

Aug 04, 2010

ISSUED
CLERK OF COURT

CA-07-005/CR-06-291

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff

v.

Rosendo Valenzuela, Defendant

ORDER


Melissa Acosta, Pascua Yaqui Public Defender's Office, Tucson, 85757, for Appellant
Rosendo Valenzuela.

Alfred Urbina, Pascua Yaqui Prosecutor's Office, Tucson, 85757, for Appellee.

On July 26, 2010, the Pascua Yaqui Office of the Prosecutor filed a Motion to Withdraw as Counsel for Rosendo Valenzuela, this legal proceedings in this case being final and this court having entered a Final Order on July 26, 2010.

For good cause shown, the Motion to Withdraw is hereby granted. The Office of the Public Defender has not longer any duties to the defendant Rosendo Valenzuela.

So ORDERED this 27th day of July, 2010.



Mark McMillan, Judge pro tem

Jul 26, 2010

ISSUED
CLERK OF COURT

CA-07-005/CR-06-291

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff

v.

Rosendo Valenzuela, Defendant

FINAL ORDER

Nicholas Fontana, Pascua Yaqui Public Defender's Office, Tucson, 85757, for Appellant Rosendo Valenzuela.

Alfred Urbina, Pascua Yaqui Prosecutor's Office, Tucson, 85757, for Appellee.

This matter came before the Court of Appeals upon a request for a *trial de novo*, in case no. CR-06-291.


On July 20, 2010, the Pascua Yaqui Office of the Prosecutor filed a Motion to Dismiss, notifying the court that it would not file new charges against Appellant Rosendo Valenzuela as he is currently serving a natural life sentence in the Arizona State Prison in Florence, AZ.

It is hereby ordered that the Motion to Dismiss is granted and all charges against Appellant Rosendo Valenzuela, arising out of the events of July 1, 2006, at 7551 S. Camino Vahcom, Tucson, 85757, be dismissed with prejudice to refiling. In the event that Appellant Rosendo Valenzuela should be released, temporarily or permanently, he is to not harm nor harass Valerie Humo.

This court further orders that the \$1,000 cash bond be released and returned, upon request, to Norma V. Valenzuela.

The Tribal Court is hereby directed to place this order into case file no. CR-06-291 and to close the case.

So ORDERED this 26th day of July, 2010.


Mark McMillan, Judge pro tem

1 PASCUA YAQUI TRIBE
2 OFFICE OF THE PROSECUTOR
3 7474 S. Camino de Oeste
4 Tucson, AZ 85757
5 (520) 879-6251

PASCUA YAQUI TRIBE
COURT OF APPEALS

Jul 20, 2010

RECEIVED
CLERK OF COURT

6 Alfred L. Urbina, Esq.
7 PYT Bar No. 10141
8 SBN: 026389
9 Interim Chief Prosecutor

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

10 **PASCUA YAQUI TRIBE,**) Trial Court Case No.: CR-06-291
11 Plaintiff/Appellee,)
12 vs.) Appeals Court Case No. CA-07-005
13 **VALENZUELA, Rosendo**) **APPELLEE'S MOTION**
14 Defendant/Appellant.) **TO DISMISS**
15)

16 COMES NOW the Pascua Yaqui Tribe, by and through counsel undersigned,
17 pursuant to Article VIII § 1, 2, and 5 of the Constitution of the Pascua Yaqui Tribe and 3
18 PYTRAP Rule 6(A), and respectfully requests the court to dismiss this matter. The Tribe
19 filed a Motion in the Trial Court to dismiss the underlying case due to the Defendant
20 being incarcerated in the State of Arizona for a period of 25 years to life (see attached).
21 The Tribe no longer wishes to pursue the charges against Defendant.

22 **RESPECTFULLY SUBMITTED this 20th day of July, 2010.**

23 **PASCUA YAQUI TRIBE**
24 **OFFICE OF THE PROSECUTOR**

25 

26 _____
27 **Alfred L. Urbina, Interim Chief Prosecutor**
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CERTIFICATE OF SERVICE

Pascua Yaqui Tribe)
) ss.
County of Pima)

Alfred L. Urbina hereby certifies that he is Interim Chief Prosecutor of the Pascua Yaqui Tribe in the above-entitled action and that on the 20th day of July, 2010, he caused to be delivered and/or e-mailed the following:

APPELLEE'S MOTION TO DISMISS

That the original of the foregoing document was electronically filed with:

CLERK OF THE PASCUA YAQUI COURT OF APPEALS

7474 South Camino de Oeste
Tucson, AZ 85757

That two copies of the foregoing document were delivered/e-mailed to:

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

Melissa Acosta, Esq.
Pascua Yaqui Public Defender
Attorney for Defendant/Appellant
7474 S. Camino de Oeste
Tucson, AZ 85757



ALFRED L. URBINA
Interim Chief Prosecutor

 Arizona Daily Star

Man convicted in fatal beating of Three Points woman

By Brian J. Pedersen Arizona Daily Star | Posted: Friday, March 12, 2010 12:38 pm

The second of two suspects accused of beating a 64-year-old woman to death three years ago was convicted Friday of first-degree murder.

Rosendo C. Valenzuela was also convicted of kidnapping, armed robbery, theft of means of transportation and theft by control, said Deputy Pima County Attorney Mark Diebolt.

He was not convicted of conspiracy to commit first-degree murder, however, Diebolt said.

Valenzuela is facing life in prison with or without the possibility of parole.

Mamie Gong was beaten to death in May 2007 shortly after hiring Armando Estrada and Valenzuela, his brother-in-law, to clear portions of the five acres she owned in Three Points, west of Tucson.

During Estrada's trial last year, Diebolt told jurors the pair killed Gong on May 31, 2007, grabbed her bank card and stole her truck. They left her body inside a dilapidated trailer in Three Points.

Her decomposed body was found 19 days later.

Investigators linked Estrada to the slaying after finding the last call made from Gong's cell phone was by Estrada to his wife, Diebolt said.

Each man claimed the other beat Gong to death.

Estrada, who was convicted of the same charges as Valenzuela, plus the conspiracy charge, is serving two life terms with release possible after 25 years.

The Pima County Attorney's Office originally had planned to seek the death penalty against both men. Prosecutors later dropped those plans because both are borderline mentally retarded, and the law forbids their execution.

Pima County Superior Court Judge Michael Cruikshank will sentence Valenzuela April 19.

06 DEC -4 PM 3:08

DOCKET NO. CA07-005

CLERK per

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

3 Nicholas A. Fontana
4 State Bar No. 014429

5 COUNSEL FOR: Defendant/Appellant

6 IN THE PASCUA YAQUI TRIBE COURT OF APPEALS
7 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION
8

9 PASCUA YAQUI TRIBE,

10 Plaintiff/Appellee,

11 vs.

12 VALENZUELA, ROSENDO C.,

13 Defendant/Appellant.
14

) Appellate Case No: CA-

) Tribal Court No.: CR-06-291

) **PETITION FOR TRIAL DE NOVO**

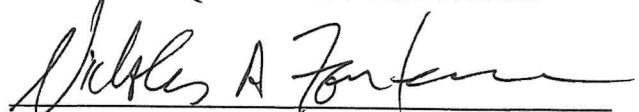
15 COMES NOW Appellant Rosendo C. Valenzuela, through counsel and pursuant to Rule 27(A),
16 Pascua Yaqui Tribe Rules of Appellate Procedure, and respectfully petitions for Trial de Novo in the Pascua
17 Yaqui Tribe Court of Appeals.

18 Mr. Valenzuela was convicted on November 27, 2006, of Domestic Violence Assault, a violation of
19 1 PYTC § 11-1101(F), and Domestic Violence Aggravated Assault, a violation of I PYTC § 1101(G). A
20 copy of the Tribal Court's Order is attached.

21 Mr. Valenzuela requests a trial by jury pursuant to the Indian Civil Rights Acts, 25 U.S.C.A.
22 §1302(10).

23 RESPECTFULLY SUBMITTED this 4th day of December, 2006.
24

25 PASCUA YAQUI PUBLIC DEFENDER

26 

27 Nicholas A. Fontana
28 Chief Public Defender

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the original and five (5) copies of the Petition for Trial de Novo were delivered
3 this date to:

4 Clerk of the Court of Appeals
5 Pascua Yaqui Court of Appeals
6 7474 South Camino de Oeste
Tucson, AZ 85757

7 and that one copy of the Petition for Trial de Novo was delivered this date to:


8 Pascua Yaqui Tribal Court
9 7474 South Camino de Oeste
Tucson, AZ 85757

10 and that one copy of the Petition for Trial de Novo was delivered this date to:

11
12 G. Allen Osburn
13 Deputy Prosecutor
14 Office of the Prosecutor of the Pascua Yaqui Tribe
15 7474 South Camino de Oeste
Tucson, AZ 85757

16 DATED this 4th day of December, 2006.

17 PASCUA YAQUI PUBLIC DEFENDER

18 
19 _____
20 Anselma Torres
Office Manager

1 IN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 PASCUA YAQUI TRIBE,)
4 PLAINTIFF,) CASE NO. CR-06-291
5 vs.) JUDGMENT AND
6 VALENZUELA, ROSENDO C.,) ORDER SETTING
7 DEFENDANT.) SENTENCING HEARING

8 The defendant, Rosendo C. Valenzuela, appeared for a bench trial, on November 27,
9 2006, and he was represented by legal counsel, Nicholas Fontana. Appearing for the Tribe was
10 G. Allen Osburn.

11 The court granted the defendant's motion for a directed verdict as to Count Three,
12 Endangerment, based on the statement of Ms. Valerie Humo that she was not holding her
13 child when the defendant pinned her down, and that Tribe did not prove that his actions were
14 "reckless," or a conscious disregard of a substantial risk or a gross deviation from a
15 reasonably prudent person's standard of conduct, nor did it establish that his actions
16 endangered the infant with a "substantial risk of imminent death or physical injury." 4 PYTC
17 § 1-200.

18 The court held a trial, heard testimony, reviewed documentary evidence, and it finds
19 the defendant guilty beyond a reasonable doubt to Count One, Domestic Violence Assault,
20 and Count Two, Domestic Violence Aggravated Assault.

21 The Tribe's Exhibit One, a certificate of Indian blood and tribal enrollment department
22 record, was admitted as an official record of the Tribe and as a self-proving public record
23 under Pascua Yaqui Rule of Evidence 39(F), Public Records, over the defendant's objection
24 that the record was not presented by a custodian of records for the Tribe and therefore was
25 inadmissible. The Pascua Yaqui Rules of Criminal procedure permits the court to apply the
26 federal rules of evidence where a tribal provision does not address a specific issue of
27 admissibility. See 3 PYT R.Crim.P. Rule 43(C). The Pascua Yaqui Rules of Evidence does
28 not specifically define an enrollment record or report as a public record, however, under
Federal Evidence Rule 803(8)-(10), enrollment records of the Tribe are like public records of
vital statistics, 803(9), "in any form," such as births, fetal deaths, or marriages, "if the report
was made to a public office pursuant to requirements of law." Like a state's duty to maintain
certificates of live birth, death certificates, and marriage certificates, a Tribe has a duty to keep
certificates of degree of Indian blood for enrollment purposes. For instance, if requested by a
member for purposes which are legitimate to show eligibility for Indian preference in hiring
for the BIA and IHS, which includes several categories for Indian preference, based on a
quantum of Indian blood for certain federal contracts for Indian country, the Tribe has an
affirmative duty to produce such certificates to a member who files the appropriate request
form. The language in the federal statute defining what constitutes a "public record" and

1 "records of vital statistics" is nearly identical to the Pascua Yaqui Tribe's provision that
2 public records and reports include statements "in any form," of public offices or agencies
3 setting forth "*matters observed* pursuant to duty imposed by law to which matters there was a
4 duty to report." Both federal and tribal law requires that the Pascua Yaqui Tribe Enrollment
5 Department keep enrollment records, and the certificate of Indian blood certifying who is a
6 Pascua Yaqui enrolled tribal member is both a tribal and public record, and it is a record of
7 "matters observed." The foundation for a public record need only establish that the public
8 record is authentic. The notarized statement signed and certified by the Tribe's enrollment
9 office agent is trustworthy, and there has been no proof that it lacks trustworthiness to exclude
10 the public record as a self-proving document. It is not necessary to prove up the enrollment
11 certificate through a custodian of tribal records, such as the foundation required for business
12 records, (requiring a foundation that the record was made at or near the time of the event
13 recorded or regularly kept record), because the public document exception to the hearsay rule
14 does not contain the requirement of the business records exception (rule 803(6), that the
15 documents be kept in the course of regularly conducted business activity). See *U.S. V.*
16 *Versaint*, 849 F.2d 827, 832 (3d Cir 1988). ("Fed R. 803(8) does not require that a report be
17 made at or near the time of the event it is describing"), and the federal public record exception
18 permits such tribal enrollment records of "matters observed" to be placed into evidence for
19 purposes of identifying defendants as "Indians" for purposes of federal court jurisdiction.
20 *United States v. Torres*, 733 F.2d 449, 455 n.5 (7th Cir. 1984) cert denied, 469 U.S. 864
21 (1984). (Admissible: Copies of Menominee Tribal Roll, containing certificates of enrollment
22 of defendants, kept by enrollment clerk).

23 The court finds as follows: On the evening of July 1, 2006, at 7551 S. Camino
24 Vahcom, within the reservation, the defendant, Rosendo C. Valenzuela, while holding an
25 infant in his left hand, pinned the victim, Valerie Humo to a bed, after he had placed his hand
26 on her throat and pushed her onto the bed. The court finds credible the testimony of Ms.
27 Humo who stated that he threw Kool-aid at her. The Tribe has proven beyond a reasonable
28 doubt that the defendant committed the offenses of Domestic Violence Assault, by throwing
the cup of liquid at her with intent to provoke her, and the court finds that the Tribe has
proven beyond a reasonable doubt that the defendant committed the offense of Domestic
Violence Aggravated Assault by pinning the victim down on the bed with his right hand
strangle hold on her at a time when she was substantially impaired in her ability to resist his
attack.

The court should set the matter for a sentencing hearing and he should be held without
bond, until the court may set a sentencing hearing in this matter.

IT IS ORDERED that the defendant, Rosendo C. Valenzuela is found guilty of Count
One, Domestic Violence Assault, and Count Two, Domestic Violence Aggravated Assault.

He shall be released on a \$1,000.00 cash bond, previously posted, pending a
sentencing hearing. He shall not harm nor harass the victim, Valerie Humo.


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IT IS FURTHER ORDERED that the court grants the defendant's motion for a directed verdict as to Count Three, Endangerment, because the Tribe did not meet its burden.


IT IS FURTHER ORDERED that this matter shall be set for a sentencing hearing on December 20, 2006, at 3:00 p.m..

THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

SO ORDERED THIS 27th DAY OF NOVEMBER, 2006.


Associate Judge, Pascua Yaqui Tribal Court

Date 11-28-06
cc: Tribe Defendant Counsel Detention


Clerk

