



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

Micah Schmit
Chief Prosecutor

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

IN AND FOR THE PASCUA YAQUI RESERVATION

PASCUA YAQUI TRIBE,)	
Plaintiff/Appellant,)	Trial Court Case No. CR-06-321
)	Appeals Court Case No. CA-06-019
vs.)	
)	APPELLANT'S MOTION TO WITHDRAW
VALENZUELA, Luis,)	APPEAL
Defendant/Appellee.)	
_____)	

The Tribe motions this Court to dismiss the requested appeal in this case without prejudice to refile in Tribal Court, pursuant to 3 PYTRAP Rule 20(B). The grounds for this request are as follows:

1. This appeal was from a Tribal Court order dismissing a criminal complaint because an officer, other than the case officer, submitted the probable cause affidavit.
2. While the Tribe still believes that any officer may become informed about, and thereby attest to, a probable cause affidavit (hearsay is permissible), in the interests of expediency and managing workloads, the Tribe is electing to simply refile an amended criminal complaint in Tribal Court instead of pursuing this appeal.
3. The Tribe has not filed an opening brief in this matter, nor has Defendant/Appellee filed any pleadings thus far. The original statute of limitations for refiling charges in Tribal Court could be as soon as July 24, 2007, but this does not include time tolled for the pendency of this appeal.

WHEREFORE, the Tribe requests that this appeal be dismissed immediately without prejudice to refile the original case back in Tribal Court.

///

RESPECTFULLY SUBMITTED this 12th day of July, 2007.

OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE.



Micah Schmit
Chief Prosecutor

ORIGINAL delivered to:

Clerk of the Court
Pascua Yaqui Tribe Court of Appeals

Copy delivered/mailed to:

Luis Valenzuela
5170 W. Wichalakas
Tucson, AZ 85757

On July 13, 2007 by: JR

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

FILED
05 AUG 24 PM 4:53
CASE NO. CA 06-019
YJC

Yancy A. Jencsok
Deputy Prosecutor

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

PASCUA YAQUI TRIBE,)
Petitioner/Appellant,) Trial Court Case No. CR-06-321
) Appeals Court Case No. CA-06-019
vs.)
) **NOTICE OF APPEAL**
VALENZUELA, Luis,)
Minor/Appellee.)
_____)


NOTICE IS HEREBY GIVEN that the Pascua Yaqui Tribe appeals from the order of the trial court dated July 25, 2006. A copy of the order is attached. The trial court dismissed the case without prejudice, pursuant to Defendant's oral motion at the Initial Hearing. The trial court held that the officer who signed the probable cause affidavit was not the same officer who wrote the affidavit and therefore the affidavit was not valid.

In this case, arresting officer drafted an affidavit, but it was not properly signed (dated) when a notary was available. The officer worked night-shift and was not available at the time the initial hearing was to be conducted. Moreover, there was a victim involved in the case. Consequently, another officer was called to review the case. He drafted the affidavit, signed, dated and properly had it notarized. The Tribe argued that such hearsay is permissible at a probable-cause stage. The wording of the revised affidavit further specifically elected the option that it was based on information and belief (rather than direct knowledge). It is the position of the Tribe that a charging affidavit, since it is based upon a mere 'probable cause' level of determination, does not have to be written or signed by the actual arresting officer, but, as in any grand jury proceeding, may indeed be written and signed by another officer who has had the opportunity to review the case or report upon which the affidavit is based on.

For such reasons as noted above, the case should not have been dismissed. The Tribe requests oral argument before a three justice panel.

RESPECTFULLY SUBMITTED this 24th day of August, 2006.

OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE.



Yancy A. Jencsok
Deputy Prosecutor

ORIGINAL ~~and 5 copies~~ delivered to:

Clerk of the Court
Pascua Yaqui Tribe Court of Appeals

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Pascua Yaqui Tribal Court

Luis Valenzuela
5170 W. Wichalakas
Tucson, AZ 85757

On August 24, 2006 by:



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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)
Plaintiff)
VS.)
Valenzuela Luis)
Defendant)

NO. CR-06-321

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 July 25, 2006 for Initial hearing.

Present were: Alan Osburn for the Tribe; the defendant in custody and with legal counsel June Harris

THE COURT FINDS: that defense counsel moves the Court to dismiss this matter as probable cause does not exist as the Officer who signed the Affidavit is not the Officer who wrote the affidavit, therefore making the affidavit invalid as the Officer who wrote the affidavit had no first hand knowledge of the alleged incident; that the Tribe objects as the Officer do speak to each other and in that hearsay is allowed in finding probable cause; that defense counsel states that there is no indication in the affidavit that one Officer spoke to the other Officer; that the Court will grant the motion to dismiss as the affidavit is deficient as the Officer attested and signed the affidavit is not the same Officer who wrote the affidavit.

IT IS ORDERED:

- Defendant shall be released upon posting bond of \$ _____
- 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 _____
THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE
X Other: defense counsel's motion is granted and this matter is dismissed without prejudice as the affidavit is deficient and this matter is closed.

SO ORDERED THIS 25th DAY OF July, 2006.

Cornelia G. [Signature]
Judge, Pascua Yaqui Tribal Court

Date: 07-26-06
 Tribe Defendant/Counsel Probation Detention Other
[Signature]
Clerk

