology, or toxicology, or chemistry.

23 The defendant's legal counsel no longer wishes to represent the defendant, because
24 the client has no other pending legal matters requiring such legal representation, and Ms.
25 Harris requests that the court allow her withdrawal from representation. The court should
grant the motion for good cause shown.

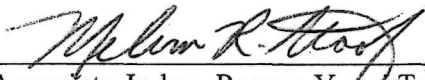
26 **IT IS ORDERED** that the court grants the defendant's motion for directed verdict,
27 because the Tribe has not proven that Reynaldo Canez, Jr. was guilty beyond a reasonable
28 doubt of Count One, Narcotics and Dangerous Drugs, Count Two, Narcotics and Dangerous

1 Drugs Count Three, Possession of Drug Paraphernalia, and Count Four, Possession of Drug
2 Paraphernalia.

3 **IT IS ORDERED** that the court grants the unopposed request of M. June Harris to
4 withdraw as legal counsel for defendant, for good cause shown. All future notices and
5 motions shall be sent directly to Mr. Reynaldo Canez, Jr., 5360 W. Koni, Tucson AZ, 85757.
6 Ms. Harris no longer has any legal duty to assist Mr. Canez, Jr. in this court case.

7 **THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.**

8 SO ORDERED THIS 13th DAY OF JULY, 2006.

9 
Associate Judge, Pascua Yaqui Tribal Court

10 Date 7-14-06
11 cc: Tribe Defendant Counsel

12 RV
Clerk