

No. CA-07-003
Pascua Yaqui Tribe Court of Appeals

Francisco F. Madril, Petitioner/Defendant,

v.

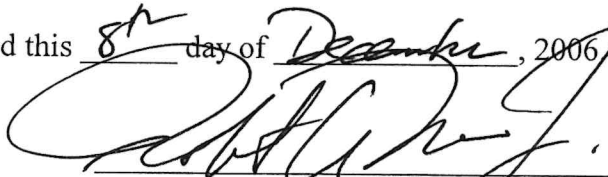
The Honorable Melvin Stoof,
Pascua Yaqui Tribal Court, Respondent.

ORDER

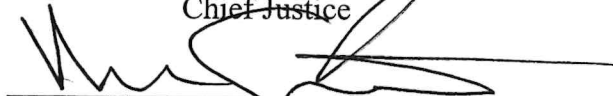
Nicholas A. Fontana, Esq., Office of Pascua Yaqui Public Defender, Tucson, Arizona, for
Petitioner/Defendant.

Pursuant to PYTRAP 24(C), this Court finds that the Defendant's petition for writ
of mandamus should be summarily denied. The issue brought before this Court deals
with the factual question of whether the Defendant was absent from Pascua Yaqui Tribe
territorial jurisdiction on certain days that the alleged offenses were committed; this issue
is better left for a jury to decide. We agree with the trial court that the Defendant's
motion to dismiss the named criminal counts is based upon alibi defense/testimony,
which does not contest Pascua Yaqui Tribe territorial jurisdiction. Accordingly, the
"Petition for Writ of Mandamus" is summarily denied.

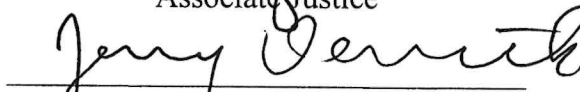
So Ordered this 8th day of December, 2006



Chief Justice



Associate Justice



Associate Justice

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

07-007
YBY

FRANCISCO F. MADRIL,
Petitioner/Defendant,

v.

THE HONORABLE MELVIN STOOF,
PASCUA YAQUI TRIBAL COURT,
Respondent.

) Case No.: CA-07007

) Tribal Court No. CR-06-221

PETITION FOR WRIT OF MANDAMUS

Nicholas A. Fontana
State Bar No. 014429
PASCUA YAQUI PUBLIC DEFENDER
7474 South Camino de Oeste
Tucson, AZ 85757
(520) 883-5013
(520) 883-5017, fax

Attorney for Petitioner/Defendant

I. STATEMENT OF JURISDICTION

This petition is filed pursuant to the provisions of Article VIII, § 2, Constitution of the Pascua Yaqui Tribe and 3 PYTRAP Rule 24 of the Pascua Yaqui Judicial Titles and Codes.

II. STATEMENT OF FACTS

On May 11, 2006, the Tribe filed a sixty (60) count criminal complaint against Petitioner Francisco Madril. [Appendix, Exhibit 1]. The Petitioner has remained in custody pending the posting of a cash bond in the amount of one-thousand dollars (\$1,000.00) per count, for a combined bond in the amount of sixty-thousand dollars (\$60,000.00). [Appendix, Exhibit 2].

On September 6, 2006, the Petitioner filed a Motion to Dismiss (Lack of Jurisdiction) and requested an evidentiary hearing on the motion. [Appendix, Exhibit 3]. The Tribe filed its response on October 9, 2006. [Appendix, Exhibit 4]. On October 10, 2006, the Respondent issued an order setting the evidentiary hearing on Petitioner's Motion to Dismiss (Lack of Jurisdiction) for November 1, 2006. [Appendix, Exhibit 5]. The Petitioner filed his reply on October 18, 2006. [Appendix, Exhibit 6]. In anticipation of the evidentiary hearing, the Petitioner subpoenaed two witnesses to provide testimony in support of his Motion to Dismiss (Lack of Jurisdiction). [Appendix, Exhibits 7-8].

At the evidentiary hearing on November 1, 2006, the Respondent refused to allow the Petitioner to present any testimony in support of his Motion to Dismiss (Lack of Jurisdiction). [Appendix, Exhibit 9]. Without hearing any evidence, the Respondent denied the Petitioner's Motion to Dismiss (Lack of Jurisdiction). [Id.]. The Respondent ruled that "the defendant's motion to dismiss based on subject matter jurisdiction shall be denied insofar as it attempts to provide alibi testimony, that the defendant was not within the reservation boundaries during the time of the alleged offenses, rather than testimony which goes to challenge the territorial jurisdiction of the court." [Id.]

III. STATEMENT OF THE ISSUE

- A. Whether the Respondent erred in refusing to allow the Petitioner to present evidence in support of his Motion to Dismiss (Lack of Jurisdiction).

IV. ARGUMENT

A. The Respondent erred in refusing to allow the Petitioner to present evidence in support of his Motion to Dismiss (Lack of Jurisdiction).

The criminal jurisdiction of the Pascua Yaqui Tribal Court extends to all matters where members or non-members of the Pascua Yaqui Tribe are parties unless otherwise prohibited by federal or tribal laws. Article VIII, § 2, Constitution of the Pascua Yaqui Tribe. The jurisdiction of the Pascua Yaqui Tribe extends only to the lands within the exterior boundaries of the Pascua Yaqui Indian Reservation. Article II, Constitution of the Pascua Yaqui Tribe. The Pascua Yaqui Tribal Court does not have criminal jurisdiction over criminal acts that occurred outside the boundaries of the Pascua Yaqui Indian Reservation. 3 PYTC § 1-1-10 (B).

The Pascua Yaqui Rules of Criminal Procedure provide that at any time after the arraignment, either party may request that the trial court issue a particular order. 3 PYT R.Crim.P. Rule 30(A). The rules specifically provide that a defendant may move to set aside a complaint based on a lack of jurisdiction. 3 PYT R.Crim.P. Rule 30(C). If the court determines that it lacks jurisdiction over the person or offense, the court is required to set aside the complaint. 3 PYT R.Crim.P. Rule 30(C)(3); *see also* 3 PYT R.Civ.P. Rule 14(C).

“Jurisdiction” refers to “the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties.” BLACK’S LAW DICTIONARY 853 (6th ed. 1990); *see also Pinner v. Pinner*, 234 S.E.2d 633 (N.C. App. 1977); *Wilson v. Ransom*, 446 N.W.2d 6 (Neb. 1989); *State v. Kwak*, 909 P.2d 1112 (Haw. 1995); *State v. Vaughan*, 33 S.W.2d 512 (Ark. 2000). As Justice Johnson of the United States Supreme Court observed nearly two-hundred years ago, “[i]t is an acknowledged principle . . . of every court in the world, that not only the decisions, but

everything done under judicial process of a court, not having jurisdiction, are, *ipso facto*, void.”

Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 364, (1816); *see also Marshall v. Clark*, 365 A.2d 1202 (Conn. 1976); *Springer v. Shavender*, 23 S.E. 976 (N.C. 1896); *Reed v. State*, 187 S.W.2d 660 (Tex. 1944); *Louisville & N.R. Co. v. Tally*, 83 So. 114 (Ala. 1919); *Wenzel v. Wenzel*, 283 S.W.2d 882 (Mo.App. 1955); *Stephens v. Hartly*, 2 Mont. 504 (1876); *Turner v. Malone*, 24 S.C. 398 (1898); *Tustin v. Gaunt*, 4 Ore. 305 (1873); *Lefevre v. Mashantucket Pequot Tribe*, 1 Mash. 1, 1992.NAMP.0000001 <<http://www.versuslaw.com>> (1992); *Thomas v. Coquille Indian Tribe*, 2004.NACQ.0000001 <<http://www.versuslaw.com>> (2004).

Challenges to the subject matter jurisdiction of a court receive a high level of scrutiny. In fact, if the parties fail to raise a possible defect to subject matter jurisdiction, the court is obligated to address any apparent issues regarding subject matter jurisdiction *sua sponte* before allowing the case to proceed. *Burgess v. Charlottesville Sav. & Loan Ass'n*, 477 F.2d 40, 43 (4th Cir. 1973); *Zelson v. Thomforde*, 412 F.2d 56, 57 (3rd Cir. 1969); *Fiedler v. Clark*, 714 F.2d 77, 78-79 (9th Cir. 1983); *Fitzgerald v. Seaboard S.R., Inc.*, 760 F.2d 1249, 1251 (10th Cir. 1992), *cert. denied*, 493 U.S. 943 (1989); *Liberty Mut. Ins. Co. v. Ward Trucking Corp.*, 48 F.3d 742, 750 (3rd Cir. 1995); *State Farm Mut. Auto. Ins. Co. v. Narvaez*, 149 F.3d 1269, 1270-71 (10th Cir. 1998); *Alumax Mill Prods., Inc. v. Congress Fin. Corp.*, 912 F.2d 996, 1002 (8th Cir. 1990); *State ex rel. Lawrence Dev. Co. v. Weir*, 463 N.E.2d 398, 399 (Ohio App. 1983); *Morrison v. Bestler*, 387 S.E.2d 753, 755 (Va. 1990); *City of Philadelphia v. White*, 727 A.2d 627, 630 (Pa. 1999); *Weatherspoon v. Allstate Ins. Co.*, 89 P.3d 1277, 1279 (Ore. App. 2004); *Trottier v. Bird*, 635 N.W.2d 157, 159 (N.D. 2001); *Timmons v. McCauley*, 27 S.W.3d 437, 440 (Ark. App. 2000); *Sage v. Gamble*, 929 P.2d 822, 824 (Mont. 1996); *People v. Stenson*, 694 N.E.2d 204, 205 (Ill. App. 1998); *International Longshoremen's Assoc. v. Davis*, 470 So.2d 1215, 1216 (Ala. 1985);

Alvarez v. State Taxation & Revenue Dep't, Motor Vehicle Div., 971 P.2d 1280, 1282 (N.M. App. 1998).

Jurisdictional attacks may be facial or factual. *Safe Air v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004), *cert. denied*, 544 U.S. 1018 (2005); *United Tribe of Shawnee Indians v. United States*, 253 F.3d 543, 547 (10th Cir. 2001); *Lawrence v. Dunbar*, 919 F.2d 1525, 1528-1529 (11th Cir. 1990); *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990); *Cedars-Sinai Medical Ctr. v. Watkins*, 11 F.3d 1573, 1583-1584 (Fed. Cir. 1993), *cert. denied*, 512 U.S. 1235 (1994). In a facial attack, the challenger asserts that the allegations in the complaint are insufficient on their face to invoke the jurisdiction of the court. *Safe Air*, 373 F.3d at 1039; *United Tribe of Shawnee Indians*, 253 F.3d at 547; *Lawrence*, 919 F.2d at 1529; *Ohio Nat'l Life Ins. Co.*, 922 F.2d at 325; *Cedars-Sinai Medical Ctr.*, 11 F.3d at 1583. In contrast, in a factual attack the challenger disputes the truth of the allegations that would otherwise invoke the jurisdiction of the court. *Safe Air*, 373 F.3d at 1039; *United Tribe of Shawnee Indians*, 253 F.3d at 547; *Lawrence*, 919 F.2d at 1529; *Ohio Nat'l Life Ins. Co.*, 922 F.2d at 325; *Cedars-Sinai Medical Ctr.*, 11 F.3d at 1583-1584.

In resolving a factual attack on jurisdiction, the court is not required to presume the truthfulness of the plaintiff's allegations. *Safe Air*, 373 F.3d at 1039; *United Tribe of Shawnee Indians*, 253 F.3d at 546; *Lawrence*, 919 F.2d at 1529; *Ohio Nat'l Life Ins. Co.*, 922 F.2d at 325; *Cedars-Sinai Medical Ctr.*, 11 F.3d at 1583-1584. To the contrary, the court has broad discretion to allow evidence beyond the complaint including affidavits, other documents, and a limited evidentiary hearing to resolve the disputed jurisdictional facts. *Safe Air*, 373 F.3d at 1039; *United Tribe of Shawnee Indians*, 253 F.3d at 547; *Lawrence*, 919 F.2d at 1529; *Ohio Nat'l Life Ins. Co.*, 922 F.2d at 325; *Cedars-Sinai*, 11 F.3d at 1584.

In his Motion to Dismiss (Jurisdiction), the Petitioner requested an evidentiary hearing and stated that the defense intended “to produce evidence establishing that Mr. Madril was residing at 13244 South Santa Rosa Road, Arizona City, Arizona, which is located outside the exterior boundaries of the Pascua Yaqui Indian Reservation.” [Appendix, Exhibit 3 at 3]. The Petitioner’s motion made it clear that he was launching a factual attack on the jurisdiction of the court. By scheduling the matter for an evidentiary hearing, it appeared that the Respondent understood that the Petitioner wished present a factual jurisdictional attack against the complaint. In anticipation of the hearing on the motion, the Petitioner subpoenaed two witnesses for the purpose of eliciting evidence demonstrating that the Respondent did not have jurisdiction over certain counts contained in the complaint. [Appendix, Exhibit 7-8]. At the time of the hearing, however, the Respondent refused to allow the Petitioner to present any evidence challenging the factual assertions regarding jurisdiction contained in the criminal complaint. [Appendix, Exhibit 9]. In essence, the Respondent refused to allow the Petitioner to challenge the jurisdiction of the Tribal Court.

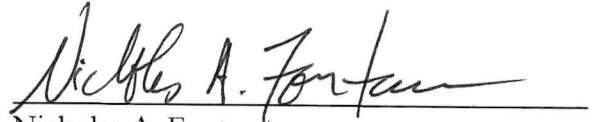
The Respondent’s ruling is problematic for several reasons. First, it fails to comply with the basic principles of law which govern jurisdictional challenges. Second, it has deprived the Petitioner of his right to perfect a factual record in the lower court. Finally, the Petitioner is being held in custody pending the posting of cash bond for offenses over which the Respondent may have no jurisdiction.

V. RELIEF REQUESTED

The Petitioner respectfully moves this Court to enter an order directing the Respondent to conduct an evidentiary hearing to allow the Petitioner to present evidence in support of his Motion to Dismiss (Jurisdiction).

DATED this 20th day of November, 2006.

PASCUA YAQUI PUBLIC DEFENDER

A handwritten signature in black ink, reading "Nicholas A. Fontana", written over a horizontal line.

Nicholas A. Fontana
Chief Public Defender

CERTIFICATE OF SERVICE

I hereby certify that the original and five (5) copies of the Petition for Writ of Mandamus were delivered this date to:

Clerk of the Court of Appeals
Pascua Yaqui Court of Appeals
7474 South Camino de Oeste
Tucson, AZ 85757

and one copy was delivered this date to the Respondent:

Hon. Melvin Stoof
Associate Judge
Pascua Yaqui Tribal Court
7474 S. Camino de Oeste
Tucson, AZ 85757

and one copy was delivered this date to:

G. Allen Osburn
Office of the Pascua Yaqui Prosecutor
7474 South Camino de Oeste
Tucson, AZ 85757.

DATED this 20th day of November, 2006.

PASCUA YAQUI PUBLIC DEFENDER



Anselma Torres
Office Manager

CERTIFICATE OF SERVICE

I hereby certify that the original and five (5) copies of the Appendix to Petition for Writ of Mandamus were delivered this date to:

Clerk of the Court of Appeals
Pascua Yaqui Court of Appeals
7474 South Camino de Oeste
Tucson, AZ 85757

and one copy was delivered this date to the Respondent:

Hon. Melvin Stoof
Associate Judge
Pascua Yaqui Tribal Court
7474 S. Camino de Oeste
Tucson, AZ 85757

and one copy was delivered this date to:

G. Allen Osburn
Office of the Pascua Yaqui Prosecutor
7474 South Camino de Oeste
Tucson, AZ 85757.

DATED this 20th day of November, 2006.

PASCUA YAQUI PUBLIC DEFENDER



Anselma Torres
Office Manager

PASCUA YAQUI TRIBAL COURT
FILED 2005 MAY 11
05 MAY 11 PM 2:30
DOCKET NO. CR-06-221
CLERK *RA*

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

Pascua Yaqui Tribe,

Case No. CR-06-221

DOCKET NO. CR-06-221

Plaintiff,

CRIMINAL COMPLAINT

Vs.

MADRIL, Francisco Armenta

AKA: MADRIL, Francisco A.

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: ABUSE OF A MINOR, 1 PYTC § 3.3

On or about September 1, 2005, within those 24 hours, at or near 7751 S. Maala Mecha Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

COUNT 2: THREATENING OR INTIMIDATING: 1 PYTC § 3.72

On or about September 1, 2005, within those 24 hours, at or near 7751 S. Maala Mecha Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

COUNT 3: ABUSE OF A MINOR, 1 PYTC § 3.3

On or about September 2, 2005, within those 24 hours, at or near 7751 S. Maala Mecha Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

1 **COUNT 4: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

2 On or about September 2, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
3 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
4 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
5 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
6 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
7 me."

8 **COUNT 5: ABUSE OF A MINOR, 1 PYTC § 3.3**

9 On or about September 3, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
10 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
11 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
12 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

13 **COUNT 6: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

14 On or about September 3, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
15 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
16 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
17 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
18 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
19 me."

20 **COUNT 7: ABUSE OF A MINOR, 1 PYTC § 3.3**

21 On or about September 4, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
22 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
23 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
24 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

25 **COUNT 8: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

26 On or about September 4, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
27 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
28 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
me."

1 **COUNT 9: ABUSE OF A MINOR, 1 PYTC § 3.3**

2 On or about September 5, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
3 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
4 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
5 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

6 **COUNT 10: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

7 On or about September 5, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
8 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
9 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
10 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
11 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
12 me."

13 **COUNT 11: ABUSE OF A MINOR, 1 PYTC § 3.3**

14 On or about September 6, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
15 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
16 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
17 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

18 **COUNT 12: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

19 On or about September 6, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
20 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
21 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
22 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
23 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
24 me."

25 **COUNT 13: ABUSE OF A MINOR, 1 PYTC § 3.3**

26 On or about September 7, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
27 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
28 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

1 **COUNT 14: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

2 On or about September 7, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
3 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
4 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
5 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
6 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
7 me."

8 **COUNT 15: ABUSE OF A MINOR, 1 PYTC § 3.3**

9 On or about September 8, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
10 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
11 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
12 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."
13

14 **COUNT 16: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

15 On or about September 8, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
16 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
17 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
18 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
19 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
20 me."
21

22 **COUNT 17: ABUSE OF A MINOR, 1 PYTC § 3.3**

23 On or about September 9, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
24 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
25 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
26 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."
27

28 **COUNT 18: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

On or about September 9, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
me."

1 **COUNT 19: ABUSE OF A MINOR, 1 PYTC § 3.3**

2 On or about September 10, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
3 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
4 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
5 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

6 **COUNT 20: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

7 On or about September 10, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
8 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
9 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
10 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
11 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
12 me."

13 **COUNT 21: ABUSE OF A MINOR, 1 PYTC § 3.3**

14 On or about September 11, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
15 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
16 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
17 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

18 **COUNT 22: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

19 On or about September 11, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
20 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
21 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
22 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
23 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
24 me."

25 **COUNT 23: ABUSE OF A MINOR, 1 PYTC § 3.3**

26 On or about September 12, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
27 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
28 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

1 **COUNT 24: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

2 On or about September 12, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
3 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
4 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
5 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
6 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
7 me."

7 **COUNT 25: ABUSE OF A MINOR, 1 PYTC § 3.3**

8 On or about September 13, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
9 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
10 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
11 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

11 **COUNT 26: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

12 On or about September 13, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
13 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
14 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
15 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
16 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
17 me."

17 **COUNT 27: ABUSE OF A MINOR, 1 PYTC § 3.3**

18 On or about September 14, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
19 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
20 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
21 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

22 **COUNT 28: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

23 On or about September 14, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
24 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
25 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
26 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
27 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
28 me."

1 **COUNT 29: ABUSE OF A MINOR, 1 PYTC § 3.3**

2 On or about September 15, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
3 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
4 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
5 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

6 **COUNT 30: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

7 On or about September 15, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
8 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
9 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
10 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
11 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
12 me."

13 **COUNT 31: ABUSE OF A MINOR, 1 PYTC § 3.3**

14 On or about September 16, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
15 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
16 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
17 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

18 **COUNT 32: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

19 On or about September 16, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
20 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
21 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
22 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
23 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
24 me."

25 **COUNT 33: ABUSE OF A MINOR, 1 PYTC § 3.3**

26 On or about September 17, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
27 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
28 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

1 **COUNT 34: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

2 On or about September 17, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
3 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
4 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
5 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
6 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
7 me."

7 **COUNT 35: ABUSE OF A MINOR, 1 PYTC § 3.3**

8 On or about September 18, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
9 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
10 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
11 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

11 **COUNT 36: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

12 On or about September 18, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
13 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
14 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
15 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
16 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
17 me."

17 **COUNT 37: ABUSE OF A MINOR, 1 PYTC § 3.3**

18 On or about September 19, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
19 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
20 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
21 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

22 **COUNT 38: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

23 On or about September 19, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
24 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
25 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
26 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
27 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
28 me."

1 **COUNT 39: ABUSE OF A MINOR, 1 PYTC § 3.3**

2 On or about September 20, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
3 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
4 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
5 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

6 **COUNT 40: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

7 On or about September 20, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
8 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
9 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
10 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
11 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
12 me."

13 **COUNT 41: ABUSE OF A MINOR, 1 PYTC § 3.3**

14 On or about September 21, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
15 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
16 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
17 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

18 **COUNT 42: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

19 On or about September 21, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
20 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
21 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
22 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
23 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
24 me."

25 **COUNT 43: ABUSE OF A MINOR, 1 PYTC § 3.3**

26 On or about September 22, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
27 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
28 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

1 **COUNT 44: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

2 On or about September 22, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
3 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
4 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
5 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
6 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
7 me."

7 **COUNT 45: ABUSE OF A MINOR, 1 PYTC § 3.3**

8 On or about September 23, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
9 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
10 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
11 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

11 **COUNT 46: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

12 On or about September 23, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
13 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
14 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
15 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
16 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
17 me."

17 **COUNT 47: ABUSE OF A MINOR, 1 PYTC § 3.3**

18 On or about September 24, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
19 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
20 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
21 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

21 **COUNT 48: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

22 On or about September 24, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
23 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
24 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
25 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
26 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
27 me."
28

1 **COUNT 49: ABUSE OF A MINOR, 1 PYTC § 3.3**

2 On or about September 25, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
3 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
4 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
5 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

6 **COUNT 50: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

7 On or about September 25, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
8 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
9 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
10 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
11 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
12 me."

13 **COUNT 51: ABUSE OF A MINOR, 1 PYTC § 3.3**

14 On or about September 26, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
15 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
16 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
17 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

18 **COUNT 52: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

19 On or about September 26, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
20 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
21 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
22 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
23 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
24 me."

25 **COUNT 53: ABUSE OF A MINOR, 1 PYTC § 3.3**

26 On or about September 27, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
27 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
28 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

1 **COUNT 54: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

2 On or about September 27, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
3 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
4 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
5 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
6 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
7 me."

8 **COUNT 55: ABUSE OF A MINOR, 1 PYTC § 3.3**

9 On or about September 28, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
10 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
11 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
12 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."
13

14 **COUNT 56: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

15 On or about September 28, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
16 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
17 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
18 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
19 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
20 me."

21 **COUNT 57: ABUSE OF A MINOR, 1 PYTC § 3.3**

22 On or about September 29, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
23 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
24 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
25 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."
26

27 **COUNT 58: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

28 On or about September 29, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
me."

1 **COUNT 59: ABUSE OF A MINOR, 1 PYTC § 3.3**

2 On or about September 30, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
3 Voo'o, while entrusted with the care of Josephine Flores, a minor, caused emotional or
4 mental injury to Josephine Flores, to wit: pointed to the breast, buttocks and/or pubic
5 region of Josephine Flores while stating "Eres Mia" and/or "it belongs to me."

6 **COUNT 60: THREATENING OR INTIMIDATING: 1 PYTC § 3.72**

7 On or about September 30, 2005, within those 24 hours, at or near 7751 S. Maala Mecha
8 Voo'o, with the intent to scare or terrify, threatened or intimidated physical injury to
9 Josephine Flores by word or conduct, or caused Josephine Flores to reasonably believe
10 that she was in danger of receiving physical injury, to wit: pointed to the breast, buttocks
11 and/or pubic region of Josephine Flores while stating "Eres Mia" and/or "it belongs to
12 me."

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

15 DATED this 14th day of May 2006.

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

18 
Complainant/~~Deputy~~ Prosecutor

19 DEFENDANT: Francisco Armenta Madril
20 ADDRESS: 7751 S. Maala Mecha Voo'o, Tucson, Arizona 85757
21 DOB: 05/12/46 SSN: ORIGIN: Pascua Yaqui 2694U02957
SEX: male HT: 6'2" WT: 295 EYES: brown HAIR: brown

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

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

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<p>PASCUA YAQUI TRIBE, Plaintiff,</p> <p>Vs.</p> <p>Madril, Francisco, Defendant</p>	<p>COURT USE ONLY</p>
	<p>Case Number: CR-06-221</p>
<p>INITIAL HEARING ORDER</p>	

In compliance with Rules 307 and 309 of the Pascua Yaqui Rules of Criminal Procedure, defendant, in custody on a separate case, appeared pursuant to a criminal summons, with his legal counsel, Nicholas Fontana, on June 12, 2006 for Initial hearing. Present for the Tribe was G. Allen Osburn, on behalf of Micah Schmit. The court should deny the defendant's motion to strike the statements in the probable cause affidavit, for lack of good cause shown.

The court finds that probable cause exists to believe defendant may have committed the offense(s) of Counts 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, and 59, Abuse of a Minor, and Counts 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, and 60, Threatening or Intimidating, that the Tribe recommends defendant be released on a \$60,000.00 cash bond, that the defendant appear at all future hearings and obey all laws. The defendant should be ordered not to contact any minors. The court should adopt the Tribe's recommendations. The court was about to set the matter for June 20, 2006. However, the defendant waived time limits, because the defendant's counsel would not be available for hearing on that day, and the court should re-set the matter for arraignment at a later date.

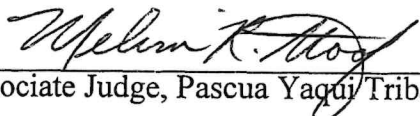
IT IS ORDERED that the Defendant, Francisco Madril, shall be released on a \$60,000.00 cash bond, he must appear at all future hearings, obey all laws, and he shall not contact any minors. Time limits for setting the arraignment shall be waived, at defendant's request.

ARRAIGNMENT HEARING shall be scheduled for June 27, 2006, at 1:30 p.m..

THIS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

IT IS FURTHER ORDERED that the defendant's motion to strike statements made in the officer's probable cause affidavit shall be denied, for lack of good cause shown.

SO ORDERED THIS 12th DAY OF JUNE, 2006.


Associate Judge, Pascua Yaqui Tribal Court

Date: 06.12.06
Tribe Defendant/Counsel Other
Clerk: AW



1 Pascua Yaqui Public Defender
7474 S. Camino de Oeste
2 Tucson, Arizona 85757

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

SEP 26 AM 9: 2

FILED NO. CR 06 221
[Signature]

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

8
9 PASCUA YAQUI TRIBE,

10 Plaintiff,

11 vs.

12 MADRIL, FRANCISCO,

13 Defendant.

Case No. CR-06-221

MOTION TO DISMISS
(LACK OF JURISDICTION)

Evidentiary Hearing Requested

14
15 COMES NOW Defendant Francisco Madril, through counsel, and pursuant to Article II and Article
16 VIII, § 2, of the Constitution of the Pascua Yaqui Tribe and Title 1, Pascua Yaqui Judicial Titles and Codes,
17 § 1.1 (A), respectfully moves this Court to enter an order dismissing Counts 5, 6, 7, 8, 9, 10, 19, 20, 21, 22,
18 35, 36, 37, 38, 47, 48, 49, and 50 of the Complaint against him.

19 The grounds for this motion are set forth in the accompanying Memorandum of Points and
20 Authorities.

21 DATED this 24th day of September, 2006.

22 PASCUA YAQUI PUBLIC DEFENDER

23 [Signature]
24 Nicholas A. Fontana
25 Chief Public Defender

26 ///
27 ///
28 ///

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS.

Count 5 of the Complaint alleges that on or about September 3, 2006, at 7751 S. Maala Mecha Voo'o, Defendant Francisco Madril committed the offense of abuse of a minor. Count 6 of the Complaint alleges that Mr. Madril committed the offense of threatening or intimidating on the same date at the same location.

Count 7 of the Complaint alleges that on or about September 4, 2006, at 7751 S. Maala Mecha Voo'o, Mr. Madril committed the offense of abuse of a minor. Count 8 of the Complaint alleges that Mr. Madril committed the offense of threatening or intimidating on the same date at the same location.

Count 9 of the Complaint alleges that on or about September 5, 2006, at 7751 S. Maala Mecha Voo'o, Mr. Madril committed the offense of abuse of a minor. Count 10 of the Complaint alleges that Mr. Madril committed the offense of threatening or intimidating on the same date at the same location.

Count 19 of the Complaint alleges that on or about September 10, 2005, at 7751 S. Maala Mecha Voo'o, Mr. Madril committed the offense of abuse of a minor. Count 20 of the Complaint alleges that Mr. Madril committed the offense of threatening or intimidating on the same date at the same location.

Count 21 of the Complaint alleges that on or about September 11, 2005, at 7751 S. Maala Mecha Voo'o, Mr. Madril committed the offense of abuse of a minor. Count 22 of the Complaint alleges that Mr. Madril committed the offense of threatening or intimidating on the same date at the same location.

Count 35 of the Complaint alleges that on or about September 18, 2005, at 7751 S. Maala Mecha Voo'o, Mr. Madril committed the offense of abuse of a minor. Count 36 of the Complaint alleges that Mr. Madril committed the offense of threatening or intimidating on the same date at the same location.

Count 37 of the Complaint alleges that on or about September 19, 2005, 2005, at 7751 S. Maala Mecha Voo'o, Mr. Madril committed the offense of abuse of a minor. Count 38 of the Complaint alleges that Mr. Madril committed the offense of threatening or intimidating on the same date at the same location.

1 Count 47 of the Complaint alleges that on or about September 24, 2005, at 7751 S. Maala Mecha
2 Voo'o, Mr. Madril committed the offense of abuse of a minor. Count 48 of the Complaint alleges that Mr.
3 Madril committed the offense of threatening or intimidating on the same date at the same location.
4

5 Count 49 of the Complaint alleges that on or about September 25, 2005, at 7751 S. Maala Mecha
6 Voo'o, Mr. Madril committed the offense of abuse of a minor. Count 50 of the Complaint alleges that Mr.
7 Madril committed the offense of threatening or intimidating on the same date at the same location.
8

9 According to the Affidavit filed in support of the Complaint, 7751 S. Maala Mecha Voo'o is located
10 within the exterior boundaries of the Pascua Yaqui Indian Reservation.
11

12 At the evidentiary hearing on this motion, the defense intends to produce evidence establishing that
13 Mr. Madril was residing at 13244 South Santa Rosa Road, Arizona City, Arizona, which is located outside
14 the exterior boundaries of the Pascua Yaqui Indian Reservation.
15

16 II. THE COURT LACKS JURISDICTION OVER COUNTS 5, 6, 7, 8, 9, 10, 19, 20, 21, 22, 35, 36,
17 37, 38, 47, 48, 49 AND 50 AND THEY MUST BE DISMISSED WITH PREJUDICE.
18

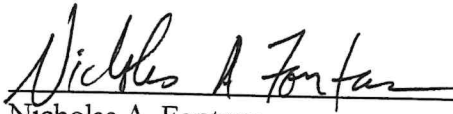
19 The criminal jurisdiction of this Court extends to all matters where members or non-members of the
20 Pascua Yaqui Tribe are parties unless otherwise prohibited by federal or tribal laws. Article VIII, § 2,
21 Constitution of the Pascua Yaqui Tribe. The jurisdiction of the Pascua Yaqui Tribe extends only to the
22 lands within the boundaries of the Pascua Yaqui Indian Reservation. Article II, Constitution of the Pascua
23 Yaqui Tribe. The Pascua Yaqui Tribal Court does not have criminal jurisdiction over alleged criminal acts
24 that occurred outside the boundaries of the Pascua Yaqui Indian Reservation. Title 1, Pascua Yaqui Judicial
25 Titles and Codes, § 1.1 (A).
26

27 At the evidentiary hearing on this motion, Mr. Madril will present evidence that on September 3rd,
28 4th, 5th, 10th, 11th, 18th, 19th, 24th, and 25th of 2005, he was located at his residence at 13244 South Santa Rose
Road, Arizona City, Arizona, which is outside the exterior boundaries of the Pascua Yaqui Indian
Reservation. As a result, the Court does not have jurisdiction over any offenses that allegedly occurred on


1 those dates and Counts 5, 6, 7, 8, 9, 10, 19, 20, 21, 22, 35, 36, 37, 38, 47, 48, 49 and 50 of the Complaint
2 must be dismissed with prejudice.


3 DATED this 2nd day of September, 2006.

4 PASCUA YAQUI PUBLIC DEFENDER

5
6 

7 Nicholas A. Fontana
8 Chief Public Defender

9 ORIGINAL filed this date in
10 PY Tribal Court by: 

11 COPY delivered this date to
12 PY Prosecutor by: 

1 Pascua Yaqui Tribe
2 7474 S. Camino De Oeste
3 Tucson, Arizona 85757
4 (520) 879-6251

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

7 PASCUA YAQUI TRIBE
8 Plaintiff,
9 vs.
10 MADRIL, Francisco
11 Defendant

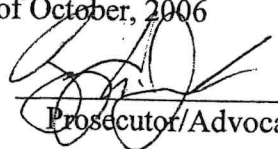
Case No.: CR-06-221

**RESPONSE TO DEFENDANT'S
MOTION TO DISMISS (VAGUENESS)**

12 Comes now the Pascua Yaqui Tribe by and through counsel undersigned, hereby
13 moves this Court to deny Defendant's Motion to Dismiss (Lack of Jurisdiction) in the above
14 entitled matter.

15 Defendant asserts that he can show that he was at his residence in Arizona City, an off
16 reservation location, at the time of the various enumerated offenses and requests that an
17 evidentiary hearing be set to establish that fact. This is improper as it is for the trier of fact to
18 determine if the Defendant's story of a different location is true or not. If the complaint had
19 asserted that the events had occurred off the reservation, then the issue would be one of law and
20 as such properly before the judge. This is not the case however and as the question of where the
21 events took place is a question of fact, that question is properly to be presented to the trier of fact
22 at trial. As such, Defendant's Motion should be denied.

23 Dated this 9th day of October, 2006

24 
25 _____
26 Prosecutor/Advocate

25 Copy Mailed/Delivered to:
26 Public Defender
27 By:

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COPY

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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-06-221
vs.) PRE-TRIAL ORDER DENYING MOTION
MADRIL, FRANCISCO,) TO DISMISS DUE TO MULTIPLICITY
DEFENDANT.) AND LACK OF NOTICE, GRANTING
MOTION FOR SANCTIONS, ALLOWING
DEFENDANT TO FILE REPLY BRIEFS,
AND ORDER SETTING HEARING ON
MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION

On October 10, 2006, the court held a pre-trial motion hearing. Appearing were the defendant, Francisco Madril, in custody, and his legal counsel, Nicholas Fontana. Appearing for the Tribe was Yancy Jencsok. The parties argued several motions.

THE COURT SHOULD DENY DEFENDANT'S MOTION TO DISMISS DUE TO MULTIPLICITY OF COUNTS AND LACK OF NOTICE.

Defendant argues that the 60 counts in the criminal complaint do not provide adequate notice to the defendant of the nature and cause of the accusation filed against him. Although the defendant concedes that the Tribe's allegations contain the basic elements of the alleged offenses, the counts lack specificity as to time frames, thus prejudicing the defendant in his ability to raise double jeopardy issues and prejudicing his ability to pose an alibi defense.

The Tribe argues that the basic elements of the alleged crime have been properly pled, and it string cites to several federal court cases, that the court finds persuasive authority, which cases permit fairly large time windows in the context of child abuse prosecutions and such wide time frames do not conflict with Constitutional notice requirements. See *Isaac v. Grider*, *Madden v. Tate*, *Fawcett v. Bablitch*, *Hunter v. New Mexico*, *Parks v. Hargett*, [citations omitted]. The rationale for permitting wide latitude by prosecutors as far as specific time frames are that courts "acknowledged the reality of situations where young child victims are involved." *Valentine v. Konteh* [citation omitted]. The court finds that each of the counts alleged contains the basic elements of each alleged offense and provide reasonable notice by dates as to when the alleged offense took place to reasonably apprise the defendant with enough specificity and preciseness to permit the defendant a challenge on double jeopardy grounds.

1 The defendant also argues that the 60 count complaint contains mutiplicitous
2 allegations. Defendant asserts that because the even numbered allegations 2 through 60, are
3 in effect identical to the odd numbered allegations 1 through 59, as they arise out of one
4 alleged single offense, and that they allege the same date, time, same victim, and the same act,
5 that the court should dismiss the surplus counts. The Tribe cites to the *Blockburger* case, in
6 which the Supreme Court held that the test of whether there are two offenses or one is
7 "whether each provision requires proof of an additional fact which the other does not." 284
8 U.S. 299, 303 (1932). The Tribe also cites to the U. S. supreme Court case of *Texas v. Cobb*
9 for the proposition that under *Blockburger*, where the same act or transaction constitutes a
10 violation of two distinct statutory provisions, "the test to be applied to determine whether
11 there are two offenses or only one, is whether each provision requires proof of a fact which
12 the other does not." 532 U.S. 162, 172 (2001). The court finds that the odd numbered
13 allegations in the complaint are not carbon copies of the even numbered ones, because the
14 counts allege different types of alleged offenses in which one alleged offense requires proof
15 of a fact which the other does not. The court should deny the defendant's motion to dismiss
16 based on lack of notice and multiplicity, for lack of good cause shown.

17 THE COURT SHOULD GRANT DEFENDANT'S MOTION FOR SANCTIONS FOR
18 DISCLOSURE VIOLATIONS AND SHOULD FINE THE TRIBE FOR SUCH ABUSES.

19 The court held defendant's arraignment on June 27, 2006, and therefore the Tribe had
20 a statutory duty under criminal procedure rule 500, **Disclosure by Tribe**, to provide its
21 disclosure no later than July 7, 2006. On July 24, 2006, the court held its pre-trial conference
22 in which the defendant requested a continuance due to the necessity to obtain disclosure from
23 the Tribe. The defendant filed a supplemental request on the same day, and the court in its
24 minute entry ordered the Tribe to respond by August 3, 2006. The Tribe filed its one page
25 response and stated:

26 The defense requests have been processed and all other items that exist
27 will be disclosed in due course.

28 The Tribe did not provide a date by which it would produce the disclosure requested, it did
not request an extension for time to respond or comply, and it did not assert any privilege,
confidentiality law, file a motion for protection or for excision or any objection that the
materials were not discoverable. See PYTC Crim. Pro.R. 502. **Excision and Protective
Orders.**

1 On August 17, 2006, the defendant filed a motion for sanctions based on failure to
2 obtain disclosure. The Tribe had been requested to produce copies of audio tapes, videotapes,
3 and transcripts made of the Tribe's witness Josephine Flores, and the defendant had also
4 requested the notes and reports of the Tribe's investigating officer, Jacob Garcia. On August
5 21, 2006, the defendant again requested a continuance of the pre-trial, due to the Tribe failing
6 to produce certain items needed for the defendant to conduct his pre-trial investigation and he
7 waived time to a speedy trial resulting from the Tribe's dilatory conduct.

8 As to the defendant's requested materials, the Tribe did not produce an audiotape of
9 Josephine Flores until September 6, 2006, or 44 days after the request was made, and the
10 Tribe produced a videotape of her interview on September 7, 2006. On September 11, 2006
11 the defendant filed a motion for judgment in the pleadings and motion for sanctions, because
12 the Tribe produced the videotape and audiotapes of Ms. Flores 82 days after the defendant's
13 arraignment, 45 days after the supplemental disclosure request and 21 days after filing of its
14 motion to sanctions. The defendant also noted that it had not received any response to its
15 request for officer Jacob Garcia's notes. The Tribe provided an affidavit on September 20,
16 2006 by officer Jacob Garcia that he did not have notes or prepare any reports in connection
17 with the case.

18 The court finds that the Tribe's failure to produce video and audiotapes of its
19 witnesses, as it was required to do under rule 500, within 10 days of the arraignment and
20 within ten days of the supplemental request, is a sanctionable violation of the disclosure rules,
21 based on its production of witness statements 82 days after the arraignment, as is the Tribe's
22 separate failure to provide a response to the defendant's request for the officer's notes and
23 reports, that were produced to the defendant's counsel 95 days after arraignment. Pursuant to
24 criminal procedure rule 504, the court should impose a sanction of \$100.00 fine for each
25 violation, for a total of \$200.00. Although criminal procedure rule 504 does not require the
26 defendant to show actual prejudice for the court to impose a sanction for disclosure abuses,
27 based on the Tribe's failure to comply with its statutory duty under rule 500, the Tribe's
28 failure to provide any information has prejudiced the defendant's ability to prepare his pre-
trial investigation and delayed a speedy and just determination of this case.

The court should deny the defendant's request for a bond reduction as part of the
motion for sanctions, as the court cannot find a sufficient nexus between the Tribe's failure to
disclose and how such action supports the defendant's request for a lowered bond. Such a

1 request may be more appropriate in a motion under rule 312, modification of release, rather
2 that in a motion for sanctions for discovery abuses. For lack of good cause shown, the court
3 should deny the request for a lower bond.

4 THE COURT SHOULD GRANT DEFENDANT'S REQUEST TO FILE REPLIES TO THE
5 TRIBE'S LATE FILING OF RESPONSES AND IT SHOULD SANCTION THE TRIBE.

6 The court entered its docket control order on September 12, 2006, "pursuant to rule
7 320, to promote a fair and expeditious trial. . . ." The court order set deadlines by which
8 motions, responses and replies were to be filed. On page ten of the order, the court ordered
9 the Tribe to file its response to defendant's motion to dismiss (vagueness) no later than
10 September 19, 2006, and the court ordered the defendant to file its reply no later than
11 September 25, 2006. The Tribe did not file its response until October 9, 2006. The defendant
12 moved to strike the response as not timely. The Tribe's attorney apologized for the late filing,
13 and simply indicated the matter had not been properly calendared in his office, but he
14 indicated that the court should not grant the request to strike, which is a procedure allowed in
15 federal courts for a failure to file a response to a motion. For the Tribe's late filing of the
16 response to defendant's motion to dismiss (vagueness), the court should sanction the Tribe
17 \$50.00 for late filing, and it should allow the defendant until October 18, 2006 to file a reply
18 to the Tribe's late filed response. Because the court does not believe that a technical default
19 should be entered, but rather, that motions should be decided after both parties have had an
20 opportunity to brief the matters fully, the court should not follow the federal practice to strike
21 a late response, but instead, should allow the defendant's counsel additional time to file a
22 reply due to the Tribe's late filing.

23 On September 27, 2006, the defendant filed a renewed motion for judgment on the
24 pleadings (motion for sanctions) and the court in its minute entry ordered the Tribe to file its
25 response by October 9, 2006, and the Tribe filed its response by October 9, 2006 at 4:58 p.m..
26 Because it filed timely, the court denies any sanction against the Tribe, but it should allow the
27 defendant time to file a reply no later than October 18, 2006.

28 THE COURT SHOULD ALLOW THE DEFENDANT TO FILE A REPLY TO THE
TRIBE'S FILING OF A RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR
LACK OF SUBJECT MATTER JURISDICTION, AND IT SHOULD SET THE MATTER
FOR AN EVIDENTIARY HEARING.

The defendant has filed a motion to dismiss for lack of jurisdiction, the Tribe filed its
response on October 9, 2006, and the court should allow the defendant to file a reply no later

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than October 18, 2006, and set the matter for an evidentiary hearing on November 1, 2006 at 2:00 p.m..


IT IS ORDERED that the Defendant's motion to dismiss due to multiplicity and for lack of notice shall be denied, for lack of good cause shown.

IT IS FURTHER ORDERED that the defendant's motion for sanctions shall be granted, for good cause shown, and the Tribe shall be assessed a \$100.00 fine for failing to produce reports, notes and statements of officer Jacob Garcia in a timely fashion, as required by Rule 500, and \$100.00 for failing to produce exculpatory recordings of audiotapes, videotapes and transcripts of Josephine Flores in a timely fashion, as required by Rule 500, for a total of \$200.00, due in thirty days. The court shall deny the defendant's request for a lower bond, for lack of good cause shown.

IT IS FURTHER ORDERED that the Tribe shall be sanctioned \$50.00 for its failure to file a timely response to defendant's motion to dismiss (vagueness), such fine due in thirty days, the defendant's motion to strike the Tribe's late filed response shall be denied, and the defendant shall be allowed until October 18, 2006 to file its reply to the Tribe's response.

IT IS FURTHER ORDERED that the defendant shall be allowed until October 18, 2006 to file a reply to the Tribe's late filing of its response to the defendant's motion to dismiss for lack of subject matter jurisdiction, **and that the defendant's motion to dismiss based on lack of subject matter shall be set for an evidentiary hearing on November 1, 2006 at 2:00 p.m..**

SO ORDERED THIS 10th DAY OF OCTOBER, 2006.


Associate Judge, Pascua Yaqui Tribal Court

Date 10-11-06
cc: Tribe Defendant Counsel

Clerk

1 PASCUA YAQUI PUBLIC DEFENDER
7474 S. Camino de Oeste
2 Tucson, Arizona 85757

65 OCT 18 PM 4:07

3 Nicholas Fontana, SBN 014429
4 COUNSEL FOR: Defendant

DOCKET NO. CR-06-221
TFRK

5 IN THE PASCUA YAQUI TRIBAL COURT

6 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

7 PASCUA YAQUI TRIBE,)
8 Plaintiff,)
9 vs.)
10 MADRIL, FRANCISCO,)
11 Defendant.)
12)

Case No.: CR-06-221

13 **REPLY TO TRIBE'S RESPONSE**
14 **TO DEFENDANT'S MOTION TO DISMISS**
15 **(JURISDICTION)**

16 Defendant Francisco Madril, through undersigned counsel, respectfully replies to the Tribe's
17 Response to the Defendant's Motion to Dismiss (Jurisdiction) filed on October 9, 2006.

18 The grounds for this Reply are set forth in the accompanying Discussion.

19 RESPECTFULLY submitted this 15th day of October, 2006.

20 PASCUA YAQUI PUBLIC DEFENDER

21 Nicholas A. Fontana
22 Nicholas A. Fontana
23 Chief Public Defender

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DISCUSSION

In essence, the Tribe's response to Mr. Madril's Motion to Dismiss (Jurisdiction) argues, without authority, that this Court does not have the power to address jurisdictional issues prior to trial. The Tribe does not dispute the fact that the jurisdiction of the Pascua Yaqui Tribe extends only to the lands within the boundaries of the Pascua Yaqui Indian Reservation, Article II, Constitution of the Pascua Yaqui Tribe, or that the Pascua Yaqui Tribal Court does not have criminal jurisdiction over alleged criminal acts that occurred outside the boundaries of the Pascua Yaqui Indian Reservation. Title 1, Pascua Yaqui Judicial Titles and Codes, § 1.1 (A).

Rule 321, Title 9, Chapter, Pascua Yaqui Judicial Titles and Codes (Revised) provides that at any time after the arraignment, a party may request that the court issue a particular order. Mr. Madril's Motion to Dismiss (Jurisdiction) raises the issue of whether this Court has subject matter jurisdiction over Counts 5, 6, 7, 8, 9, 10, 19, 20, 21, 22, 35, 36, 37, 38, 47, 48, 49, and 50 of the Complaint against him.

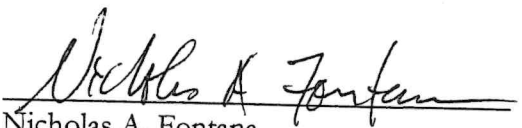
It is settled law across the country that lack of subject matter jurisdiction may be raised at any time during the pendency of legal proceedings and that it must be established that a court has subject matter jurisdiction before the court may proceed. *United States v. Richard*, 2000 U.S. App. LEXIS 14519 (6th Cir. 2000); *Delgado Oil Co. v. Torres*, 785 F.2d 857 (10th Cir. 1986); *Carter v. Commonwealth*, 31 Va. App. 393 (2000); *Geerts v. Jacobsen*, 2004 WY 148 (2004); *In re Marriage of Mallon*, 956 P.2d 642 (Colo. App. 1998); *United States v. Nelson*, 43 Fed. Appx. 735 (6th Cir. 2002); *Bolan v. Boyle*, 222 Neb. 826 (1986); *Shillinsky v. Commissioner of Corrections*, 2001 Conn. Super. LEXIS 2841 (2001); *Dean v. Gause*, 1997 Ark. App. LEXIS 644 (1997); *United States v. Giraldo-Prado*, 150 F.3d 1328 (11th Cir. 1998); *Ogle v. Church of God*, 153 Fed. Appx. 371 (6th Cir. 2005); *State ex rel. Dep't of Soc. Servs. v. Hudson*, 158 S.W.3d 319 (App. 2005); *Smith v. Smith*, 218 Mich. App. 727 (1996).


1 If the offenses alleged in Counts 5, 6, 7, 8, 9, 10, 19, 20, 21, 22, 35, 36, 37, 38, 47, 48, 49, and 50 of
2 the complaint occurred outside the exterior boundaries of the Pascua Yaqui Reservation, this Court lacks
3 subject matter jurisdiction to impose bond on or to proceed on those counts of the complaint.
4


5 WHEREFORE Defendant Francisco Madril respectfully renews his motion to dismiss Counts 5, 6,
6 7, 8, 9, 10, 19, 20, 21, 22, 35, 36, 37, 38, 47, 48, 49, and 50 of the Complaint against him.

7 DATED this 16th day of October, 2006.

8 PASCUA YAQUI PUBLIC DEFENDER

9
10 
11 Nicholas A. Fontana
12 Chief Public Defender

13
14 ORIGINAL of the foregoing delivered this date
To PY Tribal Court by: 

15 COPY of the foregoing delivered this date to
16 Prosecutor's Office 

PASCUA YAQUI TRIBAL COURT

7474 So. Camino De Oeste Tucson, Arizona 85746 Phone (520) 883-5170

COURT PROCESS LOG

Process to: Susanna Higuera, 7751 S. Maala Mecha Voo'o Tucson, Arizona 85757

Police Report Number: N/A

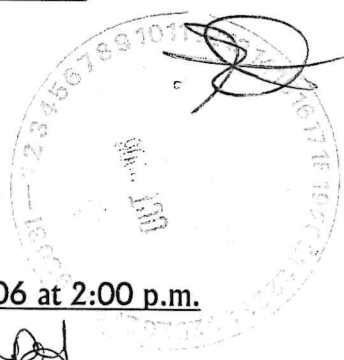
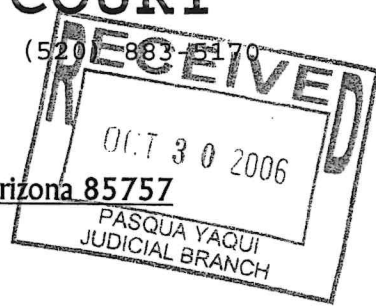
Address (Physical) 7751 S. Maala Mecha Voo'o Tucson, Arizona 85757

Case & Docket #: PYT vs. Madril, Francisco, CR-06-221

Type of Process:

- CRIMINAL
- TRAFFIC
- APPELLANT

- CIVIL
- JUVENILE
- OTHER



Date & Time of Court/Interview Wednesday, November 1st, 2006 at 2:00 p.m.

Date Process issued 10-23-06 Issuing Clerk [Signature]

FIRST ATTEMPT Date: 10-26-06 Time: 9:49

[X] Service incomplete: (Reason) no contact, no service at time of call
[] Service complete (Signature) _____

Served by: [Signature] Title: Deputy

SECOND ATTEMPT Date: 10-30-06 Time: 8:40 Am

[X] Service incomplete: (Reason) Not in at time of attempt
[] Service complete (Signature) _____

Served by: [Signature] Title: Process Server

THIRD ATTEMPT Date: 10-30-06 Time: 3:20

[] Service incomplete: (Reason) _____
[X] Service complete (Signature) Susanna F. Higuera

Served by: [Signature] Title: Process Server

NOTE: If service is not completed after the third attempt. Please return this log to the issuing clerk.

Public Defender

#238

PASCUA YAQUI TRIBAL COURT

7474 So. Camino De Oeste Tucson, Arizona 85746 Phone (520) 883-5170

COURT PROCESS LOG

Process to: Austacia Madril

Police Report Number: N/A

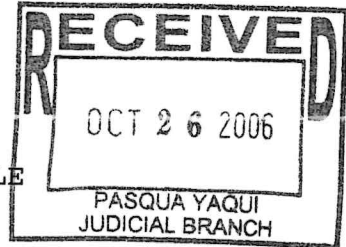
Address (Physical) C/O Office of The Prosecutor/ Pascua Yaqui Tribe, 7474 S. Camino De Oeste Tucson, Arizona 85757

Case & Docket #: PYT vs. Madril, Francisco, CR-06-221

Type of Process:

- CRIMINAL
- TRAFFIC
- APPELLANT

- CIVIL
- JUVENILE
- OTHER



Date & Time of Court/Interview Wednesday, November 1st, 2006 at 2:00 p.m.

Date Process issued 10-23-06 Issuing Clerk [Signature]

FIRST ATTEMPT

Date: 10/27/06 Time: 947

- [] Service incomplete: (Reason) _____
- [x] Service complete (Signature) [Signature]

Served by: [Signature] Title: Bailiff

SECOND ATTEMPT

Date: _____ Time: _____

- [] Service incomplete: (Reason) _____
- [] Service complete (Signature) _____

Served by: _____ Title: _____

THIRD ATTEMPT

Date: _____ Time: _____

- [] Service incomplete: (Reason) _____
- [] Service complete (Signature) _____

Served by: _____ Title: _____



Public Defender

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)	Case No. CR-06-221
PLAINTIFF,)	
vs.)	MINUTE ORDER
MADRIL, FRANCISCO,)	
DEFENDANT.)	
)	

On November 1, 2006, the court set the matter for a hearing on the defendant's Motion to Dismiss for lack of jurisdiction, filed by and through his attorney, Nicholas A. Fontana. The defendant appeared, in custody, with his counsel and G. Allen Osburn appeared for the Tribe.

The court reviewed the motion and Tribe's response, and the Tribe objected to the Court holding a hearing on the issue of subject matter jurisdiction, if the purpose of the hearing was to obtain a ruling on whether the Tribe could charge the defendant with alleged offenses occurring within the reservation boundaries on days he was supposedly off reservation. The Court agrees with the Tribe that such an issue of whether a particular offenses may have occurred within the reservation is one better suited for a juror to decide, rather than one by the court as a matter of law. The court notes that the Tribe must prove beyond a reasonable doubt that the defendant committed the offenses alleged and that such alleged offenses occurred within the reservation boundaries.

The fact that the defendant wishes to provide the testimony from witnesses who will state that Mr. Madril was not on the reservation at the time of the alleged offenses is a fact issue that may be used as part of an alibi defense for the defendant, to be decided by the trier of fact, who in this case, is a jury, rather than a purely legal issue for the court to decide. Such a hearing would create a piecemeal trial, rather than presenting such testimony to a jury as to a key element of the Tribe's allegations, i.e. that the alleged crime occurred within the reservation boundaries.

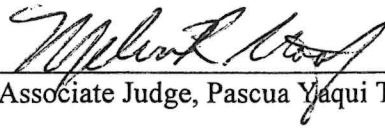
The court grants the defendant's request and its takes judicial notice that the following dates were on weekend days: September 3, 4, 10, 11, and 18, 2005, and that September 5, 2005 was a Monday holiday.

IT IS ORDERED that the defendant's motion to dismiss based on subject matter jurisdiction shall be denied insofar as it attempts to provide alibi testimony, that the defendant was not within the reservation boundaries during the time of the alleged offenses, rather than testimony which goes to challenge the territorial jurisdiction of the court. A jury shall be better suited to find such facts as to whether the alleged crime occurred within the reservation boundaries, as such must be proven beyond a reasonable doubt by the Tribe.

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IT IS FURTHER ORDERED that the court takes judicial notice of the facts that September 3, 4, 10, 11, and 18, 2005 were weekend days, and that September 5, 2005 was a Monday holiday.

SO ORDERED THIS 1st DAY OF NOVEMBER, 2006.


Associate Judge, Pascua Yaqui Tribal Court

Date 11-01-06
cc: Tribe Defendant Counsel
Clerk 