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

PASCUA YAQUI TRIBE,
Plaintiff/Appellee,

vs.

DELACRUZ, Elizabeth,
Defendant/Appellant.

Court of Appeals Case No: CA-14-002

Trial Court Case No.: CR-14-115

REPLY TO TRIBE'S RESPONSE BRIEF

Pursuant to the Pascua Yaqui Rules of Appellate Procedure, 3 PYTC §2-3-130(C), the Appellant hereby files her reply to the Tribe's Response Brief and asks that this Court grant Appellant's request for relief.

DATED this 26th day of September, 2014.

PASCUA YAQUI PUBLIC DEFENDER



Patricia Leon-Enriquez

Senior Staff Attorney

Counsel for Defendant/Appellant Elizabeth DeLaCruz

1 CERTIFICATE OF SERVICE

2 I hereby certify that the original copy of the Notice of Appeal was delivered this date to:

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

7 and that one copy of the Notice of Appeal was delivered this date to:

8 Hon. Melvin Stoof
9 Pascua Yaqui Tribal Court
10 7474 South Camino de Oeste
11 Tucson, AZ 85757

12 and that one copy of the Notice of Appeal was delivered this date to:

13 G. Allen Osburn
14 Chief Prosecutor
15 Office of the Prosecutor of the Pascua Yaqui Tribe
16 7474 South Camino de Oeste
17 Tucson, AZ 85757

18 DATED this 26th day of September, 2014.

19 PASCUA YAQUI PUBLIC DEFENDER

20 

21 Monique Ramsey
22 Office Manager
23
24
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1 In its Response Brief, the Appellee argues that the standard of review regarding the admissibility of
2 the work schedule log is abuse of discretion. While it is true that decisions to admit evidence under the
3 business records exception to the hearsay rule are reviewed for abuse of discretion, the issue here
4 includes the Court's interpretation of the rules governing the admission of documents. Consequently, a
5 *de novo* standard of review applies. "We review the interpretation of statutes and court rules *de novo*."
6 *Cramer v. State of Arizona*, 204 Ariz. 299,301; 63 P.3d 1036, 1038 (Ariz. App. 2003). Additionally,
7 Appellee does not dispute that *de novo* is the standard of review with regards to the main issue of the
8 alibi defense.
9

10 In responding to the argument that the Court erred by not requiring the Tribe to establish the time of
11 the offense where the Appellant alleged an alibi defense and relied on the time specifically selected by
12 the Tribe for the commission of the offense, Appellee cites to 3 PYTC §2-2-90 (B) (1) which provides
13 that a complaint include the time and place as nearly as may be determined. Notwithstanding the
14 latitude given by the language of the Code regarding the contents of a complaint, case law clearly
15 provides that a different standard applies when an alibi defense is asserted.
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17

18 The Tribal Code is silent on the issue of alibi. However, other jurisdictions have addressed the
19 issue and the various cases cited by both Appellant and Appellee show that the treatment by the courts,
20 of cases where an alibi defense is asserted, is different from those cases where it is not asserted.
21 Although this Court does not have to follow the findings of other jurisdictions, this Court has held that
22 "[w]hile decisions of the Arizona and United States Supreme Courts are not controlling authority in this
23 court, they are highly persuasive." *PYT v. Miranda*, CA-08-015.
24

25 Appellee's first argument is that a full reading of the quote, cited by Appellant from *United States v.*
26 *Goodrich*, shows that rather than representing the holding the quote merely rephrases Appellant's
27 argument. Notwithstanding the fact that it is Appellant's argument, the Court considered Appellant's
28

1 argument and the ample state authority cited by Appellant to reach its decision. Appellant's argument in
2 the quote is that "when an alibi defense is asserted the time of the crime is extremely material, since any
3 variance in time proved and the time the jury is allowed to find deprives the defendant of his alibi
4 defense." *U. S. v. Goodrich*, 493 F.2d 390, 393 (9th Cir. 1974).

5 After reviewing the cases cited by the appellant, the Court in *Goodrich* found that the government
6 and appellant both agreed that *but for the alibi defense*, any variance between the date of the crime as
7 charged and the date as proved was not reversible error. The Court explained that if the government
8 alleged that a crime was committed on a certain date but proved that the crime was committed on a
9 different date, there would be no error *except* when an alibi defense had been asserted. The Court
10 further explained why different standards apply when an alibi defense is asserted. The Court stated that
11 "the most cogent argument for a different rule here is that it would be grossly unfair to have the
12 government present this case as to a specific date, allow the defendant to structure his defense as to that
13 certain date, and then permit the jury to find that the crime had been committed on some other date." *Id.*
14 at 394.

15 In this case, Appellee is correct that the issue in *Goodrich* is the jury instruction given. However,
16 Appellee misconstrues the court's holding and completely disregards the court's reasoning in reaching
17 its decision. The Appellate Court in *Goodrich* did not find the jury instruction to be in error and it
18 upheld the conviction *only* because the government presented its case as to a specific date and the
19 defendant structured his defense as to that same date. There was no variance in the date the government
20 prosecuted and date appellants defended.

21 Appellee also argues that *Goodrich* "centered around a date and not a particular time." On the
22 contrary, in reviewing the ample authority cited by the appellant, the Court in *Goodrich* noted that in
23 *People v. Brown*, the court stated that "[w]hen a defense of alibi is interposed and an alleged offense is
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1 so narrowed as in this case, the date and *even the hour may become important*. “ *Id* at 393. Here, the
2 alleged offense was so narrowed to a specific date and time that even the hour became important when
3 Appellant structured her defense as to that certain time.

4 Appellee next argues that the case of *People v. Brown* 186 Cal. App.2d Supp. 889 (1960) supports
5 its arguments and it relies on a general statement made by the Court regarding focusing the minds of the
6 jurors to the period testified to by the victim instead of diverting their attention to other times of the year
7 through the jury instructions. Appellee fails to mention that the Court in *Brown* reviewed other cases
8 and decided to follow the concurring opinion of Mr. Justice White in the case of *People v. Notz*. *Id* at
9 894. Mr. Justice White’s opinion provided that “[w]hen a defense of alibi is interposed and an alleged
10 offense is so narrowed as in this case, the date and even the hour may become important.” *People v.*
11 *Notz*, 73 Cal. App.2d 439,441; 166 P.2d 607, 608 (1946). Mr. Justice White further agreed with Mr.
12 Justice McComb in *People v. Waits* when he stated that, “In light of appellant’s alibi defense, the time
13 the alleged offenses were committed became material, and it was the duty of the trial court to limit the
14 jury in its consideration of the evidence to the period which the prosecution selected as the time of the
15 commission of the offenses.” *Id.* at 442.
16
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18

19 Here, Appellee selected the time of commission of the offense as “On or about November 16, 2012
20 at approximately 7:54 p.m.” Appellant interposed a defense of alibi and relied on the Appellee’s
21 selection of that specific time in structuring her defense. ***Notwithstanding, the time of the alleged***
22 ***crime was never established or proven.*** In its response, Appellee acknowledged that there was
23 confusion with the time and the fact that it was never established. (Trial transcript pg. 93, line 6-12).
24

25 Next, Appellee claims that *Commonwealth v. Boyer* is distinguishable from the instant matter
26 because the general rule does not bind the courts to the date on the bill of indictment but can show any
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1 date within the statutory period, *except in cases where time is of the essence*. Appellee also contends
2 that recognizing that the date of the offense was vague is sufficient to cure any defect.

3 Contrary to Appellee's assertions, in *Commonwealth* the prosecution charged that a crime had
4 occurred on December 28th, despite the testimony and evidence showing that it had occurred on the
5 evening of December 27th. The issue of variance when an alibi defense is interposed was an issue of
6 first impression. In deciding the matter, the Court reviewed several cases and found that in those cases
7 the courts were of the view that "the existence of an alibi defense **does** make the time alleged material to
8 defendant's case." *Commonwealth v. Boyer*, 216 Pa.Super. 286,290; 264 A.2d 173, 176 (1970). The
9 Court specifically stated that "[i]t has been uniformly held in other jurisdictions that where the state has
10 alleged and relies on a fixed date and defendant also relies on that date in preparing his defense, it is
11 error to permit a jury to find that the crime was committed on another date, *time being of the essence*
12 *where the defense is alibi.*" *Id* at 291.

13
14
15 The Court also cited *People v. Waits*, 18 Cal. App.2d 20, 62 P.2d 1054 (1936) which held that "it
16 was the trial court's duty, where the defense is alibi, to limit the jury's consideration of the evidence to
17 the date selected by the prosecution." *Commonwealth*, 216 Pa.Super. at 292. In reversing the conviction
18 for the charge alleged to have occurred on December 28th, but for which the evidence showed occurred
19 on the evening of December 27th, the court held that "the jury was required to find that the crime was
20 committed on the date alleged, that *date being of the essence* in view of the alibi defense..." *Id* at 293.
21 Since time is of the essence when the alibi defense is asserted, the general rule does not apply and the
22 court *is* bound to the date on the bill of indictment or complaint.

23
24
25 In this case, Appellee's complaint alleged that the incident took place on the fixed date and time of
26 "[o]n or about November 16, 2012 at approximately 7:54 p.m." and Appellant relied on that date and
27 time in preparing her defense. In addition, at close of trial the Tribal Court found that the alleged
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1 incident occurred on November 16, 2012 at approximately 7:54 p.m., despite Appellee conceding that
2 there was uncertainty and confusion regarding the time the incident occurred. (Record at 7).
3 Consequently, it was error to permit a finding that the incident occurred on that specific date and time
4 when the evidence showed that there was confusion as to when the incident allegedly occurred and was
5 therefore never proven.

6
7 Appellee then argues that the case law focuses on what day the incidents are alleged to have
8 occurred and not on the particular hour. Appellee cites *People v. Waits* 18 Cal. App.2d 20, 62 P.2d 1054
9 (1936) in support of its argument. However, Appellee's argument is based on the language of the jury
10 instruction which the court held correctly stated the law with reference to the statute of limitation *but not*
11 *to the defense of alibi*. Instead, the holding of the court was that "[i]n light of appellant's alibi defense,
12 the **time** the alleged offenses were committed became material, and it was the duty of the trial court to
13 limit the jury in its consideration of the evidence to the **period** which the prosecution selected as the time
14 of commission of the offenses." *Id* at 21 (citing *People v. Morris*, 3 Cal.App.1,10[84 Pac. 463]). In
15 *People v. Brown*, the court stated that "when a defense of alibi is interposed and an alleged offense is so
16 narrowed as in this case, the date and **even the hour** may become important." *People v. Brown*, 493
17 F.2d at 393.

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19
20 In its last argument on the issue of the alibi defense, Appellee relies on arguments made by the
21 defendant in *People v. Ralls*. In that case the defendant stated what he perceived to be the "true rule"
22 when a defendant seeks to establish alibi as a defense. At his trial, two young witnesses testified and
23 were vague or certain in their testimony about the exact date that the incident took place. The defendant
24 had introduced evidence tending to prove an alibi. Notwithstanding, he was found guilty and he
25 appealed. On appeal, the defendant:

26
27 "....conceded that ordinarily the exact date of the commission of an offense is
28 immaterial but he claims the rule to be otherwise when the person charged seeks to

1 establish an alibi. He states that in such cases: “The true rule is that the time of the
2 offense must be fixed with reasonable certainty, i.e., a day certain, or several possible
3 dates.”

4 *People v. Ralls*, 21 Cal.App.2d 674, 678; 70 P.2d 265, 267 (1937)

5 This statement by the defendant in *Ralls* is what Appellee relies on to show that establishing the
6 exact time is not in fact required. What Appellee fails to disclose is that the court in *Ralls* did not find
7 the need to approve the rule as stated by the defendant because the court distinguished his case from the
8 cases he cited. The defendant in *Ralls* cited to *People v. Morris*, 3 Cal.App. 1, at page 10, 84 P.463, 466,
9 in which the court stated that “[i]t does not often happen that an alleged crime is narrowed to a particular
10 hour; often not even to a particular day. But, when it is so narrowed, the time, even the hour, may
11 become important. *People v. Ralls*, 21 Cal.App.2d 674, 678; 70 P.2d 265, 267 (1937). The court found
12 that defendant’s case had not been so narrowed.
13

14 In stark contrast, the alleged crime in this case was narrowed to the particular day of “on or about
15 November 16, 2012” and to the particular hour of “approximately 7:54 p.m.” Consequently, the time,
16 even the hour became important. When the time was not established by the testimony and Appellee
17 conceded that it was confusing and unclear, it was error for the court to find that the allegations did in
18 fact happen on that date and time. These arguments find further support in Arizona’s jury instruction
19 on the issue of Alibi, Standard Criminal jury instruction 43, Alibi or Non-Presence of the Defendant
20 which states as follows:
21

22 “The State has the burden of proving that the defendant was present *at the time*
23 and place the alleged crime was committed. If you have reasonable doubt whether the
24 defendant was present *at the time* and place the alleged crime was committed, you must
25 find the defendant not guilty.”

26 RAJI (Criminal) Standard 11 (1996 Revision)

1 The basic premise underlying all the cases cited is that where the government has alleged and relied
2 on a fixed date and time and defendant also relied on that date and time in preparing her defense, it is
3 error to permit a fact-finder to find that the crime was committed on another date or time when an alibi
4 defense has been asserted, as she will be deprived of her alibi defense. The error, in this case, was
5 further compounded when the Judge found that the crime was committed on a fixed date and time when
6 the parties agree that the time was confusing and unclear.
7

8 On the issue of whether the Court erred in failing to admit appellant's work schedule as shown by
9 her Agent Activity Sheet, Appellee argues that Appellant failed to establish the proper foundation.
10 Appellee argues that because the documents were treated as business records pursuant to 3 PYT R. Evid.
11 Rule 39, there was no "indicia of reliability" and therefore not trustworthy. However, Appellee fails to
12 apply the clear language as written in the Tribal Code and instead seeks clarification from sources in
13 other jurisdictions.
14

15 In objecting to the introduction of the schedule, Appellee argued that there was no evidence
16 presented that the document had not been tampered with or changed and he did not know where it came
17 from since there was no logo from the company. "We also have no evidence that indicates whether it is,
18 uh, tamperable (sic), whether it has, uh, a mechanism by which can be changed, uh, and further, we
19 don't know who this came from, uh, the, uh, American Airlines. They have no logo on here."
20 (Transcript, page 84, lines 12-17). Appellee was arguing as to the authenticity of the document. The
21 Tribal Code provides guidelines for authentication of a document under 3 PYT R.Evid. Rule 47 which
22 provide as follows:
23
24

25 (A) General. The requirement of authentication or identification as a condition
26 precedent to admissibility is satisfied by evidence sufficient to support a finding that the
27 matter in question is what its proponent claims.

28 (B) (1) Testimony by a witness with knowledge that the matter is what it is claimed to
be.

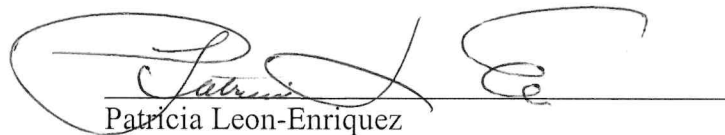
1
2 Here, Appellant testified that she worked for American Airlines, making reservations by phone from
3 her home computer. She testified that the log was *her* schedule for Saturday, November 16th, showing
4 that she worked from 11:00 a.m. to 9:29 p.m. She explained what the document was and how it tracked
5 her time on the phone for her employer. Specifically, it showed the time on the phone, in seconds, the
6 phone number of the caller, the time spent on the phone with the caller and whether the person was
7 placed on hold. [Transcript, pgs. 63-69].
8

9 Appellant was a witness with knowledge that the matter was what it claimed to be. Therefore her
10 testimony met the requirements under the Tribal Code for authentication of the document and there was
11 no need to resort to the Federal Rules.
12

13 Wherefore, the Appellant respectfully requests that the Court of Appeals grant the Appellant's
14 request for relief and reverse the trial court's ruling.
15

16 RESPECTFULLY SUBMITTED this 20th day of September, 2014.
17

18 PASCUA YAQUI PUBLIC DEFENDER

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21 Patricia Leon-Enriquez

22 Senior Staff Attorney

23 Counsel for Defendant/Appellant Elizabeth DeLaCruz
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No. CA-14-002

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellee

Vs.

Elizabeth DeLaCruz, Defendant/Appellant

ORDER


Appeal of a decision of the Pascua Yaqui Tribal Court in Case No. CR-14-115, the Honorable Melvin R. Stoof, presiding.

G. Allen Osburn, Pascua Yaqui Tribe Office of the Prosecutor, Tucson, AZ for Appellee/Plaintiff

Patricia Leon-Enriquez, Pascua Yaqui Tribe Office of the Public Defender, Tucson, AZ for Appellant/Defendant

The Appellant/Defendant's motion for an extension of time to file a reply brief is granted. Appellant asserts that opposing counsel has been advised and has no objection to this motion. Appellant/Defendant's reply brief shall be filed in this Court on or before Monday, September 29, 2014.

So **ORDERED** this 12th day of September, 2014.



James C. Hopkins, Chief Judge
Pascua Yaqui Court of Appeals

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2 Tucson, Arizona 85757

3 Patricia Leon-Enriquez
4 PYT Bar No. 10186
Attorney for Appellant

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

8 PASCUA YAQUI TRIBE,

9 Appellee,

10 vs.

11 DELACRUZ, ELIZABETH,

12 Appellant.
13

Case No(s). CA-14-002,

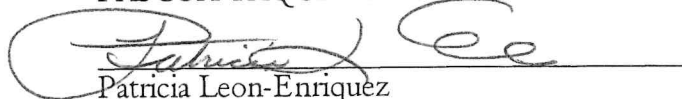
Tribal Court No(s). CR-14-115

14 APPELLANT'S MOTION TO EXTEND
15 DEADLINE

16 Appellant Elizabeth Delacruz, through counsel and pursuant to Section 3 PYTC §2-3-70(B), Pascua
17 Yaqui Rules of Appellate Procedure, respectfully moves this to Court to enter an order extending the time
18 for the filing of the Appellant's Reply Brief. Appellee filed its Response Brief on September 2, 2014, after
19 two requests for extension of time to file. The Reply Brief is due September 12, 2014. Undersigned counsel
20 has contacted Deputy Prosecutor Allen Osburn, prosecutor in the above case, and he does not object to the
21 request for extension of time to file the Reply Brief in this matter. This Motion is for a procedural order and
22 3 PYTC §2-3-80(c)(3) provides that the Chief Judge may grant a motion for a procedural order without
23 awaiting a response.

24 DATED this 12th day of September, 2014.

25 PASCUA YAQUI PUBLIC DEFENDER

26 
Patricia Leon-Enriquez
Senior Staff Attorney

27 ORIGINAL delivered this date to
PYT Court of Appeals:

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

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G. Allen Osburn
Deputy Prosecutor

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

PASCUA YAQUI TRIBE,
Plaintiff/Appellee,

vs.

DeLACRUZ, Elizabeth,
Defendant/Appellant,

Trial Court case number: CR-14-115
Appeals Court case number: CA-14-002

APPELLEE'S RESPONSE BRIEF

Tribe/Appellee ("Appellee"), through counsel, hereby responds to Defendant/
Appellant's ("Appellant") Opening Brief as follows:

ARGUMENT

A. The standard of review for evidentiary rulings is abuse of discretion.

Appellee claims that the standard of review should be *de novo*. While questions of law generally imply a *de novo* standard of review, the question of admissibility of the evidence at issue directly relates to the quality, character and reliability of Defendant's testimony in establishing a foundation for the admission of the evidence in question. The Arizona Division Two Appellate Court— citing *State v. Tankersly*, 191 Ariz, 359— addressed this issue by noting, "We review a trial court's ruling on the admissibility of evidence for a clear abuse of discretion." *State v. King*, 213 Ariz. 632, 146 P.3d 1274

The issue of reliability of testimony is a question of fact for the fact-finder to determine. Since the issue is a question of fact, the abuse of discretion standard is the appropriate standard of review regarding the admission of the purported work schedule logs.

B. Notwithstanding the claim of an *alibi* defense, Appellant misstates the precision required regarding the Tribe's burden of establishing the time that an offense occurred.

1. Exact precision regarding the time of an offense, even when the defense of *alibi* is asserted is not required.

The Tribal Code in the Rules of Criminal Procedure establishes at the outset, that exact precision is not required in the charging of a crime in the Criminal Complaint. The code establishes that:

(B) Complaints shall contain:

A written statement, describing in ordinary language the offense committed, including the time and place **as nearly as may be determined**, and the name or description of the person alleged to have committed the offense;
(3 PYTC §2-2-90(B)(1), emphasis added)

A close reading of the cases cited by Defendant actually lends support to the Tribe's position. The quote defendant uses from *US. v. Goodrich* 493 F2d 390, 393 (9th Cir. 1974) [cited in defendant's Opening Brief as *US. v. LeFevre* 493 F2d 390, 393 (9th Cir. 1974)] is as follows: "any variance in time proved and the time the jury is allowed to find deprives the defendant of his alibi defense." A more full view of the quote shows that rather than representing the holding of the Court, the quote was a mere rephrasing of the argument of the Appellant. The quote in its more complete form makes this clear.

Appellant cites ample state authority both old and new for the proposition that when an alibi defense is asserted the time of the crime is extremely material, since any variance in time proved and the time the jury is allowed to find deprives the defendant of his alibi defense. **And it is appellant's position** that under the court's instruction the jury could have found that the overt act was committed June 2, rather than June 3. *US. v. Goodrich* 493 F2d 390, 393 (9th Cir. 1974)(emphasis added)

Further reading of the case shows that the relevant issue was regarding a jury instruction which read, "The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense

was committed on a date reasonably near the date alleged.” The Appellate Court did not find the instruction to be in error and the conviction was ultimately upheld.

It is also important to note that the discussion in *Goodrich* centered around the specific date of the offense and not a specific time. The context of the discussion centering around a date and not a particular time is common throughout the caselaw cited by Defendant. The attempt by Defendant to imply a level of precision down to a precise hour rather than a date is not supported by Defendant’s own citations.

A close reading of *People v. Brown* 186 Cal. App.2d Supp. 889 (1960) likewise shows support for the Tribe rather than Defendant. In *Brown* the jury was provided with a statute of limitations instruction that was ultimately determined to be in error as confusing and prejudicial, the instruction read, “You are instructed that the Statute of Limitations in these cases is one year; that the date of the offense need not be proved as alleged. Any date within the period of the Statute of Limitations is sufficient.” In the discussion regarding the precision required for setting a time frame however, the Court embraced the notion that a range of time “the latter part of January 1960” would have been acceptable even given an alibi defense. The court noted that “[t]he instruction should have focused the minds of the jurors on that period [*i.e. the latter part of January*] instead of running the risk of diverting their attention to other times within the year.” *People v. Brown* undermines rather than supports the contention that precision as to a time or even a date certain is required of the prosecution.

Defendant’s cited case of *Commonwealth v. Boyer* 216 Pa. Super. 286, is clearly distinguishable from the instant matter. In *Boyer*, the general rule of acceptable variance as to date/time was recognized at the outset:

The general rule is as stated in *Commonwealth v. Levy*, 146 Pa. Superior Ct. 564 (1941), at page 571: “The Commonwealth is not bound by the date laid *289 in the bill of indictment but can show any date within the statutory period and prior to the finding of the indictment, **except in cases where time is of the essence of the offense**: *Com. v. Powell*, 23 Pa. Superior Ct. 370; *Commonwealth v. Major*, 198 Pa. 290.” (Emphasis added)

Boyer is distinct from the case at bar in that the *Boyer* prosecution failed to recognize or address the possibility of vagueness regarding the date of the offense. “The State did not contend that there was confusion as to the time named in the bill of indictment. It insisted the date named was in fact the true date. . .” The above rule was quoted and affirmed in *State v.*

Wilson, 264 N.C. 373, 141 S.E. 2d 801 (1965). In contrast to *Boyer*, the Tribe in the instant matter established that the time frame was somewhat unclear as to the exact hour of the offense. In closing, the Tribe noted “as far as the timeframe, you know, there is some confusion...we’re not exactly clear as to exactly what time... what we have here is absolute clarity that whatever time it took within that afternoon/evening, we’ve got testimony as to who it was, who did it, what they did, and the fact that it was a crime.”(trial transcript pg 93, lines 6-16).

The caselaw regarding timeframe requirements focus on vagueness as an issue regarding what **day** incidents are alleged to have happened, not a specific or particular **hour** that an incident is alleged to have occurred. This can be seen in *People v. Waits*, where the ruling noted “It was, therefore, prejudicially erroneous for the trial court to instruct the jury, as set forth, supra, that it was wholly immaterial on what **day** the offenses were committed.” *People v. Waits* 18 Cal.App.2d 20 (emphasis added). Defendant’s reliance on *Waits* is further undermined by the extreme nature of the “wholly immaterial” instruction which was found to be in error. The instruction given was:

“The court instructs the jury that it is **wholly immaterial** on what day or night the offense was committed, provided you believe from the evidence that it was committed, and that the same was committed within three years prior to the filing of the information in this case.” *People v. Waits* 18 Cal.App.2d 20 (emphasis added)

Appellant’s reliance on *People v. Ralls* is likewise ill advised as it is conceded by the defense in that case that establishing an exact time is not in fact required and that “several possible dates” would be sufficient.

... concedes that ordinarily the exact date of the commission of an offense is immaterial but he claims the rule to be otherwise when the person charged seeks to establish an alibi. He states that in such cases, "The true rule is that the time of the offense must be fixed with reasonable certainty, i. e., a day certain, or several possible dates. ... The jury should be limited in their deliberations to the date given or one very near to it (*People v. Ralls* 21 Cal.App.2d 674)

None of the cases cited by Appellant impose the level of precision which Appellant wishes to impose upon the Tribe in the instant matter. Defendant attempts to create a requirement which is novel and unreasonable.

C. The Tribal Court acted within its authority when it sustained the objection to the admission of Defendant's records of regularly conducted activity

1. Defendant failed to establish proper foundation for the admission of the document in question.

Defendant cites and relies upon the Pascua Yaqui Tribal Court's general requirements of authentication as set forth in Rule 47 of the PYT Rules of Evidence to the exclusion of the more specifically relevant Rule 39(E) which sets forth requirements for admission of business records.

Rule 47 Requirement of Authentication or Identification (3 PYT R.Evid. Rule 47)

- (A) General. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in questions is what its proponent claims.
- (B) Illustrations. The following are illustrative examples conforming to this rule, and are not limitations:
- (1) Testimony by a witness with knowledge that the matter is what it is claimed to be

Rule 47 establishes threshold requirements, but Rule 39(E) is more specifically relevant to the business records issue present in this case. Rule 39(E) reads:

3 PYT R.Evid. Rule 39(E)

(E) Business Records. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this

paragraph includes business, institution, association, profession, occupation, and calling of ever kind, whether or not conducted for profit.

While there was much testimony by Defendant centered around the call log which Defendant wished to be placed into evidence, proper foundation was lacking. Defendant admitted that the log was not generated by her but instead was “From, uh, my off--, my corporate office, my supervisor.” (Trial Transcript p. 83, line 3) Defendant established that she uses a computer to perform her work and that records are kept, but she did not establish that the proffered document was an accurate representation of the records she kept for work. Defendant did not establish that the records were kept in a reliable manner. In *Moon v. State* the admission of the blood alcohol test was deemed inadmissible because of insufficient foundational evidence that the test was conducted in a reliable manner. *Moon v. State*, 300 Md.354, 367-371, 478 A.2d 695, 702-703 (1984). The method and process for the storage and recovery of the record was not established. Whether the documents were prepared in the normal course and scope of business or were prepared specifically for trial was also not established by Defendant.

The fact that Defendant was not the custodian of the records at issue is not fatal to admission, but the fact that no knowledge or understanding of the record keeping system was established was fatal to admission. This principle can be seen in *U.S. v. Holden* (E.D. Wash. 2013, WL2149612), citing *U.S. v Childs*,

a witness does not have to be the custodian of documents offered into evidence to establish foundation. ECF No. 254 at 35–36. The Government argues “[t]he phrase ‘other qualified witness’ is broadly interpreted to require only that the witness understand the record-keeping system.” *United States v. Childs*, 5 F.3d 1328, 1334 (9th Cir. 1993)

In the *Holden* case, the records gathered by a non-custodian employee were allowed, but only after consideration of other factors to ensure reliability, notably, the documents at issue were compared to previously properly admitted documents and were found to be consistent in all respects.

... that Ms. Graham was sufficiently familiar with Advanced Podiatry billing and patient records to act as custodian. ER 162, Tr. 45. More importantly, the Court was satisfied that the computer printouts maintained by Ms. Graham were sufficiently reliable and “**completely**

consistent with the documents ... already admitted as proper exhibits.”
ER 162–63, Tr. 46–49. (*U.S. v Holden, id.*, emphasis added)

No such indicia of reliability were present in the present case.

2. The source of the information and/or the method or circumstances of preparation indicated a lack of trustworthiness.

Rule 39(E), which is based upon the Federal Rules of Evidence Rule 803(6)(E) contains a vital “trustworthiness” factor which is relevant in the analysis of the Trial Court’s rejection of the work log offered in evidence. While the log was purportedly a business record, it nevertheless had insufficient indicia of trustworthiness to be admissible. While hearsay exceptions, such as business records, may be allowed in evidence, the mere fact that a proffered evidentiary item is claimed to be a Business Records exception is not sufficient to establish admissibility. The party attempting to introduce the evidence must further fulfill a “trustworthiness” requirement as set forth in FRE 803(6)(E).

This trustworthiness requirement is found in FRE 803(6) which allows admission of the evidence only if, “neither the source of the information nor the method or circumstances of preparation indicate a lack of trustworthiness.”

Rule 803(6) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by--or from information transmitted by--someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.


In view of the fact that it was not established that the documents were produced as a normal course of business— and not specifically for trial— the documents were inherently unreliable. The Ninth Circuit observed this in *Sana v. Hawaiian Cruises, Ltd.* “Courts are rightfully wary when parties create self-serving documents and seek to offer them as business records.” *Sana v. Hawaiian Cruises, Ltd.*, 181 F3d 1041, 1046 (9th Cir.1999)

This risk of unreliability regarding the computer generated logs was obliquely explored in the victim John Hernandez’ testimony regarding his observations of Defendant’s work on and around computers. Mr. Hernandez commented on Defendant’s computer skills by stating, “Oh, definitely. She knows her way around.” The Trial Court had more than ample basis for questioning the trustworthiness of the documents; even if the documents had passed foundational muster, the lack of trustworthiness alone was sufficient to disallow them.

CONCLUSION

Defendant/Appellant has presented caselaw which upon inspection actually supports the Tribe’s contention that the unreasonable precision regarding the exact time defendant committed her crime is not consistent with legal standards in a variety of jurisdictions across the nation and is wholly inappropriate here. Additionally, Appellant has failed to show that the trial court abused its discretion in the decision to not allow Appellant’s purported business records. Defendant in fact was allowed to present her alibi defense, the factfinder merely found that defense insufficient. In view of the above, the Judgment by the Trial Court should be affirmed.

RESPECTFULLY SUBMITTED this 2nd day of September, 2014.




G. ALLEN OSBURN
Deputy Prosecutor
Counsel for Appellee

Original delivered to:

Clerk, Pascua Yaqui Tribe Court of Appeals

Copy mailed/delivered to:

Public Defender
Attorney for Defendant/Appellant

On September 2, 2014 by:  _____

No. CA-14-002

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellee

Vs.

Elizabeth DeLaCruz, Defendant/Appellant

ORDER

Appeal of a decision of the Pascua Yaqui Tribal Court in Case No. CR-14-115, the Honorable Melvin R. Stoof, presiding.

G. Allen Osburn, Pascua Yaqui Tribe Office of the Prosecutor, Tucson, AZ for Appellee/Plaintiff

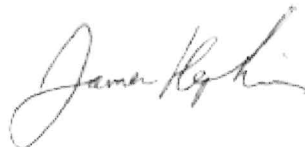
Patricia Leon-Enriquez, Office of the Pascua Yaqui Public Defender, Tucson, AZ for Appellant/Defendant

The Appellee's second motion for an extension of time to file a response to Appellant's opening brief is granted. Appellee asserts that opposing counsel has been advised and has no objection to this motion.

Appellee shall file his/her brief within 30 days after service of the Appellant's brief. See 3 PYTC § 2-3-140. Appellant's brief was filed on June 30, 2014. Appellant's certificate of service contained within the opening brief indicates that one copy of Appellant's brief was delivered to the Office of the Prosecutor on June 30, 2014. Therefore, Appellee had 30 days from June 30, 2014 to file a reply brief. Appellee sought a 14-day extension of the deadline for filing a reply brief on July 24, 2014, which was within 30 days of the date of service. On July 25, 2014, this Court granted the motion to extend the deadline. See Prior order dated July 25, 2014. Appellee filed a second motion to extend deadline on August 13, 2014, which was within the original 14-day extended deadline.

Appellee's motion for an August 31, 2014 deadline to respond to Appellant's opening brief is granted.

So **ORDERED** this 15th day of August, 2014.



James C. Hopkins, Chief Judge
Pascua Yaqui Court of Appeals

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR
7777 S. Camino Huivisim
Tucson, AZ 85757
(520) 879-6251

G. Allen Osburn
Deputy Prosecutor

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

PASCUA YAQUI TRIBE,
Plaintiff/Appellee,

vs.

DELACRUZ, Elizabeth
Defendant/Appellant

Appeals Court Case No. CA-14-002


Trial Court Case No. CR-14-115

**TRIBE'S MOTION TO EXTEND
DEADLINE**

The Tribe motions the court for an extension of time to file its response brief. The Tribe requests that the new deadline be August 31, 2014. Opposing counsel has been advised has no objection to this motion and waives all relevant time limits.

RESPECTFULLY SUBMITTED this 13th day of August, 2014.

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR


G. Allen Osburn
Deputy Prosecutor

Copy mailed/delivered this date, to:

Public Defender

By  _____

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

2014 JUL 25 PM 3:05

DOCKET NO. _____

CLERK _____ *Def*

No. CA-14-002

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellee

Vs.

Elizabeth DeLaCruz, Defendant/Appellant

ORDER

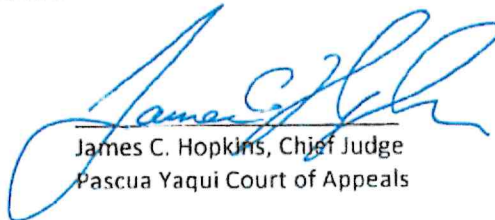
Appeal of a decision of the Pascua Yaqui Tribal Court in Case No. CR-14-115, the Honorable Melvin R. Stoof, presiding.

G. Allen Osburn, Pascua Yaqui Tribe Office of the Prosecutor, Tucson, AZ for Appellee/Plaintiff

Patricia Leon-Enriquez, Office of the Pascua Yaqui Public Defender, Tucson, AZ for Appellant/Defendant

The Appellee/Plaintiff's motion for an extension of time to file a response to Appellant's opening brief is granted. Appellee asserts that opposing counsel has been advised and has no objection to this motion. The Appellee/Plaintiff's motion for a fourteen-day extension of time to respond to Appellant's opening brief is granted.

So **ORDERED** this 25th day of July, 2014.


James C. Hopkins, Chief Judge
Pascua Yaqui Court of Appeals

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR
7777 S. Camino Huivisim
Tucson, AZ 85757
(520) 879-6251

G. Allen Osburn
Deputy Prosecutor

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

PASCUA YAQUI TRIBE,
Plaintiff/Appellee,

vs.

DELACRUZ, Elizabeth
Defendant/Appellant

Appeals Court Case No. CA-14-002

Trial Court Case No. CR-14-115

**TRIBE'S MOTION TO EXTEND
DEADLINE**

The Tribe motions the court for an additional fourteen (14) day extension of time to file its response brief. Opposing counsel has been advised has no objection to this motion and waives all relevant time limits.

RESPECTFULLY SUBMITTED this 24th day of July, 2014.

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR


G. Allen Osburn
Deputy Prosecutor

Copy mailed/delivered this date, to:

Public Defender

By  _____

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JURISDICTIONAL STATEMENT

The jurisdiction of the Pascua Yaqui Court of Appeals extends to all appeals from final orders and judgments of the Tribal Court, in both civil and criminal matters. *See* Pascua Yaqui Const., art. VIII, §5 and the Pascua Yaqui Court of Appeals Procedures Act of 2000, §1.12 (codified under Title 3 of the Pascua Yaqui Judicial Titles and Codes). Appellant Elizabeth DeLaCruz appeals an order of the Pascua Yaqui Tribal Court [March 19, 2014, Order entered in CR-12-115/TR-14-13373] in which the Tribal Court found Appellant guilty of Count one, Disorderly conduct after a bench trial.

STATEMENT OF THE CASE

On November 16, 2013, Appellant Elizabeth Delacruz was cited for Disorderly Conduct/domestic violence, Injury to public/private property and Failure to stop at accident with damage to unattended vehicle. Appellant was given a court date on December 19, 2013. [*PYT v. Elizabeth Delacruz*, Pascua Yaqui Trial Court Record, document 40, hereinafter “Record at 40”].

On December 10, Appellee filed two separate criminal complaints [Record at 38], and the probable cause Statement/affidavit [Record at 39], with the Tribal Court. Appellant filed a request for appointed counsel on December 11, 2013 [Record at 37] and counsel was appointed on December 13, 2013. [Record at 34]. On December 19, 2013, Appellant appeared in court for her initial hearings. At the initial hearings, after the Judge found probable cause as to the charges on both cases, Appellant entered ‘not guilty’ pleas and was released on her own recognizance. A Bench Trial was set for both matters on March 10, 2014. [Record at 32 & 33].

On December 30, 2013, Appellee filed the Tribe’s Notice of Witness and Disclosure [Record at 28]. Appellant filed her Request for Disclosure [Record at 29] and the Defendant’s Notice of Defenses and Disclosure in which she checked the box indicating she would introduce evidence at trial to establish an Alibi defense. [Record at 30]. The Tribal Court ordered Appellee to respond to the Request for Disclosure. [Record at 27]. Appellee filed its response on January 16, 2014. [Record at 26]. On February 25, 2014, Appellant filed her Supplemental Disclosure which included her activity log for inbound and outbound calls, 2 Facebook pages, a letter from the Casino Del Sol’s Security Department and the contact information of two defense witnesses. [Record at 25]. On March 5, 2014, Appellant filed a second Supplemental Disclosure notice,

disclosing a receipt from the Casino Del Sol. [Record at 41] (missing from initial Index Listing but provided by Tribal Court attorney at a later date).

On March 7, 2014, Appellant filed an unopposed motion to continue the bench trial due to the unavailability of a defense witness. [Record at 23]. The Tribal Court granted the continuance and reset the bench trial on March 19, 2014. [Record at 22]. On March 19, 2014, a bench trial was held. Defense exhibits included a date/time stamped receipt [Record at 12], a temporary restraining order [Record at 14] and the pages from Facebook. [Record at 15]. The Tribe submitted a Certificate of Degree of Indian blood. [Record at 13]. The Tribal Court found Appellant guilty of Count One Disorderly Conduct and granted Appellant's Motion for Directed Verdict on Count Two Injury to Public Property and Count Three (Count C on complaint) leaving the scene of an unattended vehicle (TR-14-13373). The matter was set for sentencing on April 7, 2014. [Record at 11].

On April 7, 2014, Appellant filed an unopposed Motion to Continue the Sentencing Hearing. [Record at 9]. The Tribal Court granted to Motion to Continue and reset the Sentencing Hearing to May 1, 2014. [Record at 8]. On April 15, Appellant filed a Motion to Stay the Sentencing hearing in order to appeal the matter. [Record at 5]. The Tribe did not object [Record at 2] and the matter was stayed pending the appeal. [Record at 1]. A Notice of Appeal was filed on April 15, 2014. [Record at 6].

STATEMENT OF FACTS

On November 16, 2013, Appellant Elizabeth DeLaCruz was cited for disorderly conduct, injury to public property and failure to stop at accident with damage to unattended vehicle. [Record at 40]. The citation indicated a court date and time of December 19, 2013 at 1:30 p.m. *Id.* On December 10, 2013, the Tribe filed two complaints in this matter. One complaint under CR-14-115 alleged two counts. The relevant section for purposes of this appeal provides under Count 1 for Disorderly Conduct that:

“On or about November 16, 2013 at approximately 7:54 p.m., at or near 7337 Tetaviecti, Tucson AZ, Defendant, with the intent to disturb the peace and quiet of a neighborhood, family or person, or with knowledge of doing so, made unreasonable noise, to wit: *knocked loudly on John Hernandez’s door, thereby disturbing his peace and quiet.*” [Record at 38].

The Initial Hearing was held on December 19, 2013. [Record at 32]. On December 30, 2014, Appellee filed its Notice of Witness and Disclosure. [Record at 28]. Appellant filed her Notice of Defenses and Disclosure on January 3, 2014. In the Notice of Defenses, Appellant marked the box indicating that she would introduce evidence at trial to establish the defense of “alibi.” [Record at 30]. On February 25, 2014, Appellant filed her Supplemental Disclosure which included the Agent Activity Inbound and Outbound Calls (3 pages) which is the Appellant’s work schedule for November 16, 2013 and the names of two alibi witnesses. [Record at 25]. Appellant then filed additional disclosure on March 5, 2014. This disclosure included a receipt from Casino Del Sol, dated November 16, 2013, 6:40p.m. with the name Martha Francisco, one of Appellant’s witnesses. [Record at 41 and 12].

A bench trial was held on March 19, 2014. [Record at 11]. At the bench trial, Appellee's witness, John Hernandez, testified. When asked what time Appellant showed up knocking on his door, he stated "...it was about 2:00 o'clock, maybe 3:00 o'clock." [Transcript, pg. 11, lines 1-3]. After questioning by Appellee regarding the time of the incident, Mr. Hernandez testified that "it was a while ago, so [he didn't] remember exactly what time it was." [Transcript, pg. 13, lines 1-2]. He then testified that "...it was kind of late, 'cause when the police got there they had [him] actually light up the area...where they saw the tracks." [Transcripts, pg. 13, lines 4-7]. Appellee then asked, "So, it was evening, would you say? And Mr. Hernandez answered "Yes, Uh-huh." [Transcript, pg. 13, lines 8-11]. When questioned again, on cross, about the testimony regarding the time that the incident took place, 2:00 or 3:00, Mr. Hernandez testified that "[he] didn't remember the times." [Transcript, pg. 18, lines 13-16]. Appellee's only other witness, Terry Moraga never testified as to the time of the incident, other than to state, at the suggestion of Appellee, that she and Mr. Hernandez were having dinner at the time Appellant allegedly showed up at the house. [Transcript at pg. 24, lines 14-17].

At the close of Appellee's case, Appellant made a motion for directed verdict. [Transcript at pg. 43, lines 2-3]. The basis for the request was that the time of the alleged incident was not established and that the testimony of Appellee's witnesses was conflicting in that neither witness had actually seen Appellant, only thought they heard her voice. [Transcript at pg. 43, lines 1-18]. This was based on testimony by Mr. Hernandez who initially testified that he looked up at the front window and saw it was Appellant [Transcript at pg. 11, lines 9-11] and later testified that the only time he saw Appellant was when he looked out the door. [Transcript at pg. 14, lines 7-

9]. Ms. Moraga also testified that she never saw Appellant. [Transcript at pg. 26, lines 9-10]. The Tribe argued that there was sufficient evidence based on the testimony of Mr. Hernandez, that he had seen Appellant and recognized her voice and argued that although there was confusion as to the time of day, that was not crucial or relevant. [Transcript at pg. 43, lines 20-25 and Transcript at pg. 44, lines 7-19]. The Tribal Court granted the directed verdict as to counts two and count C in TR-14-13373. [Transcript at pg. 45, lines 5-25].

Appellant then called her first witness, Martha Francisco. [Transcript at pg. 48, lines 6-7]. Ms. Francisco testified that she had borrowed Appellants car on the evening of November 16, 2013 in order to go to the Casino to get a meal. [Transcript at pg. 49, lines 4-7]. She testified it was the only car they had. [Transcript at pg. 49, lines 17-20]. A receipt for the food purchased at the Casino by Ms. Francisco on November 16, 2013 at 6:40 p.m. was entered into evidence. [Transcript at pg 50, line 25 and pg 51, line 1] (*see also* Record at 12).

Ms. Francisco testified that she borrowed Appellant's car at about 6:20 because it takes 15 or 20 minutes to get to the restaurant and review the menu and decide. [Transcript at pg. 51, lines 15-21]. Ms. Francisco testified that she did not go anywhere else prior to going to the casino. [Transcript at pg. 52, lines 8-13]. She also testified she went straight home after going to the casino. [Transcript at pg. 52, lines 14-16]. Ms. Francisco testified that she arrived home at about 7:10 p.m. because it takes about thirty minutes to fill a large order. [Transcript at pg. 52, lines 5-7]. She further testified that Appellant works out of a converted shed at her home and that Appellant was working that evening. [Transcript at pg. 54, lines 7-21]. Ms. Francisco then testified that Appellant was home when she returned from the Casino. [Transcript at pg. 55, lines

23-25]. Ms. Francisco testified that the police officers arrived at her home at about 7:30 p.m. [Transcript at pg. 56, lines 7-9]. She recalled the time because she has a habit of keeping time and she automatically looked at her phone. [Transcript at pg. 56, lines 6-25]. She also recalled because she had to text Appellant, who cannot be disturbed while working, to inform her that the police wanted to talk to her. [Transcript at pg. 57, lines 1-23].

Appellant testified that she worked for American Airlines in reservations. [Transcript at pg. 63, lines 22-25]. She testified that the Airlines keeps track of all calls that come in, how long they take and how long the calls are put on hold. [Transcript at pg. 65, lines 2-8]. She testified that if she is away from her phone, other than at designated breaks, she receives a call from her supervisor to discuss the deviation. [Transcript at pg. 65, lines 12-17]. Appellant testified that on November 16, 2013, she was working from 11:00 a.m. to 9:30 p.m. [Transcript at pg. 66, lines 2-3]. She testified that Exhibit B was her work schedule for Saturday, November 16th, showing that she worked from 11:00 a.m. until 9:29 p.m. [Transcript at pg. 66, lines 18-21 and lines 24-25]. Appellant also testified that the schedule shows the time of calls and the phone numbers called from. [Transcript at pg. 67, lines 6-13]. It also shows the amount of time spent on each call. [Transcript at pg. 67, lines 19-22]. The schedule also showed how long a call is placed on hold since that is one of the things an employee can get reprimanded for. [Transcript at pg. 68, lines 1-8]. Therefore, the schedule was able to show where Appellant was at any given time. [Transcript at pg. 68, lines 13-18]. The time increments are in seconds. [Transcript at pg. 68, lines 23-25 and pg. 69, lines 1-13]. Appellant moved to enter the log into evidence, but Appellee objected. [Transcript at pg. 84, lines 5-7]. Appellee objected based on lack of

foundation. [Transcript at pg. 84, lines 18-19]. Defense counsel argued that Appellant had testified as to what the document was (Appellant's work schedule). [Transcript at pg. 84, lines 20-25]. The Tribal court sustained the objection as the admissibility of a business record and stated that it lacked foundation. [Transcript at pg. 85, lines 1-4].

When Appellant attempted to establish the time of the incident from the officer's call log, Appellee objected and the court sustained the objection. [Transcript at pg 69, lines 14-25, pg. 70, lines 1-25 and pg. 71, lines 1-2].

At closing, Appellee acknowledged that there was a lack of clarity with regards to the events, when it happened and the time frames. [Transcript at pg. 86, lines 19-21]. Appellant argued that Appellee never established the time even though the complaint showed the specific time as 7:54 p.m. [Transcript at pg. 89, lines 1-6].

ISSUES PRESENTED FOR REVIEW

- I. Whether the Tribal Court erred in not requiring Tribe to establish the time of the offense where the appellant alleged an alibi defense and relied on the time specifically selected by the Tribe for the commission of the offense.
 - a. Whether the Court erred in not admitting Appellant's work schedule as shown by her Agent Activity Inbound and Outbound Calls log after testimony by Appellant who had knowledge that the document was what it claimed to be pursuant to Rule 47 (A) and (B)(1) of the Pascua Yaqui Rules of Evidence.

STANDARD OF REVIEW

The Pascua Yaqui Constitution and Pascua Yaqui Judicial Titles and Codes are silent regarding the standards of review to be applied by the Pascua Yaqui Court of Appeals. Questions of law are subject to *de novo* review on appeal. *Pascua Yaqui Tribe v. Alma Soto*, CA-06-010, at 8 (2007); *United States v. Semler*, 883 F.2d 832, 833 (9th Cir. 1989). In other jurisdictions, appellate courts apply a *de novo* standard when reviewing mixed questions of law and fact. *State v. Teagle*, 217 Ariz. 17, 19, 170 P.3d 266, 271 (App. 2007).

ARGUMENT

- I. WHETHER THE TRIBAL COURT ERRED IN NOT REQUIRING THE TRIBE TO ESTABLISH THE TIME OF THE OFFENSE WHERE THE APPELLANT ALLEGED AN ALIBI DEFENSE AND RELIED ON THE TIME SPECIFICALLY SELECTED BY THE TRIBE FOR THE COMMISSION OF THE OFFENSE.

Article I, § 1(h) of the Pascua Yaqui Constitution and the Indian Civil Rights Act, 25 U.S.C 1302(8) provide that the court may not deprive any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law. In *Martinez v. Santa Clara Pueblo*, 540 F.2d 1039, 1047 (1976) (*rev'd on other grounds*), the court held that, while the Fourteenth Amendment standards do not apply with full force to tribal nations, “[t]he history and decisions teach us that the Indian Bill of Rights is modeled after the Constitution of the United States and is to be interpreted in the light of constitutional law decision.” Accordingly, U.S. Supreme Court constitutional jurisprudence provides strong guidance as to the due process rights which should be accorded to defendants in Pascua Yaqui Tribal Court.

The issue of alibi defenses in criminal matters is not addressed in the Tribal Code except in Title 3, Rules of Criminal Procedure, which requires that a defendant provide the prosecutor with a written notice specifying all defenses, including but not limited to alibi. 3PYTC §2-2-390 (B). Since the Tribal Code does not address the alibi defense except to require that its use needs to be disclosed by a defendant, it is instructive to look at the laws of other jurisdictions.

The 9th Circuit Court of Appeals, in reviewing whether the trial court erred in giving a certain instruction, examined various cases which held that the time of the offense is extremely material when an alibi defense is asserted because “any variance in time proved and the time the jury is allowed to find deprives the defendant of his alibi defense.” *United States v. LeFevre*, 493 F.2d 390, 393 (9th Cir. 1974). The Court noted that in *People v. Waits*, the court held that, “[I]n light of the appellant’s alibi defense, the time the alleged offenses were committed became material, and it was the duty of the trial court to limit the jury in its consideration of the evidence to the period which the prosecution selected as the time for the commission of the offenses.” *People v. Waits*, 18 Cal. App.2d 20,21, 62 P.2d 1054.

The Court of appeals also looked at *People v. Brown*, 186 Cal. App.2d Supp. 889 (1960), where the court there stated that “when a defense of alibi is interposed and an alleged offense is so narrowed as in this case, the date and even the hour may become important.” *LeFevre* at 393. In addition, in *Commonwealth v. Boyer*, the court stated that “it has been uniformly held in other jurisdictions that where the state has alleged and relies on a fixed date and the defendant also relies on that date in preparing his defense, it is error to permit a jury to find that the crime was committed on another date, time being of the essence where the defense is alibi. *Commonwealth v. Boyer*, 216 Pa. Super. 286, 264 A.2d 173, 176 (1970).

The parties in *Lefevre* agreed that unless there is an alibi defense raised, a variance between the date of the crime as charged and the date proved is not an issue. However, when an alibi defense is raised, “...it would be grossly unfair to have the government present the case as to a specific date, allow the defendant to structure his defense as to that certain date and then

permit the jury to find that the crime had been committed on some other date.” *U.S. v. LeFevre*, 493 F.2d at 394. This is equally applicable to the time of the offense.

In this case, Appellee asserted that the offense occurred on a specific date and time, it allowed Appellant to structure her defense as to that certain date and time, but Appellee never proved the time of the offense thereby depriving Appellant of her alibi defense. In addition, the Tribal Court held that the offense had occurred on November 16, 2014, at 7337 Tetaviecti, within the reservation, at approximately 7:54 p.m....” [Record at 11] despite the fact that the testimony showed it could have happened at 2:00 p.m., 3:00 p.m. or 8:00 p.m. The time of 7:54 p.m. was never established by the evidence or testimony.

“When a defense of alibi is interposed and an alleged offense is so narrowed as in this case, the date and *even the hour may become important.*” *U.S. v. LeFevre*, 493 F.2d at 393. Consequently, it was incumbent upon Appellee to prove not only the date specified in the complaint, but also the time.

On December 10, 2013, Appellee filed a criminal complaint against Appellant providing as follows:

Count 1: 4 PYTC §1-300(B) ~ Disorderly Conduct

On or about November 16, 2013 at approximately **7:54 p.m.**, at or near 7337 Tetaviecti, Tucson, AZ, Defendant, with the intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, made unreasonable noise, to wit: ***knocked loudly on John Hernandez’s door, thereby disturbing his peace or quiet.***

[Record at 38].¹

On January 3, 2014, Appellant filed her Notice of Defenses and Disclosure which put Appellee on notice that she would be introducing evidence to establish an alibi defense. The evidence submitted in support of her alibi defense included her work schedule for November 16th, 2013, by means of the Agent Activity Inbound and Outbound Calls (3 pages) and testimony of two additional witnesses. On February 25, 2014, Appellant filed supplemental disclosure which included a receipt from Casino Del Sol, dated November 16, 2013 at 6:40PM with the name of Martha Francisco, Appellant's alibi witness.

At trial, Appellee called two witnesses to testify regarding the incident that allegedly took place on November 16, 2013. The first witness was John Hernandez, the alleged victim in the case. He testified that Appellant showed up knocking on the door asking to come in. When asked about what time that happened, he responded, "Uh, I'm going to say it was about 2:00 o'clock, maybe 3:00 o'clock. [Transcript, pg. 11, line 2-3]. Later, Mr. Hernandez testified he did not remember the time. [Transcript, pg 11, line 8]. In the course of further questioning, Appellee asked for clarification regarding the time of the incident, given that three different times were previously mentioned by Mr. Hernandez. In his response, he stated, "[w]ell, it, it was, it was a while ago, I don't remember exactly what time it was. Uhm, there was a lot going on that day, and it was, it was, yeah, you know what, it was kind of late, 'cause when the police

¹ Only Count one of the criminal complaint is at issue for purposes of this appeal.

got there they had me actually light up the area right there where they were, where they saw the tracks.” [Transcript, pg. 13, lines 1-7].

On cross examination, Mr. Hernandez was questioned about the variance in time and asked whether he was basing his subsequent testimony about the incident happening in the evening on the fact that it might have been dark outside, he testified that “[i]t was a little dark outside, yeah, uh, outside by the time everything for set up, and police got there, yeah. [Transcript, pg. 20, lines 1-6]. Appellee’s only other witness, Terry Moraga, did not testify regarding the time of the incident. The only reference to a time was when she was repeated that what Appellee stated, namely that she and Mr. Hernandez were having dinner at the time Appellant was allegedly knocking at the door. [Transcript at pg. 24, lines 14-17].

When Appellee rested its case, Appellant argued that the Tribe had specifically designated a date and time on the complaint, however the testimony provided that the incident could have taken place at 2:00 p.m. or 3:00 p.m. or 8:00 p.m. [Transcript, pg. 43, lines 3-12]. Appellee agreed that there was confusion regarding the time the incident was alleged to have taken place, but he argued that it was not “a crucial matter” and that it was irrelevant. [Transcript, pg. 43, lines 20-25 and pg. 44, lines 7-19].

Appellant then presented the uncontroverted testimony of Martha Francisco, who testified that she had borrowed Appellant’s car at about 6:20 p.m. to go get a meal at the Casino. [Transcript, pg. 49, lines 4-11]. She testified there was no other car that she could use because it was the only one they had. [Transcript, pg. 49, lines 17-20]. The testimony was corroborated with a receipt from Casino Del Sol for a food order on November 16, 2013 at 6:40 p.m. bearing

the name of Martha Francisco, the witness. [Record at 12 and Transcript, pg. 50, line5-18]. She further testified that by the time she received the food order she would have gotten home around 7:10 p.m. [Transcript, pg. 52, lines 2-7]. Ms. Francisco testified that Appellant works out of Ms. Francisco's home and that Appellant was at home when she arrived from the Casino. [Transcript, pg. 55, lines 1-13]. Ms. Francisco also testified that police arrived at her home at about 7:31 p.m. [Transcript, pg. 56. Lines 6-9]. She remembered the time police got to her home because she looked at her phone [Transcript, pg. 56, lines 20-22] and because she texted Appellant to let her know the officers needed to talk to her since Appellant cannot be disturbed while at work. [Transcript, pg. 57, lines 1-6]. Appellant also testified that she spoke with the officer at about 7:35 p.m. She recalled the time because she has to keep track of the time while she is working. [Transcript, pg. 71, lines 13-19].

Appellant also testified regarding her work schedule and the fact that her time on the phone is being tracked, in seconds, by her employer. When Appellant attempted to establish a time for the alleged offense through the officer's call log, a burden of proof which Appellee was suppose to establish, Appellee objected and the Court sustained the objection. [Transcript at pg. 69, lines 14-25 and pg. 70, lines 1-25 and pg. 71, lines 1-2]. Had the specific time of the offense been proven by Appellee, Appellant would have been able to testify whether she was on calls or on a break at the time. Instead, the testimony showed that the alleged offense could have taken place at 2:00 p.m. or 3:00 p.m. or 7:54 p.m, as specified in the complaint or even 8:00 p.m. Moreover, the uncontroverted testimony of both Appellant and of Appellant's witness Martha Francisco, indicated that police arrived at Ms. Francisco's home between 7:31 and 7:35 p.m.

Consequently, it was not possible for the alleged crime to have been committed at 7:54 p.m. Notwithstanding the fact that Appellee conceded that the time of the offense was confusing and not established, the Tribal Court held that the offense was committed at the time stated in the complaint.

Appellee asserted that the offense occurred on a specific date and time, it allowed Appellant to structure her defense as to that certain date and time, but Appellee never proved the time of the offense thereby depriving Appellant of her alibi defense.

II. THE TRIBAL COURT ERRED IN NOT ADMITTING APPELLANTS WORK SCHEDULE AS SHOWN BY HER AGENT ACTIVITY INBOUND AND OUTBOUND LOG AFTER TESTIMONY BY APPELLANT, WHO HAD KNOWLEDGE THAT THE DOCUMENT WAS WHAT IT CLAIMED TO BE PURSUANT TO RULE 47(a) AND (B)(1) OF THE PAUSCUA YAQUI RULES OF EVIDENCE.

At the trial, Appellant sought to introduce into evidence her Agent Activity Inbound and Outbound log. She testified that she worked for American Airlines, making reservations by phone from her home computer. She testified that the log was her schedule for Saturday, November 16th, showing that she worked from 11:00 a.m. to 9:29 p.m. She explained what the document was and how it tracked her time on the phone for her employer. Specifically, it showed the time on the phone, in seconds, the phone number of the caller, the time spent on the phone with the caller and whether the person was placed on hold. [Transcript, pgs. 63-69]. After the testimony regarding the document, Appellant sought to introduce it into evidence, but Appellee objected, stating that there was no foundation presented. [Transcript, pg. 84, lines 87-19]. The

Tribal Court sustained the objection and did not admit the document for lack of foundation. [Transcript at pg. 85, lines 1-3].

Rule 47 of the Pascua Yaqui Rules of Evidence provide that “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in questions is what its proponent claims. 3 PYTC R.Evid. Rule 47 (A). Examples to show that the rule has been conformed to are provided under section B. “Testimony by a witness with knowledge that the matter is what it is claimed to be.” 3 PYTC R.Evid. Rule 47 (B)(1).

In this case, Appellant testified, under oath, that the Agent activity log was her work schedule for November 16, 2013. She testified as to what each item on the log represented. Consequently, she provided sufficient authenticity and identification of the document as required under the Tribal Code and it should have been admitted.

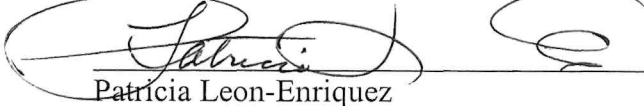
CONCLUSION

The Tribal Court committed clear error in not requiring the Tribe to establish the time of the offense, especially when an alibi defense had been asserted and Appellant relied on the time in establishing her defense. Additionally, it was error for the Tribal court to find that the offense had occurred on the evening of November 16, 2014, at approximately 7:54 p.m., when the time was not established by the evidence and Appellee conceded that it had not been established.

The Tribal Court also committed clear error in failing to admit Appellants work schedule into evidence pursuant to 3 PYTC R.Evid. Rule 47 (B)(1) after Appellant, with knowledge of

the document, had testified regarding what the document claimed to be. The errors deprived Appellant of her alibi defense in violation of her due process rights.

DATED this 30th day of June, 2014.

PASCUA YAQUI PUBLIC DEFENDER

Patricia Leon-Enriquez
Senior Staff Attorney
Attorney for Appellant

CERTIFICATE OF SERVICE


I hereby certify that Ms. DeLaCruz's Opening Brief was delivered this date to:

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

and that one (1) copy of Ms. DeLaCruz's Opening Brief was delivered this date to:

Yancy Jencsok
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Interim Chief Prosecutor
Office of the Prosecutor of the Pascua Yaqui Tribe
7474 South Camino de Oeste
Tucson, AZ 85757

DATED this 30th day of June, 2014.

PASCUA YAQUI PUBLIC DEFENDER

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3 Patricia Leon-Enriquez
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Attorney for Appellant

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

8
9 PASCUA YAQUI TRIBE,
10 Appellee,

11 vs.

12 DELACRUZ, ELIZABETH,
13 Appellant.

) Case No(s). CA-14-002,

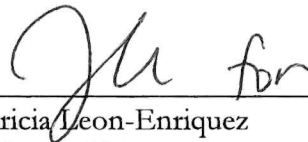
) Tribal Court No(s). CR-14-115

) **NOTICE OF FILING OF TRANSCRIPT**

14
15 Appellant Elizabeth Delacruz, through counsel and pursuant to 3 PYTC § 2-3-110(F),
16 Pascua Yaqui Rules of Appellate Procedure, respectfully files the transcript of the proceedings before the
17 lower court.

18 DATED this 29th day of May, 2014.

19 PASCUA YAQUI PUBLIC DEFENDER

20 
21 _____

22 Patricia Leon-Enriquez
23 Senior Staff Attorney

24 ORIGINAL delivered this date to
PYT Court of Appeals:

25 COPY of the foregoing hand-delivered this date
26 PY Prosecutor's In-Box by:
27
28

IN THE PASCUA YAQUI TRIBAL COURT

CITY OF TUCSON, COUNTY OF PIMA, STATE OF ARIZONA

PASCUA YAQUI TRIBE,)	NO. CR-14-115
)	
Plaintiff,)	
)	
vs.)	
)	
ELIZABETH DELACRUZ,)	
)	
Defendant.)	Tucson, Arizona
_____)	

BEFORE: THE HONORABLE MELVIN STOOF, JUDGE OF THE
PASCUA YAQUI TRIBAL COURT

APPEARANCES: G. ALLEN OSBURN, ESQ.
 appearing for Plaintiff

PATRICIA LEON-ENRIQUEZ, ESQ.
appearing for Defendant

RE: BENCH TRIAL

Christine McGarvey
Legal Transcription Services Plus, Inc.

1
2 **INDEX**

3 **WITNESS (ES)**

4 Jon Hernandez, Witness
5 Terry Moraga, Witness
6 Martha Suzanne Francisco, Witness
7 Elizabeth Delacruz, Witness
8

9 THE COURT: Good Afternoon. Please be
10 seated.

11 COURT CLERK: The Honorable Stoof presiding.

12 THE COURT: This is CR-14-115 and TR-14-
13 13373, Pascua Yaqui Tribe versus Elizabeth Delacruz, who with
14 present with their counsel, Patricia Leon-Enriquez. Uhm,
15 (inaudible), resent with his witnesses. And Ms. Leon-Enriquez,
16 has your with a reading of rights?

17 MS. LEON-ENRIQUEZ: Yes, Your Honor.

18 THE COURT: And, (inaudible)?

19 MS. LEON-ENRIQUEZ: Yes.

20 THE COURT: Okay. Is the Tribe, uh, ready
21 to go forward?

22 MR. OSBURN: Yes, Your Honor.

23 THE COURT: Okay. So, before we get to
24 opening, uh, is anyone invoking the Rule at this time,
25 (inaudible), swear in all witnesses, prior to, uh, your opening?
26
27
28

1 MR. OSBURN: (Inaudible), witnesses here
2 are Terry Moraga and Joe Hernandez.

3 THE COURT: Okay. Let's go ahead and
4 swear in, uh, all witnesses who will testifying here today. If
5 you could please raise your right hands? Uh, do you swear or
6 affirm that the testimony that you're about to give will be the
7 truth, the whole truth, and nothing but the truth, so help you
8 God?
9

10 WITNESSES: Yes. I do.

11 THE COURT: Okay. Going ahead and
12 invoking the Rule.
13

14 MS. LEON-ENRIQUEZ: No, Your Honor.

15 MR. OSBURN: No, Your Honor.

16 THE COURT: No? Okay. Let's go ahead and
17 hear the opening arguments.
18

19 MR. OSBURN: (Inaudible.)

20 THE COURT: Uh, I'm sorry. Opening
21 statements. Any opening statement for defense?
22

23 MS. LEON-ENRIQUEZ: No. (Inaudible), Your Honor.

24 THE COURT: Okay. Any, uh, pre-trial
25 motions?
26
27
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1 MR. OSBURN: No, Your Honor.
2 THE COURT: Okay. Mr. Osburn, you may
3 call your first witness.
4 MR. OSBURN: I call Jon Hernandez. Good
5 afternoon. Could you please tell us your name?
6 MR. HERNANDEZ: My name is Jon Hernandez.
7 MR. OSBURN: And, uh, where do you live?
8 MR. HERNANDEZ: I live at 7337 South
9 Tetaviecti.
10 MR. OSBURN: Is that on the Reservation?
11 MR. HERNANDEZ: Yes, it is.
12 MR. OSBURN: And, uh, approximately how
13 long have you lived there?
14 MR. HERNANDEZ: Uhm, about a year and a half
15 now.
16 MR. OSBURN: And, uh, do you know, uh,
17 Elizabeth Delacruz?
18 MR. HERNANDEZ: Yes, I do.
19 MR. OSBURN: Do you see her here today?
20 MR. HERNANDEZ: Yes, I do.
21 MR. OSBURN: Please tell us where she's
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1 seated and what she's wearing.

2 MR. HERNANDEZ: Right here with the green
3 dress, blue.

4 MR. OSBURN: For the Record, the, uh,
5 witness was pointing at the defendant seated at the table to my
6 left.

7 THE COURT: Noted.

8 MR. OSBURN: Uh, how well do you know, uhm,
9 Ms. Delacruz?

10 MR. HERNANDEZ: Well, we've known each other
11 since we were, basically in elementary, all the way through high
12 school, and, uh, we kind of talked here and there. Uhm, never
13 carried a relationship with each other, but we, we talked. That
14 was about it. So, it's been up until now we just recently started
15 a relationship, uhm, about a year ago, or a year and a half ago,
16 we started talking.

17 MR. OSBURN: So, uh, have you ever lived
18 together?

19 MR. HERNANDEZ: No. No. No. We never lived
20 together, well, until, until now.

21 MR. OSBURN: I'm sorry?

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1 MR. HERNANDEZ: Until now, about a year ago, I
2 mean, about a year and a half ago, we started living together.

3 MR. OSBURN: Oh, so you did live together?

4 MR. HERNANDEZ: Yes. Uh-huh.

5 MR. OSBURN: Okay. Was that a, uhm, a
6 relationship, or, uh, a romantic relationship, or was that
7 something else?
8

9 MR. HERNANDEZ: Yes. It was, it was, at first
10 it was a roman--, uh, romantic relationship. It was, uh, it was,
11 it was, uh, more of a friendship relationship where we got to know
12 each other a little bit more, and carried on, uh, you know, where
13 we decided we better move in together. We decided we were going
14 to move in together and live together.
15

16 MR. OSBURN: Okay. Uhm, are you currently
17 living together?
18

19 MR. HERNANDEZ: No, we're not.

20 MR. OSBURN: Uh, is it safe to say that the
21 relationship has, uh, changed from that, uh, period?
22

23 MR. HERNANDEZ: Oh, yeah. Definitely. Yeah.

24 MR. OSBURN: And how has it changed?

25 MR. HERNANDEZ: Uhm, over the years of, I
26
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1 mean, over the year that we were staying together, uh, living
2 together, uhm, I noticed that, uh, she was starting, kind of like,
3 uhm, really aggressive. Uhm, there was a lot of things that were
4 going on that I didn't know about.
5

6 MS. LEON-ENRIQUEZ: Objection, Your Honor.
7 Relevance.

8 THE COURT: (Inaudible- talking at the
9 same time), --

10 MR. OSBURN: (Inaudible- talking at the
11 same time). Let me just, uh, have you focus on, is the
12 relationship as amicable as it was in the beginning.
13

14 THE COURT: Oh, response to the objection.

15 MR. OSBURN: Oh, I'm sorry.

16 THE COURT: Yeah. Response to the
17 objection.
18

19 MR. OSBURN: Uh, Your Honor, I'm going to
20 rephrase the question, if I may?

21 THE COURT: Sustained.

22 MR. OSBURN: Uh, has your relationship
23 changed from that amicable state that it was?
24

25 MR. HERNANDEZ: Yes.
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1 MR. OSBURN: Is it less amicable now?

2 MR. HERNANDEZ: Yes, it is.

3 MR. OSBURN: Uhm, could you tell us how,
4 how much it's gone, uh, into a non-amicable state?
5

6 MR. HERNANDEZ: Oh, uhm, it was more, more
7 relationship when we first started, it was where we talked to each
8 other, and communicated with each other, but over the years, uhm,
9 I mean, we drifted so far a part that, uh, we stopped talking to
10 each other, and stopped communicated with each other. Started, it
11 was more of an argument where, you know, uh, I don't know, I don't
12 know what was going on with her, I'm not her doctor.
13

14 MR. OSBURN: Is it, is it a hostile
15 relationship now?

16 MR. HERNANDEZ: Yes, it was. A very hostile
17 relationship.
18

19 MR. OSBURN: Now, uhm, are you able to,
20 uhm, recognize, uh, her voice, if you were to hear it?

21 MR. HERNANDEZ: Oh, yeah.

22 MR. OSBURN: Uhm, do you know what, uh,
23 things about her, do you know what kind of car she drives?
24

25 MR. HERNANDEZ: Yes.
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1 MR. OSBURN: Okay. Can you tell us what
2 kind of car does she drive?
3 MR. HERNANDEZ: She drives a 2002 Jeep Grand
4 Cherokee, blue.
5 MR. OSBURN: Do you recognize it when you
6 see it?
7 MR. HERNANDEZ: Yes.
8 MR. OSBURN: Okay. Now, uhm, do you know,
9 uh, uhm, Terry Moraga?
10 MR. HERNANDEZ: Yes, I do.
11 MR. OSBURN: Please tell us, uh, about how
12 you Terry Moraga?
13 MR. HERNANDEZ: Me and Terry Moraga had, uh,
14 had a relationship, uhm, prior to, uh, Elizabeth, uhm, for about
15 six years, seven years.
16 MR. OSBURN: Do you, uhm, do you know, uh,
17 Terry, what kind of car Terry Moraga drives?
18 MR. HERNANDEZ: Yes, I do.
19 MR. OSBURN: Please tell us what that is.
20 MR. HERNANDEZ: Uhm, it's, it's a small,
21 little, I think it was a small, uhm, Ford, uh, Fiesta, or
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1 something like that, or a Fiat. I don't remember.

2 MR. OSBURN: What was the color?

3 MR. HERNANDEZ: White.

4 MR. OSBURN: Uhm, now, on November 16th,

5 right around 8:00 p.m. do you, uh, were you home at that time?

6 MR. HERNANDEZ: Yes.

7 MR. OSBURN: And, uh, was anyone there with

8 you?

9 MR. HERNANDEZ: Yes. Terry Moraga was.

10 MR. OSBURN: And, uh, how did Terry, uh,

11 get there to your residence?

12 MR. HERNANDEZ: She drove over there in the

13 little white car.

14 MR. OSBURN: Uh, where was that car parked?

15 MR. HERNANDEZ: Right in my front yard. Right

16 in front of my door.

17 MR. OSBURN: Uhm, now what, uhm, uh, as you

18 were there at the residence, uhm, did you remember anything

19 unusual happening in the evening?

20 MR. HERNANDEZ: Yeah. Uhm, Elizabeth showed

21 up knocking on the door, asking, asking to come in.

22

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1 MR. OSBURN: About what time was that?

2 MR. HERNANDEZ: Uh, I'm going to say it was
3 about 2:00 o'clock, maybe 3:00 o'clock.
4

5 MR. OSBURN: Okay.

6 MR. HERNANDEZ: Somewhere around there.

7 MR. OSBURN: And then what happened?

8 MR. HERNANDEZ: I don't remember what time.

9 Uhm, I looked up at the, up at the, the front window to see who it
10 was, and it was Liz, and, uh, I told her, you know, I asked her to
11 leave, and that's when she yelled out through the door, who's in
12 there with you, is it Terry, is it that, uh, she said, uh, is it
13 that fucking bitch. And I said, you know what, you need to leave
14 now before I call the police. And that's when, uh, the knocking
15 stopped, and we heard her get in the car, and she backed up, and
16 started hitting the car. We could actually hear the, the impact
17 of the car.
18
19

20 MR. OSBURN: Now, uh, had you, uh, were you
21 familiar with Terry's car prior to this, uh, incident?
22

23 MR. HERNANDEZ: Yes.

24 MR. OSBURN: Was that car damaged in any
25 prior to this?
26
27
28

1 MR. HERNANDEZ: No. It was a brand new car.

2 MR. OSBURN: Uhm, what did you do then?

3 MR. HERNANDEZ: Uh, that's when we, uh, waited
4 for to leave because I was trying to hold Terry back. She wanted
5 to go outside and confront her. And I, uh, went outside after she
6 left, and Liz left, and I, uhm, that's when the kids across the
7 street, all of them came across the street, that lady your car,
8 that lady hit your car. And, --

10 MS. LEON-ENRIQUEZ: Objection, Your Honor. Those,
11 those witnesses aren't here to testify. That's hearsay and an
12 issue with the confrontation.
13

14 MR. OSBURN: I have objection to, uhm,
15 striking the language about, --

17 THE COURT: We're going to strike that
18 last response, unresponsive, and, uh, also it's hearsay.

19 MR. HERNANDEZ: Uhm, that's when we, we called
20 the police.

21 MR. OSBURN: Now, I'm a little confused.
22 Earlier we had talked about the time being around, uh, 8:00 p.m.
23 but then you said 2:00 to 3:00 p.m. Can you help, uh, me clarify
24 what time this incident took place?
25

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1 MR. HERNANDEZ: Well, it, it was, it was a
2 while ago, so I don't remember exactly what time it was. Uhm,
3 there was a lot going on that day, and it was, it was, yeah, you
4 know what, it was kind of late, 'cause when the police got there
5 they had me actually light up the area right there where they
6 were, where they saw the tracks.
7

8 MR. OSBURN: So, was it evening, would you
9 say?
10

11 MR. HERNANDEZ: Yes. Uh-huh.

12 MR. OSBURN: Uhm, did you, uhm, notice if
13 the, uh, defendant stayed, uh, on the property after she crashed
14 into the car?
15

16 MR. HERNANDEZ: No. She, she took off.
17 Accelerated and got out of there.

18 MR. OSBURN: Did she, uh, did the defendant
19 leave a note, uh, after she had, -- ?
20

21 MR. HERNANDEZ: No.

22 MR. OSBURN: Did you actually see the
23 defendant drive away?
24

25 MR. HERNANDEZ: Yes. No. I didn't, I didn't
26 see her drive away. I was busy holding Terry back inside the
27
28

1 house.

2 MR. OSBURN: Okay.

3 MR. HERNANDEZ: We heard her accelerate.

4 MR. OSBURN: What did, what did you see
5 exactly the defendant do specifically?
6

7 MR. HERNANDEZ: Just back up, I mean, when I
8 looked out the door, the only time I saw Liz was when she was
9 knocking on the door. That was the only time. But we can
10 actually hear her get in the car and, uh, back up, and take off,
11 and hit the car.
12

13 MR. OSBURN: Was there any time delay from
14 when she stopped knocking and left, --

15 MR. HERNANDEZ: Yes.

16 MR. OSBURN: -- between that and the crash?

17 MR. HERNANDEZ: Yes. It was a little, --

18 MR. OSBURN: What kind of time?

19 MR. HERNANDEZ: It was about, probably a
20 minute or so.
21

22 MR. OSBURN: Okay. So, she stopped
23 yelling, went to leave, and you say about a minute or so she, then
24 you heard the crash?
25
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1 MR. HERNANDEZ: Yes. Uh-huh.

2 MR. OSBURN: And you didn't look out the
3 window when you heard the crash?
4

5 MR. HERNANDEZ: No. I was too busy trying to
6 hold Terry back.

7 MR. OSBURN: So, uhm, this all happened on
8 the Reservation?

9 MR. HERNANDEZ: Yes. Uh-huh.

10 MR. OSBURN: Are you aware of any of the
11 costs associated with the damage to the vehicle?
12

13 MR. HERNANDEZ: Uhm, I believe it was around
14 \$800.00 or so. I'm not sure. Somebody had mentioned that.

15 MR. OSBURN: Are you sure that it was, uh,
16 Elizabeth Delacruz, the defendant who, uhm, did that?
17

18 MR. HERNANDEZ: Positive.

19 MR. OSBURN: How is it you're so sure?

20 MR. HERNANDEZ: Uh, she was the only one there
21 knocking on my door, and she was pretty angry 'cause we wouldn't
22 go outside.
23

24 MR. OSBURN: Were you pretty upset when she
25 was yelling at your door?
26
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28

1 MR. HERNANDEZ: Yes, I was.
2 MR. OSBURN: Was she loud?
3 MR. HERNANDEZ: Uhm, kind of, yeah. Yeah.
4 She was, she was pretty aggressive on the door.
5
6 MR. OSBURN: Do you know what, uh, let me
7 change gears a little bit. Do you know what Ms. Delacruz does for
8 a living?
9 MR. HERNANDEZ: Uh, yeah. She works for
10 American Airlines; she takes reservations.
11
12 MR. OSBURN: And is the mechanism for her
13 doing the, the procedure, how does she, how does that go about?
14 MR. HERNANDEZ: She pretty much, uh, receives
15 the calls from home on the computer, uhm, sets up the, I believe
16 it's online with the customer, uh, reservations, and gets them set
17 up so they can travel already and go, go places, or other.
18
19 MR. OSBURN: And is that done through her
20 computer in her house?
21 MR. HERNANDEZ: Yes. Uh-huh.
22 MR. OSBURN: Is she, uh, familiar with how
23 to run computers as far as you know?
24
25 MR. HERNANDEZ: Oh, yeah.
26
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1 MS. LEON-ENRIQUEZ: Objection, Your Honor. He's
2 asking with her familiarity with the computer. It's speculation,
3 --

4
5 MR. OSBURN: Your Honor, I think you would
6 be in a position to know that since he had lived with her at one
7 point, and they had a relationship, uh, certainly able to know
8 whether she's familiar with a computer, and able to work on them.

9 THE COURT: Well, I'm going to sustain the
10 objection because of lack of foundation and say that, uh, uh,
11 again, not that it calls for speculation at this time, but you,
12 you haven't laid a predicate as to this knowledge about her, uh,
13 skills. So, I'm going to sustain the objection, based on that.

14
15 MR. OSBURN: Let me go back a little bit.
16 Uhm, you indicated that she does her work on a computer.. is that
17 right?

18
19 MR. HERNANDEZ: Yes. Uh-huh.

20 MR. OSBURN: And you've seen her do that?

21 MR. HERNANDEZ: Yes. Uh-huh.

22
23 MR. OSBURN: Uh, have you seen her work
24 with a computer?

25 MR. HERNANDEZ: Oh, yeah. Oh, yeah.

1 MR. OSBURN: Is she, uh, familiar with how
2 it works?
3 MR. HERNANDEZ: Oh, definitely. She knows her
4 way around.
5 MR. OSBURN: Okay. Nothing further.
6 THE COURT: Cross.
7 MS. LEON-ENRIQUEZ: Thank you, Your Honor. Okay.
8 Uh, Mr. Hernandez, you testified that you were the one that called
9 the police... correct?
10
11 MR. HERNANDEZ: Right.
12 MS. LEON-ENRIQUEZ: Okay. Uhm, and you initially
13 said this had occurred between 2:00 and 3:00 p.m.?
14
15 MR. HERNANDEZ: I didn't remember the times.
16 MS. LEON-ENRIQUEZ: Okay. And do you recall
17 telling the officer, uhm, when the officer showed up that you
18 heard banging on the door?
19
20 MR. HERNANDEZ: Yeah.
21 MS. LEON-ENRIQUEZ: Okay.
22 MR. HERNANDEZ: I heard knocking on the door.
23 MS. LEON-ENRIQUEZ: But you never told the officer
24 that you had actually looked out and seen Elizabeth?
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1 MR. HERNANDEZ: I don't remember if I did or
2 not.
3 MS. LEON-ENRIQUEZ: Okay. You also, uh,
4 testified, you never actually saw the car leave?
5 MR. HERNANDEZ: No. I never saw the car
6 leave.
7 MS. LEON-ENRIQUEZ: You just heard the car?
8 MR. HERNANDEZ: Yes. Uh-huh.
9 MS. LEON-ENRIQUEZ: All right. And you also
10 never, never told the officer that you had heard any sounds, any
11 crashing sounds, or anything?
12 MR. HERNANDEZ: Uhm, yeah, we did, actually.
13 MS. LEON-ENRIQUEZ: You told the officer that you
14 heard crashing sounds?
15 MR. HERNANDEZ: I believe so, yeah.
16 MS. LEON-ENRIQUEZ: Now, when you heard the car
17 speed away you didn't immediately call the police did you?
18 MR. HERNANDEZ: No. We went outside.
19 MS. LEON-ENRIQUEZ: After you testified a while
20 ago that it, uh, that it was between 2:00 or 3:00 o'clock in the
21 afternoon and then that it was at approximately 8:00 p.m. when
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1 this actually happened, are you just basing it on, just basing it
2 on the fact that it might have been dark outside?

3 MR. HERNANDEZ: It was a little dark outside,
4 yeah, uh, outside by the time everything for set up, and police
5 got there, yeah. There was two officers responding.
6

7 MS. LEON-ENRIQUEZ: Now, you also told the police
8 that you later noticed the scratch marks on the car.. correct?

9 MR. HERNANDEZ: The blue, yeah, the blue marks
10 on the car, yeah.
11

12 MS. LEON-ENRIQUEZ: Okay. And it was just scratch
13 marks, you didn't tell the officer there was any, show any dents
14 or anything on the car?

15 MR. HERNANDEZ: I didn't have to. He took
16 pictures.
17

18 MS. LEON-ENRIQUEZ: Now, you said that there was
19 two officers that were present... correct?

20 MR. HERNANDEZ: Right.

21 MS. LEON-ENRIQUEZ: Uh, isn't it true that you
22 told one of the officers, Officer Molina, that Elizabeth wasn't
23 there?
24

25 MR. HERNANDEZ: Excuse me?
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1 MS. LEON-ENRIQUEZ: That you told Officer Molina
2 that Elizabeth had not been to your house?

3 MR. HERNANDEZ: Uhm, I never said that. I
4 don't know what you, I don't even know who Officer Molina is.
5

6 MS. LEON-ENRIQUEZ: Well, you told one of the
7 officers that.

8 MR. HERNANDEZ: Uh, no. I never stated that.

9 MS. LEON-ENRIQUEZ: And your testimony was that
10 you never saw Elizabeth hit Ms., (inaudible), car... correct?
11

12 MR. HERNANDEZ: Right.

13 MS. LEON-ENRIQUEZ: And the testimony that you
14 had, uh, or the information that you had given the officer that
15 arrived was that at the time of knocking on your door you were
16 inside the house?
17

18 MR. HERNANDEZ: Yes. Uh, could you repeat
19 that again?

20 MS. LEON-ENRIQUEZ: That the information you gave
21 the officer that showed up at your house was that you were inside
22 the house when Elizabeth was knocking?
23

24 MR. HERNANDEZ: Right. Correct.

25 MS. LEON-ENRIQUEZ: If I may have a moment, Your
26
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1 Honor? I have no further questions, Your Honor?
2 THE COURT: Any redirect?
3 MR. OSBURN: No, Your Honor.
4 THE COURT: Okay. Your excused. Thank
5 you.
6
7 MR. HERNANDEZ: All right. Thank you.
8 MR. OSBURN: The Tribe calls Terry, Terry
9 Moraga. Good afternoon. Please tell us your name?
10 MS. MORAGA: Terry Moraga.
11 MR. OSBURN: And, uhm, do you, uh, do you
12 know Jon Hernandez?
13 MS. MORAGA: Yes, I do.
14 MR. OSBURN: Okay. How do you know him?
15 MS. MORAGA: We were together for six or
16 seven years. We were together before for at least six to seven
17 years.
18 MR. OSBURN: Uhm, so do you have a
19 relationship?
20 MS. MORAGA: Right now? We're just
21 friends.
22 MR. OSBURN: Uh, do you know, uh, Elizabeth
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1 Delacruz?

2 MS. MORAGA: I've seen her, knew that she
3 was his girlfriend.

4 MR. OSBURN: Uhm, would, do you know her
5 to, would you recognize her if you saw her somewhere, --
6

7 MS. MORAGA: Yes, I do.

8 MR. OSBURN: -- in a grocery store or this
9 room? Uhm, now, do you remember an incident taking place, uh, in
10 the evening of November 16th in the evening? Do you remember an
11 incident happening on November 16th, in the evening?
12

13 MS. MORAGA: Yes.

14 MR. OSBURN: Please tell us what, uh, how
15 it all began?
16

17 MS. MORAGA: Uh, it began that, uh, I was
18 at his house; we were eating in the living room.

19 MR. OSBURN: And how did you get to the
20 house?

21 MS. MORAGA: My car.

22 MR. OSBURN: What kind of car is that?

23 MS. MORAGA: It's a white car, it's a Chevy
24 Cobalt, --
25
26
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1 MR. OSBURN: And, uh, --
2 MS. MORAGA: -- 2010.
3 MR. OSBURN: -- was that car damaged prior
4 to your arrival?
5
6 MS. MORAGA: I just barely got that car
7 brand new.
8 MR. OSBURN: So, was there any damage to
9 it?
10
11 MS. MORAGA: Nope.
12 MR. OSBURN: Are you sure?
13 MS. MORAGA: Yes.
14 MR. OSBURN: Okay. Uhm, so, go ahead, you
15 said you were there, and you had dinner.. is that right?
16
17 MS. MORAGA: We were having dinner, yeah.
18 MR. OSBURN: And what happened?
19 MS. MORAGA: And, uhm, I heard a noise, a
20 knocking on the window and on the door, and I heard her voice.
21
22 MR. OSBURN: Whose voice is that?
23 MS. MORAGA: Elizabeth Delacruz.
24 MR. OSBURN: Okay. Do you see Elizabeth
25 Delacruz here today?
26
27
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1 MS. MORAGA: Yes.

2 MR. OSBURN: Please tell us where she's
3 seated and what she's wearing?

4 MS. MORAGA: She's wearing, uh, a blue-ish,
5 like a green dress with black.

6 MR. OSBURN: And for the Record the witness
7 was pointing at, uh, the defendant.

8 THE COURT: Noted.

9 MR. OSBURN: Uhm, what happened, uh, then?

10 MS. MORAGA: She started knocking. First
11 she knocked on the window and then she ask, uh, Jon, who's there
12 with you, and then, uh, she started knocking on the door, and she
13 goes, who's that bitch in there with you, is that Terry in there
14 with you.

15 MR. OSBURN: Did that disturb you?

16 MS. MORAGA: Of course. Anybody calls you
17 names it's going to disturb you.

18 MR. OSBURN: What happened then?

19 MS. MORAGA: Uhm, he told her to leave, and
20 she kept banging on the door, and then, uh, I heard her going,
21 getting inside the car. 'Cause the, where the living room, the
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1 window is just right here where the cars are parked, you can hear
2 even the neighbors going in their car. And I heard her go in the
3 car, and then all I heard was like, uh, loud, banging noise. And
4 then I heard her, like, reverse, and then go back again.
5

6 MR. OSBURN: Now, did you, --

7 MS. MORAGA: He restrained me from going
8 out there.

9 MR. OSBURN: Did you see her?

10 MS. MORAGA: No, I didn't.

11 MR. OSBURN: Now, when you say you can
12 hear, how do you know the noise wasn't from the neighbor?
13

14 MS. MORAGA: Uh, the window where, where we
15 were, it's like, right here, and like, right in front of where you
16 are is the cars. You can hear actually right away.
17

18 MR. OSBURN: So, that's, uhm, --

19 MS. MORAGA: You can hear, like, uh, like,
20 you know, how when you crash somebody's car, that's how you hear.

21 MR. OSBURN: Uhm, what did you do at that
22 point?
23

24 MS. MORAGA: I got up and ran and he tried
25 to restrain me, not to go outside.
26
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1 MR. OSBURN: Who, who is he?
2 MS. MORAGA: Jon Hernandez.
3 MR. OSBURN: Uh, were you upset?
4 MS. MORAGA: I was crying. Yeah. 'Cause I
5 just barely got that car.
6 MR. OSBURN: Uhm, what happened then?
7 MS. MORAGA: Uh, as soon as we heard her
8 leave he opened the door, and we heard the nei--, the kids playing
9 out across the street, --
10 MR. OSBURN: Okay. But, but without
11 telling us what people said.
12 MS. MORAGA: Okay.
13 MR. OSBURN: Okay. Just tell us what your
14 experience was at that point.
15 MS. MORAGA: I went, I went in my car, and
16 I noticed that she hit the car, uh, she moved the distance of my
17 car to, almost like a foot from where the car was parked, she
18 moved it. 'Cause my car's small, she had a car, uh, a truck. And
19 I noticed a big dent on my car with blue, blue marks on the side
20 of the car. It was close to the gas tank where she hit it.
21 MR. OSBURN: Did you, uhm, have that damage
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1 assessed?

2 MS. MORAGA: Yes, I did.

3 MR. OSBURN: Uh, what kind of costs did
4 you, uhm, incur for this, the damage?
5

6 MS. MORAGA: The total of the damage is,
7 including the rental is \$828.45.

8 MR. OSBURN: Uhm, what happened then?

9 MS. MORAGA: Uh, I couldn't think, I was
10 shaking, and, uh, Mr. Hernandez called the police for me. They
11 went and took pictures of the car, and, uhm, they, I guess they
12 went to go look for her, but they couldn't find her.
13

14 MR. OSBURN: Uhm, I have no further
15 questions.

16 MS. LEON-ENRIQUEZ: Thank you, Your Honor. Now,
17 Ms. Moraga, you, you heard Mr. Hernandez's testimony... correct?
18

19 MS. MORAGA: Yes.

20 MS. LEON-ENRIQUEZ: Okay. Uhm, and he testified
21 that you and he had, uh, six or seven year relationship, --
22

23 MS. MORAGA: Yes.

24 MS. LEON-ENRIQUEZ: -- prior to Ms. Delacruz?

25 MS. MORAGA: Yes. Correct.
26
27
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1 MS. LEON-ENRIQUEZ: You never quite got over of
2 that... correct?

3 MS. MORAGA: Excuse me?

4 MS. LEON-ENRIQUEZ: You never got over the
5 relationship?
6

7 MS. MORAGA: Uh, yes, I did. I have my own
8 boyfriend. Thank you.

9 MS. LEON-ENRIQUEZ: In fact, since Mr. Hernandez
10 started dating, uh, Ms. Delacruz, you made several accusations
11 against her.
12

13 MS. MORAGA: No. Sorry.

14 MS. LEON-ENRIQUEZ: Okay. You don't recall filing
15 restraining orders against her starting back in February of 2012?
16

17 MS. MORAGA: I got a restraining order
18 against her because she was harassing me over his phone.

19 MS. LEON-ENRIQUEZ: But that's not what you had
20 said in the restraining order... correct?

21 MS. MORAGA: She was texting me through his
22 phone.
23

24 MS. LEON-ENRIQUEZ: Okay. In fact, you were the
25 one that was calling her.
26
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1 MS. MORAGA: Well, how I would I know, --
2 MS. LEON-ENRIQUEZ: (Inaudible- talking at the
3 same time), --
4 MS. MORAGA: How will I know her number if
5 she, she would have had to call me first. I don't have no, no
6 commu--, I didn't even know who she was.
7 MS. LEON-ENRIQUEZ: (Inaudible- talking at the
8 same time), you couldn't get the phone number from, from Mr.
9 Hernandez?
10
11
12
13 MS. MORAGA: No. Because, uh, after we
14 left out relationship I never got in contact with him.
15 MS. LEON-ENRIQUEZ: Now, back in February of 2012
16 when you filed the restraining order you were claiming that you
17 feared for your life?
18 MS. MORAGA: Yes.
19 MS. LEON-ENRIQUEZ: That she was harassing you?
20 MS. MORAGA: Yes. She went to my work.
21 MS. LEON-ENRIQUEZ: Okay. But you never showed up
22 in court, --
23 MS. MORAGA: The problem was, --
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1 MS. LEON-ENRIQUEZ: -- for the restraining order?

2 MS. MORAGA: Yes. The problem is that
3 where I work at Sol Casinos it's hard for them to lea--, let me go
4 even when I have a court or--, uh, court time for that. I have to
5 actually ask for PTO hours, and I didn't have the time, the PTO
6 hours for me to ask for the day off.
7

8 MS. LEON-ENRIQUEZ: Okay. But, uh, back in, this
9 is back in 2012 when you filed for the restraining order, but then
10 as recent as August 30th you were trying to friend her on
11 Facebook.
12

13 MS. MORAGA: Uh, no. I'm sorry. No.

14 MS. LEON-ENRIQUEZ: No?

15 MS. MORAGA: I don't see what's, what's the
16 point of this, (inaudible).
17

18 MS. LEON-ENRIQUEZ: May I approach, Your Honor?

19 THE COURT: Yes.

20 MS. LEON-ENRIQUEZ: I'm going to be showing you
21 what's marked as Defense Exhibits C and D. Okay. Do you see your
22 information on there?
23

24 MS. MORAGA: Yeah.

25 MS. LEON-ENRIQUEZ: Is that a picture of you?
26
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1 MS. MORAGA: Yeah.

2 MS. LEON-ENRIQUEZ: Okay. And that's a friend
3 request... correct?

4 MS. MORAGA: Yeah, huh.

5 MS. LEON-ENRIQUEZ: Okay.

6 MS. MORAGA: But I never sent it.

7 MS. LEON-ENRIQUEZ: (Inaudible- talking at the
8 same time.) Okay. So, somebody else got in your Facebook and
9 sent a friend request?

10 MS. MORAGA: I'm hardly on my Facebook to
11 be honest with you.

12 MS. LEON-ENRIQUEZ: Okay. So other people have
13 your password to it then?

14 MS. MORAGA: Yes. My daughters do.

15 MS. LEON-ENRIQUEZ: And they would send friend
16 requests to, --

17 MS. MORAGA: I have no idea.

18 MS. LEON-ENRIQUEZ: -- (inaudible- talking at
19 the same time), --

20 ?

21 MS. MORAGA: I don't, they use my stuff, so
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1 I don't know.

2 MS. LEON-ENRIQUEZ: Uhm, but that is your
3 information, (inaudible)?
4

5 MS. MORAGA: Yes, it is.

6 MS. LEON-ENRIQUEZ: (Inaudible- talking at the
7 same time), --

8 MS. MORAGA: (Inaudible- talking at the
9 same time), but it wasn't me. But it wasn't me.

10 MS. LEON-ENRIQUEZ: Uh, Your Honor, if I may enter
11 this into evidence?
12

13 THE COURT: Any objections?

14 MR. OSBURN: No, Judge.

15 THE COURT: Okay. Go ahead and admit it
16 into evidence, uh, it's C and D?
17

18 MS. LEON-ENRIQUEZ: C and D.

19 THE COURT: Okay. The defendant's
20 exhibits C and D are admitted into evidence.

21 MS. LEON-ENRIQUEZ: Now, you testified that you
22 don't recall making calls to Ms. Delacruz on her work phone?
23

24 MS. MORAGA: Uh, I don't know her, --

25 MS. LEON-ENRIQUEZ: Do you recall, do you
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1 recognize the numbers 282-0152? You don't recall those numbers?
2 MS. MORAGA: No.
3 MS. LEON-ENRIQUEZ: Or 356-8251?
4 MS. MORAGA: No.
5 MS. LEON-ENRIQUEZ: You don't recall those
6 numbers?
7 MS. MORAGA: No.
8 MS. LEON-ENRIQUEZ: And so it's your testimony
9 here today that, uh, that those are not your numbers and never
10 were your numbers?
11 MS. MORAGA: Those numbers are you said?
12 MS. LEON-ENRIQUEZ: 252-0152 and 356-8251.
13 MS. MORAGA: I don't recognize the numbers.
14 MS. LEON-ENRIQUEZ: Now, you, you testified a
15 little while ago that you hadn't been in contact with Mr.
16 Hernandez prior to, uh, just recently?
17 MS. MORAGA: I see him at work. We work
18 together in the same casino. I don't talk to him at work.
19 MS. LEON-ENRIQUEZ: Okay. So, you didn't start
20 talking to him again until after, uhm, he and Ms. Delacruz split
21 up?
22
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1 MS. MORAGA: I didn't know they were
2 separated or not.

3 MS. LEON-ENRIQUEZ: Now, do you recall also, uh,
4 reporting Elizabeth to security at the Casino for other reasons?
5

6 MS. MORAGA: Yes, I do.

7 MS. LEON-ENRIQUEZ: Okay. And you also claimed,
8 or you also told security that, uh, she was banned from the
9 casino?
10

11 MS. MORAGA: No.

12 MS. LEON-ENRIQUEZ: But that wasn't true, was it?

13 MS. MORAGA: No.

14 MS. LEON-ENRIQUEZ: Uhm, then you also filed, uh,
15 a second restraining order in, on November 22nd of 2013... correct?
16

17 MS. MORAGA: Yes.

18 MS. LEON-ENRIQUEZ: Okay. So, once again you
19 filed alleging that she had, uh, was harassing you, and you
20 claimed in that restraining order that she had put sugar in your
21 tank?
22

23 MS. MORAGA: That was, that was a long time
24 ago. Yes.

25 MS. LEON-ENRIQUEZ: Right. That was, uh, and in
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1 that restraining order you remember telling, uhm, writing in the
2 restraining order that you reported that to the police, and that
3 you filed a restraining order at that time?
4

5 MS. MORAGA: I filed a restraining order,
6 yeah. That's the one I couldn't go, uh, I couldn't make it to the
7 court.

8 MS. LEON-ENRIQUEZ: Right. But in your
9 restraining order from November, November 22nd, you wrote that
10 you, that you had filed a restraining order after those incidents
11 in September of 2012.
12

13 MS. MORAGA: Yes.

14 MS. LEON-ENRIQUEZ: Okay. But that wasn't true..
15 correct? In fact, you had filed the restraining order in February
16 of 2012.
17

18 MS. MORAGA: I filed a restraining order
19 against her, uh, the one I couldn't make.

20 MS. LEON-ENRIQUEZ: That was February of 2012, the
21 one that you filed, but you were claiming that you had filed it in
22 September of 2012.
23

24 MS. MORAGA: It was, yeah. There was
25 another one that I did, but I didn't finish, I didn't go to the
26
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1 court for that.

2 MS. LEON-ENRIQUEZ: Okay. So that was the second
3 restraining order you never showed up in court for?

4 MS. MORAGA: No. I, I had to go back, I
5 was going to go back and finish the paperwork. I didn't, I never
6 went back and finished the paperwork.

7 MS. LEON-ENRIQUEZ: Uhm, and as a matter of fact,
8 in one of the restraining orders you also included the, the number
9 for a report that had nothing to do with Elizabeth... correct?
10

11 MS. MORAGA: No. There was no, those were
12 the ones that, uh, they have the reports for her. Yes.
13

14 MS. LEON-ENRIQUEZ: Okay. So, the, the citation
15 or the report number that you put on there was, you said had
16 something to do with Elizabeth?
17

18 MS. MORAGA: On the reports, yes. It's the
19 one where she went to work.

20 MS. LEON-ENRIQUEZ: May I approach, Your Honor?

21 THE COURT: Yes.

22 MR. OSBURN: (Inaudible- background noise.)

23 MS. LEON-ENRIQUEZ: Okay. Uh, Ms. Moraga, I'm
24 going to show you what's been marked as Defense Exhibit E, F, and
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1 G. Do you recognize those forms?
2 MS. MORAGA: Yeah.
3 MS. LEON-ENRIQUEZ: Okay. Uh, is, can you tell
4 the Court what those are?
5 MS. MORAGA: It's a restraining order
6 petition.
7 MS. LEON-ENRIQUEZ: Okay. Is that your writing on
8 those petitions?
9 MS. MORAGA: Yeah.
10 MS. LEON-ENRIQUEZ: Okay. Now, if you can look at
11 the third page of the petition you cite a certain police report
12 number. Can you read that out loud?
13 MS. MORAGA: P-1209-2612.
14 MS. LEON-ENRIQUEZ: This number here?
15 MS. MORAGA: No. Yeah. P-1209-26--, --
16 MS. LEON-ENRIQUEZ: Let me show you what's been
17 marked as Defense Exhibit H. Can you tell me if that is the same
18 report number?
19 MS. MORAGA: Yeah. I see it.
20 MS. LEON-ENRIQUEZ: Now, if you look at the, at
21 the police report, can you tell me if that has anything to do with
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1 Ms. Delacruz?

2 MS. MORAGA: (Inaudible- mumbling.)

3 MS. LEON-ENRIQUEZ: Do you see anything on there
4 relating to Ms. Delacruz?
5

6 MS. MORAGA: No. But this is the one when
7 I went upstairs and I was asking for the, for the papers for the,
8 for the incident report, they gave me three, and that's the
9 numbers they gave me upstairs. They told me I to, --

10 MS. LEON-ENRIQUEZ: I'd like to enter this into
11 the Record, Your Honor.
12

13 THE COURT: Any objections?

14 MR. OSBURN: No, Judge.

15 THE COURT: We will admit the, uh, it's E,
16 F, G, and you also said H, so it's four?
17

18 MS. LEON-ENRIQUEZ: (Inaudible- mumbling), F, H,
19 and E, Your Honor.

20 THE COURT: E, F, and H? Okay. Go ahead
21 and admit into evidence, uh, the reverse-order, uh, H, F, and E.
22 Thank you. They're admitted.

23 MS. LEON-ENRIQUEZ: Now, Ms. Moraga, you testified
24 that you were sitting by the window, uh, at the time that Ms., uh,
25
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1 Delacruz showed up.

2 MS. MORAGA: Yes.

3 MS. LEON-ENRIQUEZ: Okay. But you never told the

4 officer that you had looked out the window and actually had seen

5 him?

6

7 MS. MORAGA: I never said that to the

8 officer, I never did.

9 MS. LEON-ENRIQUEZ: You never talked to the

10 officer?

11

12 MS. MORAGA: No. I never told that I saw

13 her; I didn't look in the, through the window.

14 MS. LEON-ENRIQUEZ: So, you didn't see Elizabeth

15 though?

16

17 MS. MORAGA: I didn't saw her, I heard her.

18 MS. LEON-ENRIQUEZ: And you never saw her hit your

19 car?

20 MS. MORAGA: No, I didn't.

21 MS. LEON-ENRIQUEZ: I have no further questions,

22 Your Honor.

23

24 THE COURT: Any redirect?

25 MR. OSBURN: Uh, just to clarify, uhm, you,

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1 uhm, you say you didn't see her, but you heard her?
2 MS. MORAGA: Yes, I did.
3 MR. OSBURN: Do you recognize her voice?
4 MS. MORAGA: Yes, I do.
5 MR. OSBURN: Do you know her voice?
6 MS. MORAGA: Yeah.
7 MR. OSBURN: Is there any doubt in your
8 mind that that was the person who was there on that porch and then
9 crashed into your car?
10
11 MS. MORAGA: There's no doubt it was her.
12 MR. OSBURN: Nothing further.
13 THE COURT: Any re-cross?
14 MS. LEON-ENRIQUEZ: I do have one question, Your
15 Honor. Have you ever talked to Elizabeth?
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17 MS. MORAGA: I've heard her voice through
18 the phone.
19
20 MS. LEON-ENRIQUEZ: Okay. Never heard her in
21 person?
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23 MS. MORAGA: Yes.
24 MS. LEON-ENRIQUEZ: Never heard her in person?
25 MS. MORAGA: Yes.
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1 MS. LEON-ENRIQUEZ: Through the phone?
2 MS. MORAGA: In person, too.
3 MS. LEON-ENRIQUEZ: Okay. When was that?
4 MS. MORAGA: When she went to my work. She
5 went to Moby's when I was working.
6
7 MR. OSBURN: Your Honor, I don't believe
8 there's anything further for this witness, uhm, (inaudible).
9 MS. LEON-ENRIQUEZ: No.
10 THE COURT: No further questions? Okay.
11 You're excused, ma'am. Thank you.
12
13 MR. OSBURN: Your Honor, uhm, (inaudible),
14 move to, uh, may I approach?
15 THE COURT: Yes.
16 MR. OSBURN: (Inaudible- background noise.)
17 THE COURT: Any objections?
18 MR. OSBURN: (Inaudible- background noise.)
19 THE COURT: Any objections?
20 MS. LEON-ENRIQUEZ: No, Judge.
21 THE COURT: Okay. Go ahead and admit the
22 Tribe's Exhibit, uh, Number 1, uh, certificate, (inaudible).
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24 MR. OSBURN: The Tribe rests.
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THE COURT: Motions?

MS. LEON-ENRIQUEZ: Uh, yes, Your Honor. At this time I would ask for a, (inaudible). I believe there was testimony, actually there was kind of confusing testimony as far as when any of these events took place. Uhm, given that, uh, Mr. Hernandez initially said it happened between 2:00 and 3:00 and then after, uh, discussing it with, with, uh, Mr. Osburn he indicated it might have possibly been around 8:00 o'clock. That's a big time span. Uh, when the complaint specifically says that this happened, uh, at 7:54. I think there's not a question as to, to the timeframe. Uhm, additionally there's, there's testimony from the Tribe's witnesses indicating, uh, that none of them saw Ms. Delacruz. They, they possibly heard a voice of what they thought was Ms. Delacruz, and I don't think that would be sufficient for, for finding this case, Your Honor.

MR. OSBURN: Uh, Your Honor, I believe that, uh, we certainly have enough evidence. We have recognition, uh, direct recognition of the, uh, the, uh, defendant. I believe that, uhm, Jon Hernandez indicated that he, uh, viewed her, but they also recognized her voice. They had, uh, a relationship with her; he knows her voice because he was, they had a very close

1 relationship. It's someone who's had, (inaudible), connection
2 with. Uhm, and the, uhm, timeframe that is relevant is the
3 timeframe when the, uh, the, uh, the disorderly conduct occurred,
4 and then the crashing vehicle, which was a very short timeframe.
5 Uh, that is relevant, uh, with regard to what time of day this
6 was. It's true that there was some confusion with regard to that,
7 but that's not, uh, a crucial matter that he is, that the event
8 took place, and then the crash happened, and that was a very short
9 timeframe. We have clear, uh, evidence presented, uhm, a
10 recognition, uh, of the, uh, of the voice, and also, I believe it
11 was Mr. Jon Hernandez indicated he had had viewed her. Uh, so we
12 have, uh, clear evidence to indicate that, uh, the defendant was
13 in fact the person who did create the disorderly event, and did in
14 fact crash into the vehicles. Uhm, the fact that there was some
15 confusion as to what time of day this happened is certainly not,
16 uh, a relevant issue. Uhm, it's, uh, doesn't change the fact that
17 she did what she did, even if there is some confusion as to
18 exactly what time of day it was.

22 THE COURT: The Court, uhm, denies the
23 motion for directed verdict as to count one, uh, based on Tribe
24 meeting its burden. Uh, also the testimony of the, uh, witness
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1 indicating, uhm, that the defendant was, uh, aggressive at the
2 door, and upsetting him and was asked to leave. So, uh, as far as
3 the burden met, as to, the Tribe met the burden for, on count one.
4 The Court, uh, denies the directed verdict. As to counts two and
5 counts three of, uh, the testimony is actually consistent that
6 neither one of the testifying witnesses indicate that they saw,
7 uh, the actual damage to the car occurring through, uh, Ms.
8 Delacruz. They said they heard her voice, and that there was
9 about a minute lapse, and, uh, the testimony, uh, that I found
10 compelling was Mr. Hernandez indicating there was a minute delay.
11 He said, I was too busy holding Terry back, I didn't see Liz.
12 And then secondly, uh, the testimony then of Ms., uh, Moraga,
13 never said I saw her, I did not see Elizabeth, I heard her, I did
14 not see her. And then secondly on cross, I did not see her hit the
15 car. So, the Tribe has not proven, uh, as far as the second and
16 third counts of the, uhm, actual injury to the property and then
17 leaving the scene of an accident, uh, to establish beyond a
18 reasonable doubt, uh, is not even, uh, the issue, if, if you can't
19 meet the standard of moving forward on this case. So, I'm going
20 to grant the directed verdict as to counts two and, uh, C, I
21 think, not three, C of, uh, TR14-13373. So, I'm grant the
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1 directed verdict as to the, uhm, second and the third count, C.
2 So, we'll go ahead and proceed then on count one. And will
3 defense be calling any witnesses?
4

5 MS. LEON-ENRIQUEZ: Yes, Your Honor.

6 THE COURT: Okay.

7 MS. LEON-ENRIQUEZ: I'd like to call, (inaudible)
8 at this time?

9 THE COURT: Okay.

10 MR. LOMAYESVA: Your Honor, just for the
11 Record, I object to the, uh, the granting of the direct verdict.
12 Well, file an appeal, (inaudible).
13

14 MR. LOMAYESVA: (Inaudible- talking at the
15 same time), --

16 THE COURT: (Inaudible- talking at the
17 same time), it's my ruling. So, unless you ask me to reconsider.
18 I mean, it's, that's the, basically, the ruling.
19

20 MR. LOMAYESVA: Okay. This time I formally
21 ask the Court to reconsider and the reason why is because we
22 believe that the, (inaudible), is not the standing and the Court
23 referred to that. But at this point, uhm, all we have to have is
24 a reasonable, uh, uh, what we have to have is the, uh, evidence
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1 presented that could, uh, a jury could, or in fact, uhm, having
2 could find in favor, and in fact, that there is just a brief
3 amount of time between the identification of the person and then
4 also the, the crash right after that. Uhm, maybe circumstantial
5 evidence, but nevertheless, uh, evidence that is valid. Just as,
6 if someone doesn't watch it snow, there's still a reason to
7 conclude that it did snow if they walk outside and see snow on the
8 ground. Uh, just because there was no obser--, observation,
9 direct observation doesn't mean that, (inaudible), cannot
10 reasonably conclude that that's what happened. So, for that
11 reason I ask the Court to reconsider.

14 MS. LEON-ENRIQUEZ: Uh, Your Honor, uh, this Court
15 has already indicated that the, uh, the evidence that was
16 provided, uhm, that wasn't even sufficient evidence for, for that,
17 uhm, as the Court stated, none of the witnesses that were brought
18 forward actually saw what happened. Uhm, there was also a
19 discrepancy as far as the timeframes. Uhm, it could have been
20 2:00 or 3:00, it could have been 8:00 o'clock. So, as far as
21 saying it happened immediately before, uhm, there's some issues
22 with regards to that. So, I would ask the Court to maintain
23 verdict.
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1 THE COURT: I'm denying the motion to
2 reconsider and maintaining the ruling on the directed verdict as
3 to, uh, two and three. Okay. You may call your, uh, first
4 witness, Ms. Leon-Enriquez.
5

6 MS. LEON-ENRIQUEZ: Uh, Martha Suzanne Francisco.
7 Uh, I forgot, I'm sorry. You're actually sworn in already.

8 THE COURT: Yeah. She's been sworn in.
9 She can sit. She raised her hand, and, (inaudible).
10

11 MS. LEON-ENRIQUEZ: Uhm, Ms. Francisco, would you
12 please state your name for the Record?

13 MS. FRANCISCO: It's Martha Suzanne Francisco.

14 MS. LEON-ENRIQUEZ: Okay. And, uh, Ms. Francisco,
15 do you know Elizabeth Delacruz?
16

17 MS. FRANCISCO: Yes, I do.

18 MS. LEON-ENRIQUEZ: Okay. And how do you know
19 her?

20 MS. FRANCISCO: She's my sister.

21 MS. LEON-ENRIQUEZ: Okay. Now, Ms. Francisco,
22 we'll be going back to the evening of November 16th, uhm, 2013.
23 Do you recall an incident on that evening?
24

25 MS. FRANCISCO: Yes, I did.
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1 MS. LEON-ENRIQUEZ: Okay. What do you recall from
2 that evening?

3 MS. FRANCISCO: Uhm, beginning at, what I
4 recall on that evening is that I usually borrow Elizabeth's
5 vehicle to go get a meal at the casino, and I recall that I
6 borrowed her vehicle that day, uh, that night.

7 MS. LEON-ENRIQUEZ: Do you, do you remember about
8 what time that would have been?

9 MS. FRANCISCO: That would be about 6:20. I
10 had my twenty-two year old daughter with me.

11 MS. LEON-ENRIQUEZ: Okay. And you said that you,
12 you borrowed, you recall borrowing the car that evening?

13 MS. FRANCISCO: Yes.

14 MS. LEON-ENRIQUEZ: Okay. Is there any other car
15 that you could use?

16 MS. FRANCISCO: No. That's the only vehicle
17 we have.

18 MS. LEON-ENRIQUEZ: Okay. Do you recall when you
19 went to the casino?

20 MS. FRANCISCO: We went to the, uhm, I guess
21 it's called An Express, or An Express right there on Camino De
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1 Oeste at the casino.

2 MS. LEON-ENRIQUEZ: May I approach, Your Honor?

3 THE COURT: Yes.

4 MS. LEON-ENRIQUEZ: I'm going to show you what's

5 marked as Exhibit B. Do you recognize that?

6

7 MS. FRANCISCO: Yes. That is my receipt for

8 that night.

9 MS. LEON-ENRIQUEZ: Okay. Can you, is there, is

10 there a date on it?

11

12 MS. FRANCISCO: Yes. The time is 6:40.

13 MS. LEON-ENRIQUEZ: Okay. And what is the date?

14 MS. FRANCISCO: The date is November 16th,

15 2013.

16

17 MS. LEON-ENRIQUEZ: All right. And that was the

18 receipt that you got from the casino?

19 MS. FRANCISCO: Uh, yes, that is.

20 MS. LEON-ENRIQUEZ: Okay. (Inaudible- background

21 noise.)

22

23 THE COURT: Any objections?

24 MR. LOMAYESVA: No, Judge.

25 THE COURT: We'll go ahead and admit into

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1 evidence, uh, Defense Exhibit B.

2 MS. LEON-ENRIQUEZ: Now, you testified that, uh,
3 the receipt that you received from the casino was about 6:40?
4

5 MS. FRANCISCO: Yes.

6 MS. LEON-ENRIQUEZ: That was in the evening?

7 MS. FRANCISCO: Yes, it was.

8 MS. LEON-ENRIQUEZ: So, that would be the time
9 that you actually placed the order... correct?
10

11 MS. FRANCISCO: Yes, it was.

12 MS. LEON-ENRIQUEZ: Okay. So, about what time
13 would it have been that you would have borrowed, uh, Ms.
14 Delacruz's car?

15 MS. FRANCISCO: Uh, probably, we left my house
16 about, I think 6:20 because by the time we got there, we usually
17 review the menu to see what, you know, we want to get, so it
18 usually takes us a couple of minutes, fifteen, twenty minutes to
19 decide. So, I borrowed her vehicle probably at 6:20 and placed
20 the order about 6:40.
21

22 MS. LEON-ENRIQUEZ: Did, uhm, once you pick up
23 your order, did you go anywhere else?
24

25 MS. FRANCISCO: Uhm, no. We stayed there and
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1 waited for it.

2 MS. LEON-ENRIQUEZ: So, about what time did, uh,
3 did you get back home?

4 MS. FRANCISCO: Uhm, it usually takes, there,
5 usually because we have a large order it usually takes thirty
6 minutes. So, I think maybe 7:10, a little before 7:10.

7 MS. LEON-ENRIQUEZ: Did you go anywhere else
8 before going to the casino?

9 MS. FRANCISCO: Uh, no. No. We had left my
10 house and went straight to the casino, reviewed the menu, and
11 placed our order.

12 MS. LEON-ENRIQUEZ: Did you go anywhere after?

13 MS. FRANCISCO: No. I am very, you know, I've
14 been very ill, so wherever I go anywhere I have to rush home.

15 MS. LEON-ENRIQUEZ: Now, you, you said that you
16 had borrowed, uh, Elizabeth's car. What kind of car is it?

17 MS. FRANCISCO: Uhm, it's a Jeep Cherokee.
18 I'm not actually, you know, aware of the year, but I know it's
19 like, a blue, a dark blue.

20 MS. LEON-ENRIQUEZ: And that was the vehicle that
21 you borrowed that evening?

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1 MS. FRANCISCO: Yes.

2 MS. LEON-ENRIQUEZ: And while you had the, the
3 Jeep, did you at any time go to 7337 South Camino Tetaviecti?
4

5 MS. FRANCISCO: No.

6 MS. LEON-ENRIQUEZ: Do you recall, uh, maybe on
7 the way up or on the way down having anything with the vehicle?
8

9 MS. FRANCISCO: Uh, no. Not with my sister's
10 vehicle. That isn't mine so I'm very careful.

11 MS. LEON-ENRIQUEZ: Now, why is that you borrowed
12 her car?

13 MS. FRANCISCO: 'Cause we didn't want to walk
14 up there. The kids were hungry and our car has been down for a
15 while now.

16 MS. LEON-ENRIQUEZ: Did you have to go somewhere
17 to get the car, or, -- ?

18 MS. FRANCISCO: No. She works out my house so
19 the car is always parked in the front yard.

20 MS. LEON-ENRIQUEZ: Okay. So, she, she works at
21 your house?
22

23 MS. FRANCISCO: Yes.

24 MS. LEON-ENRIQUEZ: (Inaudible- talking at the
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1 same time), --

2 MS. FRANCISCO: (Inaudible- talking at the same
3 time.) Yes. She works in my house at 7617 South Camino Cocomim.

4 MS. LEON-ENRIQUEZ: Does she work inside the
5 house, or is there, uh, does she have an office, or, -- ?

6 MS. FRANCISCO: She has an office. She's
7 actually using the, uh, it's like a tool shed, a storage shed.
8 She's converted that into her office where there's more privacy
9 for the incoming calls she takes.

10 MS. LEON-ENRIQUEZ: Is that connected to the
11 house?

12 MS. FRANCISCO: Uhm, a patio, the house is
13 like that, and then the patio is here, so it's like a little bit,
14 a couple feet away.

15 MS. LEON-ENRIQUEZ: Okay. When, uh, when you left
16 the house before going to the casino, was Elizabeth home?

17 MS. FRANCISCO: Yes. She was working that
18 day.

19 MS. LEON-ENRIQUEZ: Okay. Uh, was she home when
20 you returned?

21 MS. FRANCISCO: Yes, she was.

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1 MS. LEON-ENRIQUEZ: Okay. And when you returned
2 from, uhm, from the casino, uhm, do you recall where Elizabeth
3 was?
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5 MS. FRANCISCO: She was still in her office.
6 I can tell when she's in her office because she leaves the keys,
7 uh, hanging outside the door so she can lock it, since she has,
8 uhm, computers, and everything that's very expensive in there.
9

10 MS. LEON-ENRIQUEZ: The keys to her office?

11 MS. FRANCISCO: Yes. She leaves them outside
12 the doorknob when she's working in there. So, you can tell she's
13 in there. And you can kind of hear taking phone calls.
14

15 MS. LEON-ENRIQUEZ: So, you, you just testified
16 that you got home around 7:10?
17

18 MS. FRANCISCO: Yes.

19 MS. LEON-ENRIQUEZ: Do you recall what you did
20 after?
21

22 MS. FRANCISCO: Since I've been ill, anytime I
23 go anywhere, drink anything, I tend to vomit, uhm, have bad
24 stomach aches, so usually when I go anywhere I have to run to the
25 restroom when I get home. It takes me twenty, thirty minutes, you
26 know, being sick and everything, so I know that when I got off, I
27
28

1 hung the keys in the doorway. We have our little key thing; I
2 have the keys there. And I just ran to the restroom.

3 MS. LEON-ENRIQUEZ: Do you, do you recall the
4 police getting to your house?
5

6 MS. FRANCISCO: Yes. I was actually still in
7 the restroom. It was, maybe, after 7:30, 7:31, or something,
8 'cause my, (inaudible), and they knocked on the restroom door and
9 told me to come out.

10 MS. LEON-ENRIQUEZ: Okay. Now, how, how is it
11 that you recall more or less what time it was?
12

13 MS. FRANCISCO: I have this bad habit of
14 keeping time because I was married to a police officer for twenty-
15 five years. So, he's always told us, look at the sunlight, keep
16 time all the time, you never know when you need it.
17

18 MS. LEON-ENRIQUEZ: So, you said that the officers
19 arrived around what time?

20 MS. FRANCISCO: It would be 7:31, because when
21 they arrived, uhm, I looked at my clock automatically, I mean, not
22 my clock, my phone.
23

24 MS. LEON-ENRIQUEZ: And you recall that time from
25 your phone?
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1 MS. FRANCISCO: Plus, they asked for her, and
2 I texted her, because she cannot be disturbed in there. She has
3 to get permission to put her phone calls on hold. So, when they
4 asked for her, I said she's working, hold on, let me text her.
5 So, I sent her a text telling her that there were people.
6

7 MS. LEON-ENRIQUEZ: Okay. Did, uh, they go in to
8 see her right away, or did she come out?
9

10 MS. FRANCISCO: No. He told me, we have
11 enough time, we can wait, so I text her, and I told him, she,
12 she'll get the text, but when she's on a phone call they recommend
13 that if they, you know, say, with client, or anything like that,
14 she has to get, wait for the, you know, the guest or whatever, the
15 client to finish speaking, and she has to get permission to put
16 that call on hold, or transfer it to somebody. So, the officer
17 did speak to her right away.
18

19 MS. LEON-ENRIQUEZ: Do you remember about what
20 time you texted her?
21

22 MS. FRANCISCO: Uh, it was 7:31. My text says
23 7:31.
24

25 MS. LEON-ENRIQUEZ: But you said they didn't talk
26 to her right away?
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1 MS. FRANCISCO: No. Because we waited. I
2 hung around, asking them, what is this in regards to, and I told
3 them, it might be a while, and the officer said, that's okay, we
4 can wait.
5

6 MS. LEON-ENRIQUEZ: Do you remember how long they
7 waited?

8 MS. FRANCISCO: They only waited four minutes,
9 and they told me, we really have to knock on her door, and I re-
10 text her again, and I told her, I go, you know, they really have
11 to speak to you, so, you know, you really have to come out here,
12 or they're going to knock on your door.
13

14 MS. LEON-ENRIQUEZ: Was it one officer?

15 MS. FRANCISCO: No. There was two officers.

16 MS. LEON-ENRIQUEZ: Did any of the officers talk
17 to you?
18

19 MS. FRANCISCO: Just one with glasses; I
20 didn't get the name.

21 MS. LEON-ENRIQUEZ: Do you remember what he asked
22 you, or what, -- ?
23

24 MS. FRANCISCO: Uh, asked him, what is this in
25 regards to, and he told me, uhm, have you, you know, has she gone
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1 anywhere, and I go, she's been working, and he goes, can you
2 please come out, and I went out, and he showed me the front of the
3 Jeep, and he goes, have you seen these marks before, and I told
4 him, this is an old Jeep, it has a lot of bangs all over the
5 place. I go, you look all over it's very, you know, old, it has a
6 lot of markings.
7

8 MS. LEON-ENRIQUEZ: And the officer was showing
9 you marks on the Jeep?
10

11 MS. FRANCISCO: You know what? He never
12 showed, he never turned on the light, and it was dark at that
13 time, and he just showed me, you know, there's marks here, and I
14 go, you know, this vehicle is very old, but he never lit a
15 flashlight, or anything.
16

17 MS. LEON-ENRIQUEZ: On the vehicle?

18 MS. FRANCISCO: So, yes. On the front of the
19 car right in the road, he never turned on a flashlight or
20 anything. And I kind of figured it's always, you know, been
21 banged and stuff, so he didn't light a flashlight, so, he just
22 told me, look at this marks, he goes, (inaudible), I go, sir, I
23 go, this is an old vehicle, you go around, it has a lot of marks
24 all over the place.
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1 MS. LEON-ENRIQUEZ: How long, how long, uhm, has
2 Elizabeth been living at your home?
3 MS. FRANCISCO: Since September.
4 MS. LEON-ENRIQUEZ: So you're familiar with her
5 work?
6 MS. FRANCISCO: Yes. Sir, may I have some
7 water, 'cause I take a lot of pain pills; I get really dry?
8 THE COURT: Here, get you some. I know we
9 have some next door, but not in this, this courtroom.
10 MS. FRANCISCO: Sorry. Sorry, Your Honor.
11 THE COURT: No problem.
12 MS. FRANCISCO: (Inaudible- talking at the
13 same time), --
14 THE COURT: (Inaudible- talking at the
15 same time), --
16 MS. FRANCISCO: -- too much and my lips get
17 all dry.
18 MS. LEON-ENRIQUEZ: Are you familiar with, uh,
19 Elizabeth's schedule?
20 MS. FRANCISCO: Yes.
21 MS. LEON-ENRIQUEZ: Is it, uh, do you know if
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1 she's able to leave her position once she's started working?

2 MS. FRANCISCO: Leave her position?

3 MS. LEON-ENRIQUEZ: Yeah. Leave the phones, or, -

4 - ?

5 MS. FRANCISCO: Oh, no. She's never been

6 allowed to do that. When I go to deliver things to her I have to

7 make sure I knock, and sometimes I have to wait a long time before

8 she's allowed to talk to me.

9 MS. LEON-ENRIQUEZ: I have no further questions.

10 THE COURT: Cross examine?

11 MR. OSBURN: Uhm, so, the defendant, uh,

12 she's your sister... right?

13 MS. FRANCISCO: Yes.

14 MR. OSBURN: (Inaudible- background noise),

15 Delacruz?

16 MS. FRANCISCO: Yes, sir.

17 MR. OSBURN: I guess, uh, her name was

18 Elizabeth Valenzuela and then became Delacruz... is that right?

19 MS. FRANCISCO: Yes.

20 MR. OSBURN: Uhm, she, uh, and you love

21 your sister, don't you?

22

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1 MS. FRANCISCO: I love all my family members.
2 I'm the oldest of nine. Yes.
3 MR. OSBURN: And you wouldn't want anything
4 bad to happen to her, would you?
5 MS. FRANCISCO: No.
6 MR. OSBURN: No further questions.
7 MS. LEON-ENRIQUEZ: Ms. Valenzuela, --
8 MS. FRANCISCO: Yes.
9 MS. LEON-ENRIQUEZ: -- uh, you testified that you
10 loved your sister... correct?
11 MS. FRANCISCO: Yes.
12 MS. LEON-ENRIQUEZ: Would you lie for her in
13 court?
14 MS. FRANCISCO: No, I wouldn't. I've never
15 lied for anybody. So, I feel that it's your destiny to face
16 whatever you have to.
17 MS. LEON-ENRIQUEZ: Thank you. No further
18 questions, Your Honor.
19 THE COURT: Okay. Any re-cross?
20 MR. OSBURN: Thank you.
21 THE COURT: Okay. You're excused. Thank
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1 you.

2 MS. FRANCISCO: Thank you.

3 THE COURT: Okay. Any other witnesses for
4 defense?
5

6 MS. LEON-ENRIQUEZ: Uh, I'd like to call Elizabeth
7 Delacruz.

8 MS. LEON-ENRIQUEZ: Uh, Ms. Delacruz, would you
9 please state your name for the Record?
10

11 MS. DELACRUZ: My name is Elizabeth
12 Valenzuela Delacruz.

13 MS. LEON-ENRIQUEZ: Are you employed, Ms.
14 Delacruz?
15

16 MS. DELACRUZ: Pardon me?
17

18 MS. LEON-ENRIQUEZ: Are you employed?
19

20 MS. DELACRUZ: Yes. I am employed with
21 American Airlines.
22

23 MS. LEON-ENRIQUEZ: With whom?
24 American?
25

26 MS. DELACRUZ: American Airlines.
27 And what do you do at
28 American?
I work for, in reservations.

1 MS. LEON-ENRIQUEZ: Uhm, and when you say you work
2 reservations what, what does that mean?

3 MS. DELACRUZ: I take inbound phone calls
4 from various of the parts of the universe, uh, world, uhm, ten
5 hours, it's a ten shift, and I constantly take inbound calls. We
6 can't be interrupted. We have a strict schedule with a fifteen
7 minute break, a thirty minute break, and then another fifteen
8 minute break. Within that timeframe, within my ten hour shift I
9 have no--, I can't deviate and take extra time anywhere, otherwise
10 I reprimanded.
11

12 MS. LEON-ENRIQUEZ: Okay.

13 MS. DELACRUZ: I could lose my job.

14 MS. LEON-ENRIQUEZ: So, when, uh, what is it that
15 you do when you're working?
16

17 MS. DELACRUZ: Just sit there and take
18 inbound calls. The calls in come, they announce who they are, and
19 I help make their reservation, uh, whether that be revenue or
20 mileage.
21

22 MS. LEON-ENRIQUEZ: Is, is there a record of the
23 calls that you make?
24

25 MS. DELACRUZ: Yes.
26
27
28

1 MS. LEON-ENRIQUEZ: Okay.
2 MS. DELACRUZ: Uh, yes. They keep track of
3 every call we make, what time it comes in, and where it comes in,
4 uh, how many minutes we are on that call, how many minutes we put
5 the passenger on hold, uhm, how many minutes we put in the, uh,
6 basically, just how many, they keep track every minute, second of
7 what I do while I'm on the phone.
8
9 MS. LEON-ENRIQUEZ: So, if you were away from the
10 phone would that be something that would be, uh, marked or, -- ?
11
12 MS. DELACRUZ: Yes. If I'm away from the
13 phone, uh, other like, uhm, other than like, my fifteen minute
14 break, my thirty minute lunch, or my fifteen minute break, then I
15 get, uhm, an email from my supervisor advising that they want to
16 speak to me in regarding why I deviated my timeframe.
17
18 MS. LEON-ENRIQUEZ: Now, going back to November
19 16th, of 2013. No time specifically right now.
20
21 MS. DELACRUZ: Yes.
22 MS. LEON-ENRIQUEZ: Uhm, was, was there a record
23 of, of your shift?
24
25 MS. DELACRUZ: Yes.
26 MS. LEON-ENRIQUEZ: Do you recall what your shift
27
28

1 was on that day?

2 MS. DELACRUZ: Yes. I was, I work from 11:00
3 a.m. until 9:30 p.m. that evening.

4 MS. LEON-ENRIQUEZ: Okay. May I approach, Your
5 Honor?
6

7 THE COURT: Yes.

8 MS. LEON-ENRIQUEZ: Ms. Delacruz, I'm showing you
9 what's been marked as Exhibit B.

10 MS. DELACRUZ: Yes.

11 MS. LEON-ENRIQUEZ: Can you tell the Court what
12 that is?
13

14 MS. DELACRUZ: Pardon?

15 MS. LEON-ENRIQUEZ: Can you tell the Court what
16 that is?
17

18 MS. DELACRUZ: This is my scheduled time for
19 Saturday the 16th of November, showing that I began work at 11:00
20 a.m. and I ended up, I ended work at 9:30, by 9:29 that evening.

21 MS. LEON-ENRIQUEZ: Okay. Now, is that for, for
22 morning, or is that for the month, or how, -- ?
23

24 MS. DELACRUZ: No. This is for one day on
25 that Saturday, the 16th of November.
26
27
28

1 MS. LEON-ENRIQUEZ: Okay. So, in looking at the
2 schedule, you can tell pretty much what you were doing at, uh,
3 (inaudible), during that work period?
4

5 MS. DELACRUZ: Yes. Yes.

6 MS. LEON-ENRIQUEZ: Okay. Now, looking at the
7 schedule, can you tell what you were going around, say 6:43?
8

9 MS. DELACRUZ: For 1843, at 1843 hours I was
10 in a call, inbound call for, uh, 347-598-4442 telephone number.

11 MS. LEON-ENRIQUEZ: Okay. So, it actually gives
12 you the number, --

13 MS. DELACRUZ: Yes.

14 MS. LEON-ENRIQUEZ: -- (inaudible- talking at
15 the same time), --

16 MS. DELACRUZ: (Inaudible- talking at the
17 same time), --

18 MS. LEON-ENRIQUEZ: Does it give you the amount of
19 time you were on that phone?
20

21 MS. DELACRUZ: Yes.

22 MS. LEON-ENRIQUEZ: Uhm, now, looking at the
23 schedule, uh, does it show, like, when your, you've got someone on
24 hold, or you're actually talking to a person?
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1 MS. DELACRUZ: Uhm, it does. Uh, it does say
2 on here sometimes when you put that on hold, because that's
3 called, uhm, (inaudible), and that's one of the things you're
4 reprimanded on. It has to be fifteen and under and mine,
5 (inaudible), twenty-two, so I have a good time.
6

7 MS. LEON-ENRIQUEZ: So, if you're taking too long
8 working a call then you get reprimanded?
9

10 MS. DELACRUZ: Yes.

11 MS. LEON-ENRIQUEZ: Okay.

12 MS. DELACRUZ: Yes.

13 MS. LEON-ENRIQUEZ: So, looking at the schedule,
14 uhm, between 6:00, between 6:00 p.m. and 7:00 p.m., uh, can you
15 tell where you were on calls?
16

17 MS. DELACRUZ: Yeah. Yes. I was,
18 (inaudible- background noise), around that time frame.

19 MS. LEON-ENRIQUEZ: Now, on the different columns,
20 just for clarification, it has numbers.. correct?
21

22 MS. DELACRUZ: Yes.

23 MS. LEON-ENRIQUEZ: Can you explain what those
24 numbers mean, like, uh, for just as an example, for the time of
25 1843, it has 570. What does that mean?
26
27
28

1 MS. DELACRUZ: That means that I was on a
2 call, (inaudible- background noise).
3 MS. LEON-ENRIQUEZ: Is that seconds, or, -- ?
4 MS. DELACRUZ: Yes. That's seconds.
5 MS. LEON-ENRIQUEZ: Okay.
6 MS. DELACRUZ: (Inaudible- mumbling.)
7 MS. LEON-ENRIQUEZ: And you testified by looking
8 at those schedules you had been on calls, uhm, --
9
10 MS. DELACRUZ: Yes.
11 MS. LEON-ENRIQUEZ: -- at 6:00, 1843... correct?
12 MS. DELACRUZ: Correct.
13 MS. LEON-ENRIQUEZ: Now, I'm going to show you
14 what's, uh, been marked as Exhibit A, (inaudible- background
15 noise). And looking at the report, can you, can you tell what
16 time the call came?
17
18 MS. DELACRUZ: 12:00, --
19 MR. OSBURN: Objection, Your Honor. I
20 believe she's referring, not to her own documents, but she's
21 referring to, uh, --
22
23 MS. DELACRUZ: (Inaudible- talking at the
24 same time), --
25
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1 MR. OSBURN: -- (inaudible- talking at
2 the same time), --
3 MR. OSBURN: So, I would object that she
4 has, (inaudible), interpret that.
5
6 MS. LEON-ENRIQUEZ: Oh, what time it was recorded
7 at 1851, at 6:51.
8 MR. OSBURN: (Inaudible- talking at the
9 same time), --
10
11 THE COURT: (Inaudible- talking at the
12 same time), I hear the response to the objection.
13 MS. LEON-ENRIQUEZ: Uh, Your Honor, it's, uh, a
14 copy that was disclosed, uh, of her call log. Uhm, there's no
15 officers here to testify in regards to that.
16
17 MS. DELACRUZ: But I can, I can convert it
18 over because it's in Zulu time.
19 THE COURT: Wait a minute. Uh, go ahead.
20 MR. OSBURN: Your Honor, what I'm getting
21 at is, uh, she was earlier testifying about her documents that she
22 created with regards to her, uh, work. But this is a document
23 that is not something that she's created, that she has no
24 knowledge of the, of that document, where it came from, anything
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1 about it. She has no expertise to interpret it.

2 THE COURT: I'll sustain the objection.

3 MS. LEON-ENRIQUEZ: Now, uh, Elizabeth, do you

4 remember the officer going to your house?

5

6 MS. DELACRUZ: Uh, yes. Uhm, Molina.

7 MS. LEON-ENRIQUEZ: Do you remember about what

8 time that was that he showed up?

9

10 MS. DELACRUZ: Uh, around, --

11 MS. LEON-ENRIQUEZ: Or, uh, I should say the time

12 you spoke to him?

13 MS. DELACRUZ: Was 1935, which would be 7:35.

14 MS. LEON-ENRIQUEZ: And how do you recall that?

15 MS. DELACRUZ: Uh, because I was in a call

16 and I keep track of my time because I'm very, uhm, concerned with

17 my, uhm, how many, how much, how many minutes I spend on my calls,

18 'cause I have to keep track of that.

19

20 MS. LEON-ENRIQUEZ: When the officer arrived, you

21 said you were working... correct?

22

23 MS. DELACRUZ: Yes.

24 MS. LEON-ENRIQUEZ: Okay. You hadn't taken any

25 breaks, or anything?

26

27

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1 MS. DELACRUZ: I. No. Because I, at that
2 time it was toward the latter part of my shift so there's no
3 breaks to take.

4 MS. LEON-ENRIQUEZ: Do you remember loaning out
5 your car that evening?
6

7 MS. DELACRUZ: Yes. My sister text me, uh,
8 asked me if whether she could use the vehicle to go buy some food,
9 uh, up front, at Moby's.

10 MS. LEON-ENRIQUEZ: Okay. And had you driven the
11 car that evening?
12

13 MS. DELACRUZ: No. Not that, not that I can
14 remember.

15 MS. LEON-ENRIQUEZ: So, when the officer showed
16 up, uhm, was he, did he tell you why he was there?
17

18 MS. DELACRUZ: I asked him, I told, well,
19 first of all I advised him that I was working, I didn't have time
20 to speak to anyone, uh, because I'm on a time schedule, and I
21 can't be interrupted by anyone. But, uhm, he said that the, the,
22 he came and said that there was an incident, and he wanted to ask
23 me some questions, and I said fine, but you have to understand
24 that I'm on a call, I can't put this person on hold because it
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1 goes against me, but I can put on mute.

2 MR. OSBURN: Your Honor, I'm going to
3 object her characterizing her own testimony, and, essentially
4 she's presenting hearsay, her own words, but still hearsay
5 nonetheless.
6

7 MS. DELACRUZ: Uh, she's testifying what she
8 said. I don't see how that's hearsay, Your Honor.

9 THE COURT: Overruled.

10 MS. LEON-ENRIQUEZ: So, you were saying?

11 MS. DELACRUZ: I was just saying that, uhm,
12 the officer that, uh, I was working, so I had to put, I could not
13 put the caller on hold because that goes against me. Uh, it's
14 not, I can get reprimanded for that. So, I told the officer, I'll
15 speak to you, but it has to be, uhm, I have to put the caller on
16 mute, and you have to understand that I'm going to tell you when I
17 have it on and off of mute, because I could get fired for this
18 type of, uhm, situation. Especially if they, if I'm being
19 monitored for example, or if they decide to recall this call and
20 have it monitored, if they hear that I'm doing anything but making
21 a reservation I'll get in trouble. So, I told him, I have to make
22 sure that I put this person on mute, and you have to be silent.
23
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1 MS. LEON-ENRIQUEZ: Okay. So, they're monitoring
2 your calls while you're making them?
3 MS. DELACRUZ: Yes.
4 MS. LEON-ENRIQUEZ: Okay. Do you recall at any
5 time on the evening of November 16th going to the address of 7337
6 South Camino, --
7 MS. DELACRUZ: No. I was working.
8 MS. LEON-ENRIQUEZ: -- Tetaviecti? Okay. Now,
9 uh, you said that, uh, you're, are you familiar with Mr.
10 Hernandez?
11 MS. DELACRUZ: Yes.
12 MS. LEON-ENRIQUEZ: Okay. How are you familiar
13 with him?
14 MS. DELACRUZ: Uhm, I was his fiancé.
15 MS. LEON-ENRIQUEZ: Okay. How long were you with
16 him?
17 MS. DELACRUZ: Uh, since, when we moved in
18 together in August of 2011, and we have been together until the
19 incident that was September 16th, of 2013.
20 MS. LEON-ENRIQUEZ: Are you familiar with, uh,
21 Terry Moraga?
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23
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1 MS. DELACRUZ: Yes.

2 MS. LEON-ENRIQUEZ: And how are you familiar with
3 her?

4 MS. DELACRUZ: She began harassing, uhm, us,
5 and following us. Back, uhm, I didn't know who she really was
6 until one day in July of 2011 she followed us to Tanya's on Drexel
7 and Cardinal. And Jon introduced us, but at that time I didn't
8 know who she was, I didn't, it didn't click until she asked him to
9 step out, she slapped him, and called him a liar. And that was
10 the first time I ever seen her, or knew who she was. But
11 afterwards I asked him, why did she slap you, and he said,
12 because, he said because, I promised her that I would never, err,
13 he told her, I would never be involved with another woman who has
14 a child. And I have a son.

15 MS. LEON-ENRIQUEZ: Have you, uh, now, you said
16 you were together since August of 2011.

17 MS. DELACRUZ: Yes.

18 MS. LEON-ENRIQUEZ: Have you ever talked to Ms.
19 Moraga?

20 MS. DELACRUZ: No.

21 MS. LEON-ENRIQUEZ: You never spoke to her?

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1 MS. DELACRUZ: No. Not even the day that Jon
2 introduced us. Well, I said hi, and that was it.

3 MS. LEON-ENRIQUEZ: Did you ever have contact with
4 her after that?
5

6 MS. DELACRUZ: Uh, only when she started
7 harassing me and started saying that I was, uhm, following her in
8 the casino. I was a supervisor at the casino, uh, for
9 reservation, uh, in the hotel department from February through May
10 of 2011. She claims that during that time when I didn't even know
11 who she was that I was following her around the casino. Jon told
12 me, I was already at the, (inaudible), the big hotel, uhm, casino,
13 she was working at the Sun, which is the smaller one, I was
14 working two jobs, forty hours each job, uhm, so it was like,
15 eighty hours a week. I only had time to work my eight hour shift
16 as a supervisor at the Casino Del Sol, an hour to drive all the
17 way to the airport to work, uhm, reser--, uh, with American, so I
18 didn't have time to be, and I wouldn't waste my time on someone.
19 I didn't even know who she was, not until that day she slapped
20 Jon. So, I never knew who she was.
21
22
23

24 MS. LEON-ENRIQUEZ: Did you, uhm, did you see her
25 afterwards, after, any time after that?
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1 MS. DELACRUZ: Uhm, not that I know of. No.
2 I can't think of any time.
3 MS. LEON-ENRIQUEZ: But you don't recall ever
4 talking to her?
5 MS. DELACRUZ: No. I've never talked her;
6 I've never spoken to her. Uh, but I asked Jon why was she, like,
7 harassing me, and he said, --
8 MR. OSBURN: Objection. I think she's
9 already answered the question.
10 MS. DELACRUZ:
11 MS. LEON-ENRIQUEZ: -- he said that she was
12 jealous of, --
13 THE COURT: Wait a minute, wait a minute.
14 Any response?
15 MS. LEON-ENRIQUEZ: No. I'll ask her a question.
16 THE COURT: Okay. Sustained.
17 MS. LEON-ENRIQUEZ: You, you said that you never
18 talked to her, but you did have a chance to have some kind of
19 contact, or, -- ?
20 MS. DELACRUZ: Well, she sent me the Facebook
21 friendship in August of, uh, this past year. But I've never
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1 verbally spoken to her.

2 MS. LEON-ENRIQUEZ: Did you, did you ever speak to
3 her during the, uh, when the restraining orders were filed?

4 MS. DELACRUZ: No. No. I've never spoken to
5 her.

6 MS. LEON-ENRIQUEZ: I have no further questions.

7 THE COURT: Any cross?

8 MR. OSBURN: So, is it fair to say that
9 you, uh, you had a relationship with, uh, Jon Hernandez?
10

11 MS. DELACRUZ: Yes. I was his fiancé.

12 MR. OSBURN: And, uhm, you eventually broke
13 up?
14

15 MS. DELACRUZ: Well, we were separated due to
16 the situation that occurred.
17

18 MR. OSBURN: So, you broke up... is that
19 right?

20 MS. DELACRUZ: Uh, we were separated due to
21 the situation that occurred.
22

23 MR. OSBURN: Separated?

24 MS. DELACRUZ: Yes.

25 MR. OSBURN: Okay. Uhm, you were pretty
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27
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1 upset with him... is that right?
2 MS. DELACRUZ: Me? No. No.
3 MR. OSBURN: You're not angry or upset with
4 him?
5 MS. DELACRUZ: No. I'm better off without
6 him because he was physically abusive toward me.
7 MR. OSBURN: And isn't it true that you
8 were jealous?
9 MS. DELACRUZ: Jealous of who?
10 MR. OSBURN: Of Terry Moraga?
11 MS. DELACRUZ: Please. Look it... Sorry.
12 Please. No. There's nothing to be jealous of.
13 MR. OSBURN: Isn't it true that you
14 decided, uhm, you were going to vent a little anger towards Jon,
15 you went to his house, and banged on his door?
16 MS. DELACRUZ: No.
17 MR. OSBURN: He told you to leave and you
18 didn't like that. Isn't that what happened?
19 MS. DELACRUZ: No. I was working.
20 MR. OSBURN: When you left you crashed your
21 car into his car, err, Terry Moraga's car... didn't you? When you,
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1 | when you were upset?

2 | MS. DELACRUZ: No. I was working.

3 | MR. OSBURN: And you further indicated that

4 | you worked the entire shift, you didn't have any breaks... is that

5 | right?

6 |

7 | MS. DELACRUZ: Pardon me?

8 | MR. OSBURN: You didn't have any breaks in

9 | your shift?

10 |

11 | MS. DELACRUZ: Yes. Remember, I mentioned,

12 | during my ten hour shift, I had a fifteen minute break, a thirty

13 | minute lunch, and a fifteen minute break.

14 | MR. OSBURN: How does that show up on your,

15 | on your, uh, log sheet?

16 |

17 | MS. DELACRUZ: I don't know. I have to take

18 | my fifteen minute break between the first four hours on my shift.

19 | My lunch has to be, like, and hour and a half after that, and then

20 | my last break, anywhere from three hours before, but it's hard to

21 | distinguish where it's at. But it's a fifteen, thirty, fifteen

22 | minute, uhm, break time.

23 |

24 | MR. OSBURN: Now, that's, uh, computer, who

25 | has access to that?

26 |

27 |

28 |

1 MS. DELACRUZ: Just me. My work computer?
2 MR. OSBURN: Uh-huh.
3 MS. DELACRUZ: Just I, 'cause, uh, 'cause
4 it's controlled by passwords and logins, so I'm the only one who
5 can access anything on there.
6
7 MR. OSBURN: When you're on the computer,
8 uh, is there, uh, any kind of, uh, mechanism, is there a camera on
9 you, or anything like that that keeps you, uh, uh, -- ?
10
11 MS. DELACRUZ: No. No. They don't have
12 cameras on us. That's how they keep track of us, uhm, by that,
13 by keeping that log.
14
15 MR. OSBURN: Do they have a camera on you?
16 MS. DELACRUZ: No.
17 MR. OSBURN: No? There's no camera?
18 MS. DELACRUZ: No. It's all monitored
19 through calls.
20 MR. OSBURN: So you could get up and leave
21 at any time you like... is that right?
22
23 MS. DELACRUZ: No.
24 MR. OSBURN: So, what's holding you down?
25 MS. DELACRUZ: Well, the call is, especially
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1 if I'm on a call and I have an inbound call I can't just walk
2 away. I get reprimanded, and I can actually get fired.

3 MR. OSBURN: So, you can walk away and you
4 just get in trouble for that?
5

6 MS. DELACRUZ: But I don't do that. I have a
7 son, --

8 MR. OSBURN: That's not my question.

9 MS. DELACRUZ: Yes.

10 MR. OSBURN: The question is, can you do it
11 or not?
12

13 MS. DELACRUZ: No, I cannot.

14 MR. OSBURN: And what prevents you from
15 doing that, from walking away?
16

17 MS. DELACRUZ: Because I can get fired.

18 MR. OSBURN: So, you could, you just suffer
19 the consequences of, uh, repercussions at work... is that right?

20 MS. DELACRUZ: You could, but I wouldn't
21 have.
22

23 MR. OSBURN: One moment. Uhm, now, we're
24 looking at this log here regarding your hours.

25 MS. DELACRUZ: Uh-huh.
26
27
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1 MR. OSBURN: Uhm, where did that come from?
2 Did you, -- ?

3 MS. DELACRUZ: From, uh, my off--, my
4 corporate office, my supervisor.
5

6 MR. OSBURN: So, you, you got that log, and
7 you gave it to your lawyer?

8 MS. DELACRUZ: Yes.

9 MR. OSBURN: We have no further questions.

10 MS. LEON-ENRIQUEZ: Ms. Delacruz, did you leave
11 your computer during your work hours?
12

13 MS. DELACRUZ: The, uhm, on that day, no. I
14 mainly stayed inside because I just, what happens is I have a
15 fifteen minute break. Maybe I'll, you know, have to go to the
16 bathroom, but I have to be back within six minutes because I have
17 to make sure I'm on my next call before my fifteen minute break is
18 up.
19

20 MS. LEON-ENRIQUEZ: And, uh, you were testifying
21 now that, uh, nothing actually prevents you from, uh, getting up,
22 but if you do leave your post you can get fired?
23

24 MS. DELACRUZ: Yes.

25 MS. LEON-ENRIQUEZ: And you did not leave your
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1 post on November 16th?

2 MS. DELACRUZ: Not to go outside of the
3 house, no. No. I was inside the, inside my office.

4 MS. LEON-ENRIQUEZ: Your Honor, I would like to
5 enter the log into the Record.
6

7 THE COURT: Any objections?

8 MR. OSBURN: Your Honor, we object. Uhm,
9 this is a log that, uhm, is supposedly created by the, uhm, the
10 computer program which she referred to earlier. We have no
11 knowledge of the reliability of that. We also have no evidence
12 that indicates whether it is, uh, tamperable (sic), whether it
13 has, uh, a mechanism by which can be changed, uh, and further, we
14 don't know who this came from, uh, the, uh, American Airlines.
15 They have no logo on here. Uh, we believe this is, uhm, fails
16 with regard to the reliability. And I don't believe it, uhm,
17 should be admitted, uhm, with lack of foundation presented.
18
19

20 MS. LEON-ENRIQUEZ: Your Honor, Ms. Delacruz has
21 testified as to what the document is, where she received the
22 document. It's a document that's kept, (inaudible), of business,
23 uhm, with American Airlines, uh, her schedule. Uh, so I would ask
24 that it would pass.
25
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1 THE COURT: I'm going to sustain the
2 objection as far as the admissibility as a business record, uh,
3 and not admit it into evidence, uh, lack of foundation. Any other
4 questions?
5

6 MS. LEON-ENRIQUEZ: No, Your Honor.

7 MR. OSBURN: Nothing further.

8 THE COURT: Okay. You're excused. Thank
9 you.

10 MS. LEON-ENRIQUEZ: Okay. Thank you.

11 THE COURT: Okay. Any other witnesses for
12 defense?
13

14 MS. LEON-ENRIQUEZ: No, Your Honor. Defense
15 rests.
16

17 THE COURT: Okay. With no further, uh,
18 testimony, let's go ahead and hear closing arguments as to how the
19 matter should be decided.

20 MR. OSBURN: Thank you, Your Honor. I will
21 reserve for rebuttal. Uhm, Your Honor, we have, uhm, a
22 relationship that has obviously had its ups and downs and this is,
23 uh, a very low point in the relationship. Mr. Hernandez did have
24 a relationship, uh, with the defendant, uhm, and unfortunately
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1 there was animosity, things became, uh, heated, and it also
2 involved, uhm, Ms. Terry Moraga, as well, uhm, the classic
3 scenario, (inaudible), being jealous, and becoming angry, and
4 losing temper. Uh, and we have individuals that, (inaudible), but
5 they know each other. Uhm, they know each other's voices, and
6 certainly, uh, clearly Jon Hernandez, to a lesser degree, Terry
7 Moraga, but these are people who are not strangers. They know
8 each other and when Jon Hernandez says, yes, that was Elizabeth
9 Delacruz at my door, we can be pretty certain that is accurate.
10 He knows her; he knows her voice. He saw her through the window.
11 He did not see the crashing of the vehicle, but he knows her
12 voice, and this is not something that could be confused with some
13 strangers voice, because it's people that have a close, had a
14 close relationship. So, to say that somehow it could be someone
15 else, uhm, it defies logic to think that he would have her voice
16 confused with someone else when he knows her so well. Now, we
17 have some lack of clarity with regards to the events, when it
18 happened, the timeframe, uh, and we also have the defendant saying
19 that she was working, and she didn't do this. I would submit that
20 it is something that makes sense that she would make that
21 argument. She would say, of course, uh, I was working, I didn't
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1 do this; that's her defense. If, on the other hand, Jon and Terry
2 are going to lie about whether or not this even happened, why
3 would they lie only a little bit, why would they say, we heard her
4 but we didn't see her. If they were going to lie and say, we want
5 to get this person in trouble, let's make up a big story, let's
6 make up a big lie, let's cause damage to our own vehicle. Why
7 would they then fall short and say, well, we didn't actually see
8 her, if they were going to lie, they would make it a good lie, and
9 say, we saw her for sure, clear as day. They didn't do that
10 because they're telling the truth. They heard her, they know her
11 voice, they recognize her voice, but they're not going to lie and
12 say, well, we saw her as well, because they're being honest. If
13 they were going to lie, they would make it, I submit, it would
14 only make sense that they would make it a good lie, and say, we
15 saw her, and add other emotions to it. They didn't do that. The
16 fact that they say that they recognized her by voice and not by
17 vision indicated their credibility. It's unfortunate that these
18 events took place, but it is clear that from the testimony that
19 the defendant did in fact go to Jon's house, Jon Hernandez's
20 house, she did engage in, uh, banging the, the words that she
21 said, she's angry, aggressive, and Jon was being responsible. Jon
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1 Hernandez held back Terry, trying to minimize the situation,
2 trying to not let the situation escalate. Very responsible, doing
3 what should be done in that kind of situation, didn't let it get
4 out of hand. We're talking about someone who is eminently
5 responsible and cool headed, and handling the situation as best as
6 a responsible citizen, Tribal Member can. So, we need to
7 recognize the behavior that came, that came out of the testimony
8 is of someone, Jon Hernandez, who is being very reasonable, trying
9 to restrain, trying to keep the situation from getting out of
10 hand, and we have Ms. Delacruz, who was in fact, as evidence
11 indicates, lost her temper and became angry. The fact that she
12 has, uh, the testimony that she was working all that time, and the
13 fact that she has her sister who is vouching for her, this is not
14 surprising, Your Honor. People unfortunately, when they care
15 about each other, they try to skew events, or remember them in a
16 way that works for their own advantage. Uhm, but if Jon Hernandez
17 was going to be remembering events to his own advantage he would
18 have remember that he saw her crash in to that car. If Terry
19 Moraga were in, remembering events in a where to her advantage she
20 would have said, oh, yeah, I saw her. She didn't say that because
21 they're telling the truth.
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1 MS. LEON-ENRIQUEZ: Your Honor, what's required
2 from the Tribe to prove this case beyond a reasonable doubt is
3 that on September 16th, 2013, and here's where we have quite a
4 problem, is that it says approximately 7:54. According to the
5 complaint this incident happened at approximately 7:54. Part of
6 the problem that we have with the timeframe is that the timeframe
7 has varied so much that it doesn't, hasn't given Ms. Delacruz
8 notice of when the event actually happened for her to be able to
9 actually get her, her, uhm, testimony as accurately as possible
10 for the Court. Uhm, in the affidavit that was submitted to the
11 court, when the case was initially filed, it indicates that Ms.
12 Delacruz was actually cited on November 16th, 2013 at 7:54. That
13 would indicate that that was the very end of the entire
14 investigation. So, any events would have happened prior to that
15 time. Now, part of the problem that we had here in the testimony
16 of, of Mr. Hernandez and Ms. Moraga is that it could have happened
17 at 2:00, it could have happened 3:00, it could have happened at
18 8:00. Uhm, but what we have here, Your Honor, is testimony and
19 actual evidence from Ms. Francisco showing, indicating, well, she
20 testified that she had borrowed the car from Ms. Delacruz, she
21 gave a specific time that she had taken the car. Uh, she had the,
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1 the receipt which was submitted to the Court, showing that she was
2 at the Casino Del Sol at 6:40. She testified that she had
3 borrowed the car approximately, I believe, uh, twenty minutes
4 earlier to drive up there. Uhm, so, during that time period, she
5 borrowed the car, she took the car to the casino, she didn't
6 return home until about 7:10. During that time Ms. Delacruz has
7 also provided this Court with actual evidence, uh, and testimony
8 indicating that she was at work. Uhm, again, the, the receipt
9 showing, by Ms. Francisco, shows that she was placing an order at
10 6:40, took about twenty minutes, got home about 7:10. Uhm, and
11 the officers arrived at the home about 7:35. Uhm, Ms. Francisco
12 also testified that she recalled the time period because it's
13 something that she was taught to do by her husband, who had been a
14 police officer for twenty-some years. Uhm, the testimony from
15 Elizabeth also showed that she had been, that she had taken the
16 calls at the time. She testified that while she's on the phone
17 her calls are being monitored, uh, and she can lose her job, if
18 she does leave her post. Uh, she testified that during that time
19 period, uh, or the time period in question just prior to 7:54, she
20 was actually on calls. And although it is possible for her to
21 actually get up and possibly go to the bathroom on break, uh, she
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1 didn't do that at that time. Uh, Ms. Delacruz also testified
2 that when the officer showed up, uhm, she was still working at
3 that time. So, this timeframe, Your Honor, is consistent with the
4 timeframe that she, that the testimony was given that the car was
5 borrowed, was actually viewed by another person, who testified
6 that they had not gone to the address on Tetaviecti, uhm, and also
7 by Ms. Delacruz's schedule indicating that she had worked at the
8 time. With regards to the testimony, Your Honor, uhm, there was
9 testimony from Ms. Moraga indicating that she had, on several
10 prior occasions, uh, make several complaints against Ms. Delacruz,
11 and she never followed through with them. Uhm, she had actually
12 given some false information on the restraining orders that she
13 had put with the court in previous restraining orders, also. Uhm,
14 all the testimony, uh, and evidence showing that, uh, she had been
15 complaining to the court that Ms. Delacruz was harassing her prior
16 to this time, uhm, but it was evidence to the court she was also
17 trying to be--, befriend her on Facebook. Although she says that,
18 uh, she wasn't the one that, that submitted that on Facebook, but
19 she is the one with the password. Now, the Tribe has indicated
20 that if they would have, if, uh, Mr. Hernandez or Ms. Moraga would
21 have lied, they would have lied all the way. However, as the
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1 testimony has shown, there has been motive from both Mr. Hernandez
2 and Ms. Moraga to, to fabricate a story against Ms., Ms., uh,
3 Delacruz, and she has shown the Court the proof of what was
4 actually occurring at the time. Uh, so, given the testimony that
5 was given, I believe there was certainly enough motive for, for
6 Mr. Hernandez and Ms. Moraga to have come up with a story. Also,
7 they testified that neither of them saw Ms. Delacruz there. Uh,
8 there was testimony that they heard the voice, however, Ms.
9 Delacruz testified that she's never actually spoken to Ms. Moraga.
10 Uhm, so, her testimony with regards to recognizing her voice, uhm,
11 becomes an issue now. Uhm, but the main thing would be with
12 regards to the timeframe. Uh, I think that given the timeframe
13 that was given in the complaint is not giving Ms. Delacruz notice
14 enough for her to be able to build a defense accurately. Uh,
15 however, she has provided, given the timeframe that was given,
16 uhm, I believe she provided enough evidence. So, we would ask the
17 Court to find her not guilty for, (inaudible), as she could not
18 have been there.

22 MR. OSBURN: Uh, just briefly, uhm, there
23 is the discussion about how, uhm, it would have been harmful to
24 her job, she could have gotten fired, uh, for this behavior. Uhm,
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1 Your Honor, this, we're talking about criminal behavior, she can
2 go to jail for this behavior. So, it's up to, individuals willing
3 to take risks with their own freedom I think is not unreasonable
4 to include that they also take risks to their employment, uh,
5 which is a lesser risk. Uhm, and as far as the timeframe, you
6 know, there is some confusion, but we are in a Reservation that is
7 not that large, it's very to get from place to place on the
8 Reservation very quickly with that amount of time. Uh, and so,
9 that is, uh, given the fact that we're not exactly clear as to
10 exactly what time, I don't think that's required. Uh, what we
11 have here is absolute clarity that whatever time it took within
12 that afternoon/evening, we've got testimony as to who it was, who
13 did it, what they did, and the fact that it was a crime. And to
14 hold, uh, the standard to, uh, because of the lack of exactitude
15 with regard to what, what time it was, exactly happened, uh, I
16 think that I would be a higher, uh, an inappropriate, uh, uh,
17 burden because we have clear testimony of what she did, when she
18 did it, and the approximate time that it happened in that evening.
19 Uh, I think that, uh, the evidence is absolutely clear that she in
20 fact did, uh, conduct disorderly conduct, Your Honor.

25 THE COURT:

The Court, uh, heard testimony

1 of Mr. Hernandez who resides at 7337 Tetaviecti on the
2 Reservation, uh, that he's known as, uh, she refers to herself as
3 Valenzuela-Delacruz, uh, Ms. Delacruz since high school, and that,
4 uh, they had a relationship, so he knows her well. Uh, they broke
5 up, uh, didn't have much communication, and ended up in a hostile
6 relationship after that fact. Now, the Court also finds credible
7 the testimony of Mr. Hernandez that, uh, he heard knocking on the
8 door, he described it as, aggressively knocking, and that he, uh,
9 looked outside of the window, and he saw that it was Elizabeth
10 Delacruz, and that he asked her to leave. He was then questioned
11 by Ms. Delacruz, who is that, who is that there with you, is that
12 fucking bitch, Terry. And so, that's his testimony, and
13 consistent with that is Ms. Moraga's testimony who indicated that
14 she heard some knocking at the front, uh, window and front door,
15 and that he, she recognized the voice of Ms. Delacruz, and had
16 heard her, uh, notwithstanding the testimony of Ms. Delacruz that
17 she had spoken to her the one time, the onetime only by saying
18 time. Ms. Moraga indicated that she was familiar and was
19 listening in, that at that time of the incident that she was
20 eating with, uh, Jon at his house, that she heard Elizabeth's
21 voice, and that she also heard, who's that bitch, is that Terry
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1 with you. And so, it's consistent, although a but different from
2 Mr. Hernandez's testimony that Elizabeth had come to the door, uh,
3 knocking aggressively and did in fact disturb the peace and quiet
4 of Mr. Hernandez and his household. As far as the alibi
5 testimony, uh, there are some consistencies there because I heard
6 testimony from Ms. Delacruz that she has a fifteen minute, and a
7 thirty minute, and then a fifteen minute break. The Court also,
8 uh, finds, uh, a convincing argument from the Tribe that it takes
9 a very short period of time to get from one address to the next,
10 uh, on the Reservation. It's not a huge Reservation and it could
11 have provided sufficient time for Ms. Delacruz to have gone over
12 to that house during that time in which she was working that
13 evening. So, the Court does find that based on the testimony
14 presented by Ms., uh, Moraga and Mr. Hernandez that the Tribe has
15 proven beyond a reasonable doubt that, uh, Ms. Delacruz committed,
16 uh, disorderly conduct by disturbing the peace and quiet of Mr.,
17 uh, Hernandez at his household. So, guilty of count one,
18 disorderly conduct. Okay. And are we proceeding today with
19 recommendations with sentencing, or do you wish to have a matter
20 set for a sentencing hearing on a later date?
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25 MS. LEON-ENRIQUEZ: (Inaudible- background noise.)
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1 THE COURT: Okay. We'll go ahead and set
2 a sentencing hearing for a later date.

3 COURT CLERK: Monday, April 7th, at 11:00.

4 THE COURT: April 7th at 11:00. And
5 recommend--, --
6

7 COURT CLERK: (Inaudible- talking at the
8 same time), --

9 THE COURT: I'm sorry. 11:30. Okay.
10 April 7th at 11:30 and recommendations on conditions of release?
11

12 MR. OSBURN: The same.

13 THE COURT: Okay. Ms. Delacruz will be
14 released on her own recognizance. She must appear at all future
15 hearings or bail bonds and not contact, uh, Jon Hernandez and
16 Terry Moraga. We'll see you back here April 7th at 11:30 a.m. for
17 the sentencing, sentencing hearing as to count one, uh, disorderly
18 conduct. Court is adjourned.
19

20 COURT CLERK: All rise.
21

22 [END OF BENCH TRIAL]

23 [Transcriber's Certification Follows:]
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C E R T I F I C A T E

I certify that, to the best of my ability, the foregoing is a true and accurate transcription of the original digitally recorded court proceeding in the case referenced on page 1 above.

Transcription Completed: May 28, 2014

CHRISTINE McGARVEY
LEGAL TRANSCRIPTION SERVICES PLUS, INC.
TRANSCRIBED BY: TERESA CHRISTINE AKIN

SIGNED BY: *Christine McGarvey*
CHRISTINE McGARVEY

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

Patricia Leon-Enriquez
PYT Bar No. 10186
Attorney for Appellant

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

PASCUA YAQUI TRIBE,

Appellee,

vs.

DELACRUZ, ELIZABETH,

Appellant.

Case No(s). CA-14-002,


Tribal Court No(s). CR-14-115

**STIPULATED MOTION TO EXTEND
TRIAL COURT TRANSCRIPT SUBMISSION**

On May 15, 2014, Appellant Elizabeth Delacruz, through counsel and pursuant to Section 3 PYTC §2-3-110(F)(4), Pascua Yaqui Rules of Appellate Procedure, gave notice regarding the arrangement of trial court transcripts which were anticipated to have been completed by May 28, 2014. The transcriptionist has indicated that she is having difficulty with some of the audio and as of the filing of this Motion has not completed the transcription. Therefore, pursuant to 3 PYTC § 2-3-70(B), the Appellant submits a stipulated request to extend the projected transcript submission to May 29, 2014.

DATED this 28th day of May, 2014.

PASCUA YAQUI TRIBAL PROSECUTOR PASCUA YAQUI PUBLIC DEFENDER


Nancy Jencsok
Deputy Prosecutor


Patricia Leon-Enriquez
Senior Staff Attorney

ORIGINAL delivered this date to
PYT Court of Appeals:
COPY of the foregoing hand-delivered this date
PY Prosecutor's In-Box by:

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

3 Patricia Leon-Enriquez, Esq.
4 PYT Bar No. 10186
Attorney for Appellant

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

8 PASCUA YAQUI TRIBE,

9 Appellee,

10 vs.

11 DELACRUZ, ELIZABETH,

12 Appellant.
13

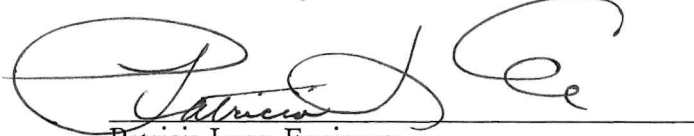
Case No. CA-14-002
Tribal Court No. CR-14-115

14 **NOTICE OF ARRANGEMENTS
15 REGARDING TRANSCRIPTS**

16 Appellant Elizabeth Delacruz, through counsel and pursuant to Section 3 PYTC §2-3-110(F)(4),
17 Pascua Yaqui Rules of Appellate Procedure, respectfully gives notice of the arrangements made with Legal
18 Transcription Services Plus, Inc. for payment for approximately 120 to 150 pages of transcripts at a rate of
19 \$4.00 per page. The record is currently being transcribed therefore the exact number of pages and amount
20 owed has not yet been determined with exactitude. It is anticipated that the transcripts will be received and
21 filed by May 28th, 2014.

22 DATED this 15th day of May, 2014.

23 PASCUA YAQUI PUBLIC DEFENDER

24 

25 Patricia Leon-Enriquez
Senior Staff Attorney

26 ORIGINAL e-mailed this date
27 PYT Court of Appeals:

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

Pascua Yaqui Tribe
Office of the Tribal Prosecutor
7777 S Camino de Huivisim, Bldg. A
Tucson, AZ 85757
(520) 879-6251

By Frederick Lomayesva
Deputy Prosecutor

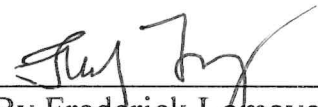
IN THE PASCUA YAQUI COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE ,)	CASE NO. <u>CA-14-002</u>
)	
Appellee,)	
)	
v.)	NOTICE OF SUBSTITUTION
)	OF COUNSEL
DELACRUZ, ELIZABETH,)	
)	
Appellant.)	
_____)	

Please be advised that the Pascua Yaqui Tribe gives notice of substitution of counsel, and that Frederick Lomayesva will be counsel of record for the Appellee, Pascua Yaqui Tribe, in this appeal. Please direct all notices, motions and orders to Mr. Lomayesva at the Office of the Tribal Prosecutor.

RESPECTFULLY SUBMITTED this 9 day of May, 2014.



By Frederick Lomayesva,
Deputy Prosecutor

A copy of the foregoing was delivered

This 9 day of May, 2014, to:

Patricia Leon-Enriquez

Office of the Public Defender

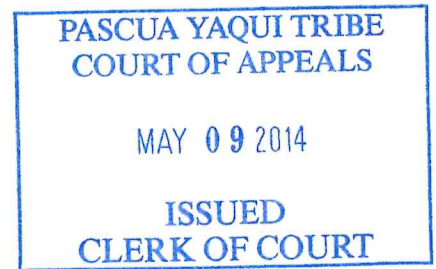
No. CA-14-002

Pascua Yaqui Court of Appeals

Pascua Yaqui Tribe, Appellee,

vs.

Delacruz, Elizabeth, Appellant,



Appeal of a Tribal Court Case No. CR-14-115, the Honorable Melvin Stoof presiding.

Yancy Jencsok, Office of the Prosecutor of the Pascua Yaqui Tribe, 7777 Camino Huivisim, Tucson, AZ for the Appellee.

Patricia Leon-Enriquez, Pascua Yaqui Public Defender, 7474 S. Camino de Oeste, Tucson AZ 85757 for the Appellant.

ORDER

On May 8, 2014, Appellant filed a Motion for Extension of Time for Filing Transcript because the transcriptionist needs additional time to transcribe the hearing needed in this matter. Appellee was contacted and does not object to a request for extension of time to file the transcript.

Chief Justice Hopkins grants the Motion for Extension and gives Appellant an additional fourteen (14) days from the original due date to submit the transcripts and complete the record. Appellant shall file transcripts no later than May 30, 2014.

So **ORDERED** this 9th day of May 2014.

James C. Hopkins, Chief Judge

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

3 Patricia Leon-Enriquez, Esq.
4 PYT Bar No. 10186
Attorney for Appellant

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

8 PASCUA YAQUI TRIBE,

9 Appellee,

10 vs.

11 DELACRUZ, Elizabeth,

12 Appellant.
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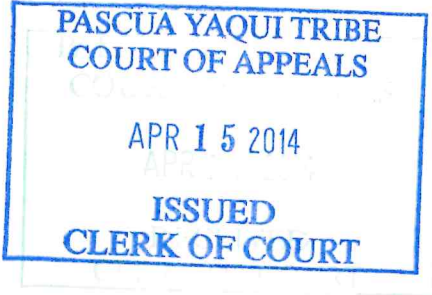
) Case No. CA-14-002

) Tribal Court No. CR-14-115

) MOTION FOR EXTENSION OF TIME FOR
FILING TRANSCRIPT

14
15 Appellant Elizabeth DeLaCruz, through counsel and pursuant to 3 PYTC §2-3-110(C) and 3 PYTC
16 §2-3-80 of the Pascua Yaqui Rules of Appellate Procedure, respectfully moves this to Court to enter an
17 order extending the time for the filing of the transcript of the proceedings before the lower court.
18 Appellant's notice of appeal was filed on April 15, 2014. Pursuant to Section 110 (F)(5), Pascua Yaqui Rules
19 of Appellate Procedure, no later than thirty days after the filing of the Notice of Appeal, the Appellant shall
20 file the original transcript with the appellate court clerk and serve a copy on each party. Appellants request
21 is made due to the following reasons:

- 22 1. Appellant contacted the contracted transcriptionist and was informed that due to other
23 rush requests, transcriptionist will need additional time to transcribe the hearing in this
24 matter.
25 2. Undersigned counsel has contacted Deputy Prosecutor Yancy Jencsok, prosecutor in the
26 above case, and he does not object to a request for extension of time to file the
27 transcripts in the case.
28 3. The Chief Judge may grant a motion for a procedural order without awaiting a response
(3 PYTC §2-3-80(c)(3))
4. Any party adversely affected by the granting of a procedural order may file a motion
requesting rehearing, vacation, or modification of the order (3PYTC §2-3-80 (c)(4).



1 PASCUA YAQUI PUBLIC DEFENDER
7474 S. Camino de Oeste
2 Tucson, Arizona 85757
3 (520) 883-5013

4 Patricia Leon-Enriquez,
Counsel for Appellant

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

8 PASCUA YAQUI TRIBE,

9 Plaintiff/Appellee,

10 vs.

11 DELACRUZ, Elizabeth,

12 Defendant/Appellant.
13

) Court of Appeals Case No:

) Trial Court Case No.: CR-14-115

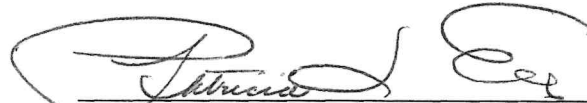
) NOTICE OF APPEAL

14 Pursuant to 3 PYTC §2-3-90, Pascua Yaqui Tribe Rules of Appellate Procedure, counsel for
15 Appellant Elizabeth DeLaCruz, respectfully files a Notice of Appeal in the Appellate Court from the
16 Judgment and Order finding Defendant guilty of Count one, Disorderly Conduct in the Pascua Yaqui Tribal
17 Court on March 19, 2014. A Copy of the Court's Order is attached hereto as required by Section 90, Pascua
18 Yaqui Rules of Appellate Procedure.

19 The Appellant further requests that this Court enter an order directing the Clerk of the Pascua Yaqui
20 Tribal Court to prepare and submit the records within thirty (30) days.

21 DATED this 15th day of April, 2014.

22 PASCUA YAQUI PUBLIC DEFENDER

23 
24 _____
25 Patricia Leon-Enriquez
26 Counsel for Defendant

27 ///
28 ///
///

1
2 CERTIFICATE OF SERVICE

3 I hereby certify that the original copy of the Notice of Appeal was delivered this date to:

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

8 and that one copy of the Notice of Appeal was delivered this date to:


9 Pascua Yaqui Tribal Court
10 7474 South Camino de Oeste
11 Tucson, AZ 85757

12 and that one copy of the Notice of Appeal was delivered this date to:

13 Allen Osburn/Yancy Jencsok
14 Deputy Prosecutor
15 Office of the Prosecutor of the Pascua Yaqui Tribe
16 7474 South Camino de Oeste
17 Tucson, AZ 85757

18 DATED this 15th day of April, 2014.

19 PASCUA YAQUI PUBLIC DEFENDER

20 
21 _____
22 Monique Ramsey
23 Office Manager
24
25
26
27
28

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-14-115, TR-14-13373
5	vs.)	JUDGMENT AND
6	DELACRUZ, ELIZABETH,)	ORDER SETTING
7	DEFENDANT.)	SENTENCING HEARING

8 The defendant, Elizabeth Delacruz, appeared for a bench trial, on March 19, 2014, and
9 she was represented by legal counsel, Patricia Leon-Enriquez. Appearing for the Tribe was G.
Allen Osburn. Also appearing was John Hernandez and Terry Moraga.

10 The court held a trial, heard testimony, reviewed documentary evidence, and it finds
11 the defendant guilty beyond a reasonable doubt to Count One, Disorderly Conduct.

12 The Tribe's Exhibit One, a certificate of Indian blood and Pascua Yaqui Tribal
13 Enrollment Program record, was admitted as an official record of the Tribe and as a self-
14 proving public record under Pascua Yaqui Rule of Evidence, Public Records and F.R. Evid
803(8).

15 The court finds as follows: Based on the testimony of John Hernandez and Terry
16 Moraga on the evening of November 16, 2014, at 7337 Tetaviecti, within the reservation, at
17 approximately 7:54 p.m., the defendant, Elizabeth Delacruz, knocked loudly and "aggressive"
18 on the window and on the door of Mr. Hernandez' home, she asked him who was in the home,
and asked loudly "Who's in there with you?" and "Is it that bitch, Terry?" thereby disturbing
19 Mr. Hernandez peace and quiet to a point where he asked the defendant to leave the premises.
The court finds credible the testimony of Mr. Hernandez and Ms. Moraga that the defendant's
20 conduct was seriously disruptive and disturbed the peace of the neighborhood.

21 The court finds that the Tribe has proven beyond a reasonable doubt that the defendant
22 committed the offense of Count One, Disorderly Conduct, based on the loud pounding on the
door argument and disruptive fighting in public between the defendant and her boyfriend.

23 The Court should grant the defendant's motion for directed verdict because the Tribe
24 has not proven beyond a reasonable doubt Count Two, Injury to Public Property, and Count
25 Three, Leaving Scene of accident of Unattended Vehicle, (TR-14-13373) for lack of sufficient
evidence, because it could not show that the defendant was actually seen causing damage to
26 Ms. Moraga's vehicle that was parked in front of Mr. Hernandez' home.

27 The court should set the matter for a sentencing hearing and the court should grant the
28 Tribe's request to maintain the current release conditions until the defendant may appear for
sentencing hearing in this matter.

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IT IS ORDERED that the defendant, Elizabeth Delacruz, is found guilty beyond a reasonable doubt, of Count One, Disorderly Conduct.

She shall be released on a recognizance bond, she shall appear at all future hearings, obey all laws, not harm nor harass the victim, John Hernandez, or the witness, Terry Moraga.

IT IS FURTHER ORDERED that this matter shall be set for a sentencing hearing on April 7, 2014 at 11:30 a.m..

THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

IT IS FURTHER ORDERED that the Court grants the defendant's motion for directed verdict as to Count Two, Injury to Public Property, and Count Three, Leaving Scene of Accident of Unattended Vehicle (TR-14-13373).

SO ORDERED THIS 19th DAY OF MARCH, 2014.

Melvin R. Hood
Associate Judge, Pascua Yaqui Tribal Court

cc: Date 03/20/14
 Tribe Defendant/Counsel

V. Cepan
Clerk

