

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

PASCUA YAQUI TRIBE,)	
)	
Appellant,)	Case No. CA-19-004
v.)	(CR-19-080)
)	
ISENA RODRIGUEZ,)	OPINION AND ORDER
)	
Appellee.)	
_____)	

Appearances: For the Tribe, Oscar J. Flores and Coleen Thoene
For the Defendant, Annamarie L. Valdivia

Plevel, Associate Justice

Concurring: Chief Justice Miller and Associate Justice Martinez

This matter comes before the Court of Appeals on an Appeal by the Tribal Prosecutor on behalf of the Pascua Yaqui Tribe, appealing a trial court decision dismissing, without prejudice, a criminal complaint at the Initial Hearing.

Jurisdiction

The Pascua Yaqui Court of Appeals has jurisdiction to hear this matter pursuant to 3 PYTC §2-3-30 *et seq.*

Facts

On or about January 9, 2019 the defendant was arrested for Injury to Public Property (4 PYTC §1-630), Family Violence (4 PYTC §3-10(B)). The Tribe filed its complaint and supporting affidavit on January 9, 2019. Appellant's Exhibit A. At the Initial Hearing on January 9, 2019, the trial judge dismissed the complaint without prejudice, for want of probable cause. Specifically, the trial court stated, "the Court does not find sufficient probable cause to believe the defendant may have committed the alleged [offense] because the alleged time of the incident is not included in the probable cause statement." Appellant's Exhibit B. Essentially, the trial court found that because the law enforcement officer's supporting affidavit of probable cause only included a date for when the offense was alleged to have occurred, and not a time that matched the time listed within the complaint itself, the court could not find probable cause to support the charge.

Standard of Review

The appellate court's standard of review of decisions dismissing a criminal case without prejudice is for an abuse of discretion. *Pascua Yaqui Tribe v. Bustamante*, CA-17-004, at 2 (PYT Ct. App. July 3, 2017). "The court abuses its discretion when it makes an error of law in reaching a discretionary conclusion or when the record, viewed in the light most favorable to upholding the trial court's decision, is devoid of competent evidence to support the decision." *Pascua Yaqui Tribe v. Coleman*, No. CA-15-003, at 2 (PYT Ct. App. Nov. 17, 2015).

Discussion

This appeal is fairly direct. The question is whether upon examination of a complaint and accompanying probable cause affidavit, the judge should dismiss the complaint without prejudice for a technical defect with respect to foundational facts. Our guidance first comes from the current Pascua Yaqui Tribal Code and Rules of Criminal Procedure.

3 PYTC § 2-2-180 provides for Initial Appearances, wherein the court must first determine if "probable cause exists to continue to detain and prosecute the accused." *Id.* at (A). Probable cause is a determination as to whether it is more likely than not that a crime was committed and that the accused committed it.

3 PYTC § 2-2-90 states that criminal prosecutions are initiated by the filing of a complaint. That complaint is "(1) 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..."

The issue herein, is that language "including a time and place." The complaint in this matter, states

On or about January 07, 2019, at approximately 5:00 pm, at or near 5091 W. Calle Tarook, Defendant, without proper authority, used, injured, or misused any public, Tribal government or private property, to wit: ***Broke a window of her grandmother, Helen Luzania's home.***

(emphasis in original). The accompanying probable cause affidavit does not specify the time on January 7, 2019 when the window was broken. Appellant's Exhibit A. While 3 PYTC § 2-2-90 states that a time and place must be included in a complaint, it is qualified by the language "**as nearly as may be determined.**" (emphasis added)

"This suggested tolerance of imprecision built into the criminal process recognizes the immense potential for error or mistake early in the initiation of criminal proceedings. At this point in the criminal process, there has been insufficient time to determine the reliability and veracity of witnesses. The court's

role here is to determine whether the basic information necessary to go forward with a criminal prosecution have been met, whether reasonable or probable cause exists that a crime has been committed and whether the case involves an incident having occurred within the territorial boundaries and involving a person within the Tribe's jurisdiction.”

PYT v. Baltazar, CA-01-003, page 4. The trial court in this matter dismissed the complaint for lack of probable cause “because the alleged time of the incident is not included in the probable cause statement.” Appellant’s Exhibit B.

Probable cause exists where the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed by the person to be arrested.

McKenzie v. Lamb, 738 F.2d 1005 (9th Cir. 1984) (citing *Dunaway v. New York*, 442 U.S. 200, 208 n. 9, 99 S.Ct. 2248, 2254 n. 9, 60 L.Ed.2d 824 (1979) (quotations and citations omitted)).

“In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved.”

Brinegar v. United States, 338 U.S. 160, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949).

“The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.” *Id.* at 176. Whether the window was broken at 5 am or 5 pm is of minor consequence to the charge, particularly as according to the probable cause statement, the defendant admitted that she broke the window, though claiming it was an accident. Appellant’s Exhibit A. Additionally, the offense charged does not have an element of time which is essential to the offense.

Findings


The trial court in this case abused its discretion by imposing requirements on the probable cause determination which were unwarranted.

This matter is remanded for proceedings consistent with this Order.

ORDERED this 7th of October, 2019.


Hon. Rebecca Plevel

We CONCUR:


Interim Chief Justice Robert J. Miller


Justice Kendra A. Martinez

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

PASCUA YAQUI TRIBE,
OFFICE OF THE PROSECUTOR

Appellant

vs.

ISENA RODRIGUEZ,

Respondent

APPELLATE CASE NO: CA-19-004

TRIBAL COURT CASE NO: CR-19-080

PETITIONER/APPELLANT'S REPLY BRIEF

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REQUEST FOR ORAL ARGUMENT

Although the Appellee has indicated a belief that oral arguments are not necessary in this case, *see* Appellee's Response Brief, at 10. The Tribe reiterates its justification for requesting such argument as outlined in its Opening Brief. *See* Appellant's Opening Brief, at 5. The Tribe further incorporates the arguments detailed below, many of which turn upon the nuances of case interpretation, which can differ amongst litigants, as further evidence that oral argument would be in the interests of justice in this particular case.

STATEMENT OF JURISDICTION

The parties agree that the Court of Appeals has jurisdiction over this matter. *See* Appellant's Opening Brief, at 6-7; Appellee's Response Brief, at 1.

STATEMENT OF THE CASE

Based on the arguments and facts outlined in the Appellee's Response Brief, no additions or corrections need to be made to the factual or procedural recitation outlined in the Tribe's Opening Brief.

ISSUES PRESENTED FOR REVIEW

No new issues have been presented to this Court for review based on the Appellee's response, save a disagreement between the parties as to what standard of review is appropriate for this case.

STANDARD OF REVIEW

The parties disagree as to what standard of review is appropriate for this appeal. That disagreement is based upon a conflicting interpretation of earlier Pascua Yaqui Appellate cases, and whether those cases adequately address the specific issue raised in this appeal. The Appellee correctly notes that, previously, this Court had reviewed general dismissals of complaints under an “abuse of discretion” standard. The Appellee then suggests, incorrectly, that because this court has used an “abuse of discretion” standard in the past, *PYT v. Miranda*, CA-08-015, p.22 (PYT Ct. App. Mar. 29, 2009), “is irrelevant.” Appellee’s Response Brief, at 7. However, a closer analysis of the Pascua Yaqui Court of Appeals cases cited by both parties demonstrates that this Court has never reviewed whether a trial court’s probable cause determination involves a mixed question of law and fact. Indeed, the local cases cited by the parties, even though they reviewed dismissals, simply did not address the issue of dismissals based on whether sufficient evidence exists to support a finding of probable cause.

For instance, in *PYT v. Bustamante*, CA-17-004 (PYT Ct. App., Jul. 3, 2017), this Court was asked to review whether the trial court abused its discretion by dismissing a complaint that failed to include proper statutory language and citations relating the defendant’s charges. Ultimately, the Court found that there had been no abuse of discretion. However, the Court did not address the issue of probable cause.¹ Years earlier, in *In the Matter of Alvarez*, CA-17-008

¹ This case relied upon *PYT v. Gonzalez*, CA-07-017 (PYT Ct. App., Oct. 9, 2007), and, more specifically, briefings that had been submitted by the parties as part of that older appeal. This case was not cited in the Tribe’s Opening Brief. The Appellee correctly points out that *Gonzalez* ruling was designated as an “Order,” and not as an Opinion, thereby making it akin to a memorandum decision that may carry persuasive authority in certain contexts, without being of precedential value. However, it is also important to note that the Court did not ever address the issue of sufficiency of probable cause — and, indeed, could not — because the prosecution had failed to submit a copy of its affidavit of probable cause as part of the record on appeal, and local rules prohibit consideration of materials that are not a part of the trial court record. *Id.* In short, *Gonzalez* did not address the issues involved here.

(PYT Ct. App., Jun. 19, 2018), this Court reviewed whether the trial court abused its discretion in dismissing a juvenile complaint. The specific issue before the Court at that time did not concern probable cause or its sufficiency. Instead, it involved determining whether statutory time limits for filing a complaint as to an arrested juvenile barred the prosecution from refileing it as a non-arrest matter when the first complaint was dismissed for an identification-related error. Even *PYT v. Baltazar*, CA-01-003 (PYT Ct. App., Sept. 12, 2001), which is the only local case to discuss whether location or date issues are fatal to the form of a complaint, did not address that issue in the context of probable cause.

Because there is no local case law that specifically addresses the unique issue presented in this appeal, looking to extra-jurisdictional law is relevant, persuasive, and allowable under *Miranda*, CA-18-015, at 22. For instance, the Appellee, although claiming that *Miranda* is irrelevant, cites to *Illinois v. Gates*, 462 U.S. 213, 236 (1983), for the proposition that *de novo* review of a magistrate's probable cause determination is inappropriate. That case, however, like the cases discussed above, fails to address the unique issue involved here. *Gates* discussion and review of probable cause was done primarily in the context of search warrant affidavits. In it, the United States Supreme Court indicated that “[f]inely-tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the magistrate’s decision” to issue a warrant. *Id.* at 235. “While an effort to fix some general, numerically precise degree of certainty corresponding to probable cause may not be helpful, it is clear that only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause.” *Id.* (citations and quotations omitted). The Supreme Court ultimately indicated that, when issuing a warrant, a court need only to have a “substantial basis ... for conclud[ing] that a search would uncover evidence of wrongdoing.” *Id.* at 236-237 (internal

quotations omitted, alterations in original). *Gates* never touched upon probable cause in the context of charging documents, or the standard of review that should be used when reviewing a court's charging determination.

At least two federal circuits have, however, indicated that appellate review of dismissals, when they involve mixed questions of law and fact, or pure questions of law, warrant *de novo* review. See Opening Brief, at 8-9. See *United States v. Linick*, 195 F.3d 538, 541 (9th Cir. 1999); *United States v. Alfonso*, 143 F.3d 772, 776 (2d Cir. 1998); *United States v. Spillone*, 879 F.2d 514, 520 (9th Cir. 1989); *United States v. Gonzalez-Roque*, 301 F.3d 39, 44 (2d Cir. 2002). Although those cases, also, did not review charging decisions based on a sufficiency of probable cause argument, the cases, as detailed more fully in the Tribe's Opening Brief, clearly demonstrate that review of a charging document can—and often do—involve a nuanced interplay between factual and legal interpretation.

The issue presented by this appeal involves a mixed question of law and fact, and this nuanced interplay demands *de novo* review. Probable cause in the context of charging documents, much like warrant decisions, involves very specific factual determinations. However, whether probable cause for criminal charges depends upon proof of a specific time of offense, is a purely legal question. Furthermore, probable cause to support a charge requires an understanding not only of the legal definition of probable cause, but what elements are required by the statutory language of offense, and how those legal considerations interact with rules regarding forms of complaint. The factual and legal interpretive issues are intimately intertwined and virtually inseparable from each other from an analytical standpoint.

Because the issues presented in this case involve a mixed question of law and fact, *de novo* review is appropriate. However, in the event that this Court determines, instead, that an

“abuse of discretion” standard of review should be used, the trial court’s dismissal decision still resulted in error.

LAW AND ARGUMENT

I. Nothing in the Pascua Yaqui Tribal Code Requires that Information Relating to a Time of Offense Match Between the Text of the Charging Document and its Supporting Affidavit of Probable Cause.

Nothing in the Pascua Yaqui Tribal Code requires that the prosecution even submit an affidavit of probable cause. And yet, the Appellee attempts to argue that unless the information contained in such an affidavit matches the information provided in a complaint exactly, it renders the complaint fatally flawed and prevents a court from finding probable cause. As will be discussed below, this interpretation is incorrect.

The Appellee’s argument is a variation of the one presented in *Baltazar*, yet not one that obviates the rule or reasoning of that case. 3 PYTC § 2-2-90(A) defines a complaint as “a written statement of the essential facts constituting an offense, signed by a law enforcement officer or a prosecutor, or made upon oath before a judge, and charging that a named individual has committed a particular criminal case.” This “written statement” is the charging document itself, *not* the affidavit of probable cause submitted alongside it. *See* 3 PYTC § 2-2-90(C) (indicating that the prosecution “*may have*” an officer or witness “verify the written complaint by signing an affidavit or other signed statement to be attached to the complaint”). In fact, under the Tribal Code, a signed statement is not necessary, as the prosecution may, instead, elect to provide a statement “made upon oath before a judge.” 3 PYTC § 2-2-90(A). 3 PYTC § 2-2-90(D) also appears to suggest that a written affidavit is unnecessary. *Id.* (“If the complaint, *or* the complaint taken together with other signed statements, is sufficient to establish probable

cause to believe that a crime has been committed by the person charged,” then a criminal case may proceed.) (*emphasis added*).

A complaint, such as the one submitted in this case, *See* Tribe’s Opening Brief, Exhibit A, typically submits the facts relevant to the charge within the language of the charge itself. For example, here, the Appellee was charged as follows:

On or about January 7, 2019, at approximately 5:00 p.m., at or near [the victim’s address], Defendant, without proper authority, used, injured, or misused any public, Tribal, government, or private property, to wit: ***Broke a window at her grandmother, [H.L.’s] house.***

Id.

“[T]he essential facts constituting the offense” under 3 PYTC § 2-2-90(A), in this case, were that the Appellee was alleged to have broken a window in her grandmother’s house. While the Tribal code permits the prosecution to submit a signed affidavit along with the complaint—which the Tribe did here—does not change the permissive nature of 3 PYTC § 2-2-90(C). Nor does it change the language of 3 PYTC § 2-2-90(D), which indicates that probable cause can be based on “the complaint, or the complaint together with other signed statements....” The Tribe has located no statutory or appellate case law requiring the prosecution to file an affidavit.² Likewise it has found no such law requiring that the affidavit—as opposed to the complaint—contain information as to the time of offense, and the Appellee’s has also failed to cite any such law. Indeed, 3 PYTC § 2-2-90(C) only requires that the complaint contain information as to the time of offense “as nearly as may be determined.”

² The Tribe notes that, as a matter of local unwritten legal custom, the prosecution typically files written affidavits with its complaints. However, while this is a matter of local custom, it is not codified as a requirement under the Pascua Yaqui Tribal Code. Nor does this custom change the fact that the Tribal Code does not require that affidavits include a time of offense, or that any such time that may be listed match exactly with the time listed in the criminal complaint.

Based on the reasons outlined above, the Appellee's attempts to distinguish *Baltazar* fail. And, as noted above and in its Opening Brief, although *Baltazar* did not specifically address whether proof of things such as time, date, or location go to the heart of probable cause, it clearly discussed how those elements of complaint form should be treated under our laws.

The court's role when reviewing a complaint "is to determine whether the basic information necessary to go forward with a criminal prosecution have been met, whether reasonable or probable cause exists that a crime has been committed and whether the case involves an incident having occurred within the territorial boundaries and involving a person within the Tribe's jurisdiction." *Baltazar*, CA-01-003, at 4. "[T]he court is determining whether a gross error exists leading to an erroneous conclusion as to the reasonableness or probability of the conclusion that a crime has been committed." *Id.* The Court specifically addressed whether, under an older version of 3 PYTC § 2-2-90(A)-(D), errors in dates, or location render a complaint fatally flawed. *Id.* at 3. The Court, after an extensive analysis, found that it does not. *Id.*^{3, 4}.

³ The Appellee argues that *Baltazar* dealt primarily with discrepancies between a charging document and its supporting affidavit. Instead of citing to case law, the Appellee attaches as support a copy of the defendant's response filed with this Court in *Baltazar*. This response was filed in 2001, eighteen years before the case at bar. Additionally, the arguments contained in the 2001 response were ultimately rejected by this Court when it issued its ruling. The Tribe is uncertain whether it has been attached with the intent that this Court adopt the arguments contained in said brief *in toto*, or if Appellee's intent was to attach the brief in solely in support of its argument that *Baltazar* is factually distinguishable from this case. Regardless, the Tribe is unaware of any authority holding that such a practice is proper, even in an appellate context.

⁴ It is important to note that the 2001 response relied heavily on caselaw that is distinguishable from the issues presented in this case, and which largely focused on violations of Nevada speedy trial rules. *See e.g. State v. Austin*, 482 P.2d 284, 87 Nev. 81, 82, 482 P.2d 284, 284 (1971) (*per curiam*) (upholding a dismissal when the prosecution requested multiple continuances based on its failure to subpoena witnesses, to locate evidence, or for other reasons not listed in the opinion); *Maes v. Sheriff, Clark Cty.*, 86 Nev. 317, 319, 468 P.2d 332, 333 (1970) (upholding dismissal when the prosecution requested leave to provide proof of good cause for its failure to pursue a preliminary hearing, but failed to provide said proof); *McNair v. Sheriff, Clark Cty.*, 89 Nev. 434, 514 P.2d 1175 (1973) (finding dismissal was appropriate where prosecution made an unsupported motion to continue a preliminary hearing, only to file a grand jury indictment on the same charges, and where it appeared that the prosecution was willful or consciously indifferent about the delay).

II. The Complaint Provided the Appellee with Adequate Notice as to the Charge She Faced So that She Could Prepare Her Defense, and her Arguments Regarding Prejudice to Her and the Victim are Misplaced.

As discussed in the Tribe's Opening Brief, the Complaint filed in this case adequately provided the Appellee with notice of the charge against her and an opportunity to begin preparing her defense. *United States v. Neill*, 166 F.3d 943 (9th Cir. 1999); *Hamling v. United States*, 418 U.S. 87, 117, 94 S.Ct 2887, 2907 (1974). A charging document "need do little more than to track the language of the statute charged and state the time and place (in *approximate* terms) of the alleged crime." *United States v. Alfonso*, 143 F.3d 772, 776-77 (2nd Cir. 1998) (*emphasis added*). The Appellee has cited to no case law from any jurisdiction that says otherwise. Instead, the Appellee — while admitting that "the officer may have performed a valid arrest in this case, based on the totality of the circumstances" — argues that the affidavit submitted in support of the complaint needed to provide notice of the time of offense. This argument is directly contradicted by *Baltazar*. As argued extensively in the Tribe's Opening Brief, the Tribal Code has a "tolerance of imprecision built into the criminal process [that] recognizes the immense potential for error or mistake early in the initiation of criminal proceedings." *Baltazar* CA-01-003, at 4. This "tolerance" is premised on the fact, at the early stages of the criminal process, the parties have not had an opportunity "to determine the reliability and veracity of witnesses." Accordingly, the Appellee's argument in this regard should be rejected.

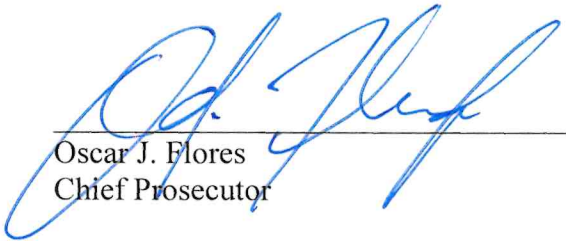
The Appellee also attempts to argue, without support, that the listed victim have suffered neither prejudice, nor a violation of their own right to speedy resolution under local Victims' Rights laws because the complaint in this case was dismissed without prejudice,. *See* 4 PYTC § 5-20. This Court indicated in *Baltazar* that a trial court has a duty to balance the sometimes

conflicting rights of an accused and his victim. *Baltazar*, CA-01-003, at 4-5. In describing that balancing act, this Court stated, “The court’s superior concern ... must be whether a justice can be accomplished which takes into account these competing concerns. This becomes more important in the early stages of the criminal process when a confrontational opportunity to examine the factual basis for the complaint has not yet happened.” *Id.* The victim in this case reported to police that the Appellee had broken a window in her house, and that she wanted to have the Appellee removed from the premises as a result. Once the case proceeded to court, the victim was entitled to a just, speedy, and fair resolution of the case through the course of the normal legal process. The fact that the complaint was dismissed as a result of the trial court’s misinterpretation of 3-PYTC § 2-2-90 and whether time is an element that must be considered when analyzing probable cause was error. That error resulted in the Appellee being released without conditions that might have been relevant to the victim’s safety or peace. It also resulted in the case being continued into the future, denying her a speedy resolution. The passage of time, as lawyers and courts are well aware, also tend to result in degradation of memories or other evidence, thereby making the search for truth at trial more difficult for both parties. Thus, the Appellee’s argument that the victim suffered no prejudice is short sighted and unpersuasive.

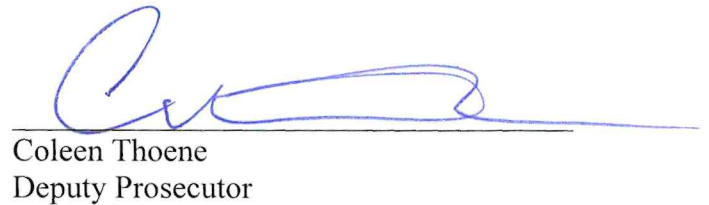
CONCLUSION AND REMEDY SOUGHT

The trial court's dismissal of the complaint against the Defendant at the initial hearing was contrary to the Pascua Yaqui Tribal Code and relevant case law. The Appellant respectfully requests this Court reverse the trial court's ruling, reinstate the complaint, and remand the case to the trial court for further proceedings.

RESPECTFULLY submitted this 17th day of April, 2019.



Oscar J. Flores
Chief Prosecutor



Coleen Thoene
Deputy Prosecutor

CERTIFICATE OF SERVICE

I hereby certify that the Tribe's pleading was delivered this date to:

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And that one (1) copy of the Tribe's pleading was delivered, this date to:

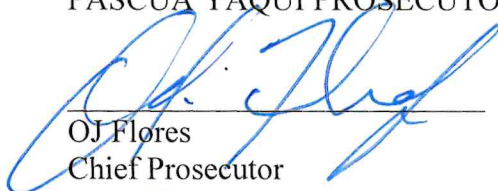
Annamarie Valdivia
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And that one (1) copy of the Tribe's pleading was delivered this date to:

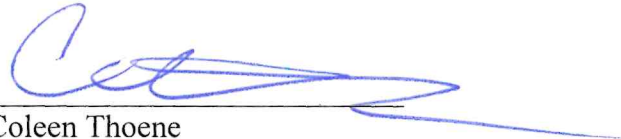
Associate Judge Margaret Flores
Pascua Yaqui Tribal Court
7777 S. Camino Huivisim
Tucson, AZ 85757

Dated this 17th day of May, 2019.

PASCUA YAQUI PROSECUTOR

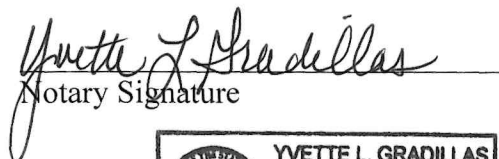


OJ Flores
Chief Prosecutor

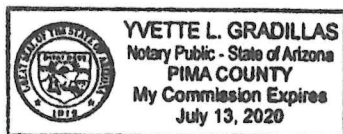


Coleen Thoene
Deputy Prosecutor

Sworn before me this 17th day of May, 2019



Notary Signature



IN THE PASCUA YAQUI COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,
Appellee,

vs.

ISENA RODRIGUEZ,
Appellant.

) APPELLATE CASE NO. CA-19-005⁴
)
) PASCUA YAQUI TRIBAL COURT NO.
) CR-19-080
)
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APPELLEE'S RESPONSE BRIEF

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I. JURISDICTIONAL STATEMENT

The Court of Appeals has jurisdiction to review this case as the Tribe has the ability to appeal dismissal of a complaint prior to trial, whether or not dismissal is with or without prejudice. *PYT v. Bustamante*, CA-17-004 (PYT Ct. App. 2018); *In the Matter of Alvarez*, CA-17-008 (PYT Ct. App. 2018); and *PYT v. Baltazar*, CA-01-003 (PYT Ct. App. 2001). In the present case, the Pascua Yaqui trial court dismissed a complaint file on January 9, 2019 without prejudice without prejudice to refile. The complaint alleged Defendant/Appellee Isena Rodriguez, an enrolled member of the Pascua Yaqui Nation, broke a window at her grandmother's house, constituting an injury to public property/family violence in violation of 4 PYTC § 1-630 and 4 PYTC§ 3-10(B) on or about January 7, 2019 at approximately 5:00 p.m.. The probable cause statement/affidavit submitted by the Tribe in support of the complaint at the initial hearing failed to notify the court or the Defendant of the time she was alleged to have committed the charged crime. The Tribe's charging prosecutor indicated a time on the complaint, however, at the hearing no explanation was offered for the source of that time.

II. ISSUE PRESENTED FOR REVIEW

- A. Whether the trial court abused its discretion when it dismissed, without prejudice to refile, a complaint alleging that an incident occurred at a specific time despite the failure of any time to be indicated in the supporting probable cause affidavit, or other statement of the officer known by the court or prosecutor?**

III. STATEMENT OF THE CASE

A. Summary of Incident and Arrest

The following information was obtained from Appellant's Exhibit A-C (Criminal Complaint and Probable Cause Affidavit, Initial Hearing and Order of Dismissal and Transcripts of Initial Hearing). Ms. Rodriguez makes no admissions as to any elements of the charges.

On January 9, 2019 at 5:49 a.m., Helen Luzania, arrived at the front gate of the Pascua Yaqui Police Department and made contact with the Pascua Yaqui Police Department's Officer Kevin Wells. Ms. Luzania requested assistance from the police department in removing her granddaughter, Isena Rodriguez from her home. Ms. Luzania informed Officer Wells that she kicked her granddaughter out of her home after her granddaughter broke a window with a rock on January 7, 2019.

Officer Kevin Wells informed Ms. Luzania about the formal process in the nation of having tenants removed and drove Ms. Luzania home so he could further investigate the situation. After reading *Miranda* rights, Officer Wells spoke with Ms. Rodriguez, who allegedly indicated that she accidentally broke the window after getting mad and swinging a broom. There was no discussion with Ms. Rodriguez of the date and time that the incident occurred and no time of the alleged incident was included in the affidavit. Ms. Rodriguez was arrested at 6:23 a.m. and detained for violation of 4 PYTC § 4-1-630 – Injury to Public Property and referred to the Tribe for prosecution.

B. Summary of Trial Court Proceedings

On January 09, 2019 at 11:11 a.m., a one-count complaint was filed alleging the following: "On or about January 7, 2019, at approximately 5:00 p.m., at or near 5091 W. Calle Tarook, Defendant, without proper authority, used, injured, or misused any public, Tribal, government or private property, to wit: ***Broke a window at her grandmother, Helen Lucania's house***" This was

in alleged to be a violation of 4 PYTC § 1-630 and 4 PYTC § 3-10(B)– Injury to Public Property/Family Violence. Appellant’s Exhibit A.

At the Initial Hearing, the trial court made a finding that the information contained on the criminal complaint as to the time of the incident did not match the information contained in the affidavit filed by Officer Wells as the affidavit did not give an approximate time of the offense. The trial court cited to the requirement of the tribal code requiring that all criminal complaints filed in tribal court need to include both a date and time and that the information be supported by a sworn statement or affidavit. 3 PYTC § 2-2-90. The trial court further stated that “it’s not clear as to what time the allegation actually occurred according to [her] reading of the probable cause statement.” Appellant’s Exhibit C at p. 7.

The Tribe argued in rebuttal that time was not an element of the offense and that the defendant had been sufficiently apprised of the allegation and charge against her. The Tribe stated that another prosecutor, Kendrick Wilson, added “5:00 p.m.” to the complaint, but only speculated as to how Mr. Wilson came up with that time. The Tribe further requested that dismissal be without prejudice. Defense argued that knowing the time of the incident was important to allow Ms. Rodriguez the opportunity to defend herself. She also indicated that her client denied that the incident occurred on January 7, 2019. The Defense argued that dismissal could be without prejudice to permit the Tribe to refile the complaint and affidavit with the accurate information “where Defense can work with the case properly defend the client.” *Id.* at 9.

The trial court dismissed the complaint without prejudice to refiling due to the missing information in the affidavit as the complaint and supporting affidavit did not comport with

the requirements of the tribal code. *Id.* at 9-10. No where in the transcripts or the initial hearing order did the court make a finding that time is an essential element of the offense.

IV. SUMMARY OF ARGUMENT

The trial court dismissed without prejudice a complaint where an officer failed to include information relating to the time a specific incident occurred, in violation of 3 PYTC § 2-2-90. While the issue in the present case appears to be similar to the issue presented in *PYT v. Baltazar*, CA-01-003, this case is distinguishable for a number of reasons. First, in the present case, the Tribe made up a time to include in the complaint without any supporting information. Second, in the present case, the Tribe failed to include any information regarding the time the incident occurred which is a requirement of the tribal code. In *Baltazar*; the complaint was dismissed with prejudice where a series of corrections were made by the Tribe as to the location and to date of the offense but where defendant had notice of the time and date alleged due to the multiple filings of the complaint and supporting affidavits. In the present case, dismissal was without prejudice to re-filing, so neither the Tribe nor the alleged victim in this case was prejudiced by the trial court's dismissal and the Tribe. The court did not abuse its discretion since the Tribe had an option to amend the complaint to include the essential fact of time, and re-file the charge.

V. ARGUMENT

A. Standard of Review

The standard of review in this case is abuse of discretion. *PYT v. Bustamante*, CA-17-004 (PYT Ct. App. 2018); *In the Matter of Alvarez*, CA-17-008 (PYT Ct. App. 2018); and *PYT v. Baltazar*, CA-01-003 (PYT Ct. App. 2001). Therefore, *PYT v. Miranda*, CA-08-015 (PYT Ct. App. 2009) is irrelevant as there is no absence of controlling Pascua Yaqui Law with regards to the standard of review in this case. *In PYT v. Coleman*, CA-15-003 (PYT Ct. App. 2015), this Court, citing to *Michaelson v. Garr*, 234 Ariz. 542, 544, (Ariz. App. 2014), held that “[t]he court abuses its discretion when it makes an error of law in reaching a discretionary conclusion or “when the record’ viewed in the light most favorable to upholding the trial court’s decision, is devoid of competent evidence to support the decision.”

De novo review would allow this Court to evaluate the affidavit and the complaint to see if sufficient facts were alleged to support a finding of probable cause. This was contemplated in *PYT v. Gonzalez*, CA-07-017 (PYT Ct. App. 2007). However, this decision is designated as an “Order” rather than an “Opinion.” Therefore, it is not precedent. 3 PYTC § 2-3-240. The United States Supreme Court has cautioned appellate courts from reviewing *de novo* a trials courts probable cause finding. *See Illinois v. Gates*, 462 U.S. 213, 236, (1983) (“Similarly, we have repeatedly said that after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review. A magistrate's “determination of **probable cause** should be paid great deference by reviewing courts.”) (Bold added.)

B. Issue for Review

Whether the trial court abused its discretion when it dismissed, without prejudice to refile, a complaint alleging that an incident occurred at a specific time despite the failure of any time to be indicated in the supporting probable cause affidavit, or other statement of the Officer known by the court or prosecutor?

- 1. The Trial Court did not abuse its discretion when it dismissed without prejudice to refile a complaint where an Officer failed to provide any approximate time of the incident in the supporting affidavit.**

PYT v. Baltazar, supra, is a case that involved a complaint where the defendant was accused of committing a crime which resulted in bodily injury to the alleged victim. Exhibit A (*Baltazar* Opinion). At the time of the initial hearing, it became apparent that the arresting officer made a clerical error in the first affidavit that was filed and the Tribe moved orally to correct the first complaint. When counsel for the defendant objected to an oral amendment on the complaint, the Tribe moved to dismiss the complaint without prejudice to refile and proceeded to refile the complaint to reflect the date listed in the affidavit.

After the case proceeded for a short while, the Tribe moved again to make additional amendments to the complaint and affidavit to reflect the correct location of the incident. It was discovered shortly after that the officer had again made a clerical mistake regarding the date of the incident. The trial court dismissed the case with prejudice upon motion by defense. The Tribe appealed the dismissal stating that dismissal was based on simple deficiency. Appellee argued that dismissal was warranted as it was unfair to subject the defendant to multiple affidavits regarding the same incident. In its response brief, appellee admitted that at some point, the information in the complaints and affidavits were correct. Exhibit B (*PYT v. Baltazar, supra* Appellee's Brief in Response). The Pascua Yaqui Appellate Court held that "when a dismissal [of a criminal complaint] is reached so early in the criminal process, it is incumbent upon the court to state with specificity how such errors do prejudice the defendant. It is not enough that it is an inconvenient

to the defendant ... But, in a ‘victim’ case, as stated above, the Tribe stands in a trust position to ensure that justice is accorded to all parties.”

The *Baltazar* case is highly distinguishable to the present case in its tolerance of slight errors. In *Baltazar*, the defendant was put on notice of the correct date and location of the offense multiple times throughout the proceedings. That distinction cannot be overstated. In the present case, Ms. Rodriguez was not placed on any notice of the time she was accused of having violated the law by the complaining Officer. Instead she was given an approximate time of 5:00 p.m., a time nowhere stated in the Officer’s supporting affidavit of probable cause. The Tribe’s charging prosecutor filled in a time, but does not indicate where or how the time was discovered by him. The charging prosecutor did not cover the initial hearing and therefore could not explain how that time came arose to include in the complaint. To date, Ms. Rodriguez never received any additional information on the alleged time that the incident occurred. There was no allegation of a clerical error nor a motion to amend the complaint to reflect the information in the affidavit. This is contrary to the requirements of 3 PYTC § 2-2-90(A)-(D).

While it does appear that the officer may have performed a valid arrest in this case, based on the totality of the circumstances, review for abuse of discretion requires this Court to ask not if there was probable cause to arrest, but whether or not “the record’ viewed in the light most favorable to upholding the trial court’s decision, is devoid of competent evidence to support the decision.” *Coleman, supra*. (external citations omitted). When viewed from this perspective, it is clear that the complaint lacked specificity of time to survive the Tribal Code’s requirement.

Here dismissal of the charges against Ms. Rodriguez were without prejudice to refile. The trial court dismissed the complaint to allow the Tribe and Officer Wells to make the necessary

amendments to the affidavit and, if necessary to the complaint, so that information was consistent in accordance with the requirements of the tribal code.

Victims in the Pascua Yaqui Tribe have a right to a speedy trial and this was not violated by a dismissal without prejudice as the Tribe has the right to refile the complaint as soon as they could correct the missing information in the affidavit.

VI. CONCLUSION

This case turns on the Court's application of *Baltzar, supra*. in a case where time was completely omitted from the arresting officer's affidavit and where defendant received no notice of the alleged time the incident occurred. While probable cause may have existed to arrest Ms. Rodriguez in this matter, the Tribe has an obligation to comport with the tribal code and to instruct their officers when affidavits are non-compliant. A defendant must be notified of the alleged time of the incident so as to have ample notice to prepare her defense or to determine whether or not to plead guilty at the time of arraignment. Here no injury was suffered by the victim when the trial court dismissed the complaint without prejudice because the Tribe had the ability to refile the affidavit and complaint as soon as they could obtain an approximate time of the alleged incident.

For these reasons, Appellee is requesting denial of the Tribe's request for relieve in this matter. Appellee is not requesting oral arguments in this matter.

RESPECTFULLY SUBMITTED:

May 6, 2019



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Attorney for Appellee Isena Rodriguez

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the
Appellate CM/ECF System

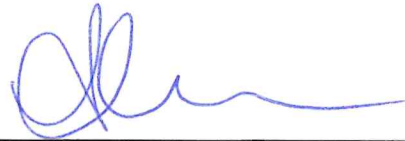
I hereby certify that on May 6, 2019, I filed an original and submitted a copy of the Appellee's Response Brief to the following:

Ben Casey
PYT Court of Appeals
7777 S. Camino Huvisim
Tucson, AZ 85757

Honorable Melvin Stoof
PYT Court of Appeals
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Oscar Flores
Chief Prosecutor
Colleen Thoene
Deputy Prosecutor
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Appellee's Exhibit A:

PYT v. Baltazar Opinion and Order (2001)

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

Docket No. CA-01-003

Pascua Yaqui Tribe,)	
Appellant,)	
)	OPINION
v.)	AND
)	ORDER
Randy Baltazar,)	
Appellee.)	

Appearances: Tamara Walters, Chief Prosecutor, for the Appellant;
Vincent Gonzalez, Public Defender, for the Appellee.

Before: Richard A. Monette, Chief Justice;
Carolyn Abeita, Associate Justice;
Carey N. Vicenti, Associate Justice.

C.N. Vicenti, Justice, for a unanimous Court.

This matter comes before the Court of Appeals by an appeal submitted by the Chief Prosecutor on behalf of the Pascua Yaqui Tribe of Arizona. This Court requested and received brief in this matter. Oral arguments were held on June 14, 2001. Having fully considered the arguments and the authorities cited, this Court hereby holds in favor of the Appellant, Pascua Yaqui Tribe, and remands this matter to the trial court for further consideration consistent with this ruling.

I. Jurisdiction

The Appellant has appealed an Order of the Court entered on March 2, 2001. Section 1.22 of the Court of Appeals Procedures Act allows such appeal. This Court has jurisdiction over the present appeal.

II. Facts

On August 4, 2000, at about 8:30 in the evening, a crime was allegedly committed on South Kau Bo-oh Street. The crime resulted in bodily injury to Ernesto Flores. As a result of a cursory investigation the Office of the Prosecution then filed this case against Randy Baltazar. The Complaint filed in this case relied principally upon an affidavit prepared by Officer Vincent Pettis. Apparently, as a matter of mere clerical error, the Officer cited the date of the incident as August 4 rather than the correct day of August 5. As the Prosecution became aware of this mistake, she requested counsel for the defense to stipulate to an amendment to change the '4' to a '5'. Defense Counsel refused. The Prosecution then filed a Motion to Dismiss and re-filed the Complaint making the necessary alteration. The new complaint was filed on November 14, 2000.

As the new complaint advanced through the criminal process, Ernesto Flores, the alleged victim, then disclosed that the alleged crime occurred at 7600 South Kau Bo-oh -- --thus contradicting yet another prosecution fact, that the event took place at '7700' South Kau Bo-oh Street. The Prosecution then, based upon this new information, directed Officer Pettis to re-interview Mr. Flores and revise his original affidavit. He did so. The Prosecution filed a Motion to Amend the Complaint. As the matter went forward, however, it was soon discovered that the date had been reverted to the originally erroneous 4th of August, 2001. Upon the Defense Counsel's assertions that such mistakes of date and location would prejudice the defenses available to the defendant the Court summarily dismissed the complaint with prejudice, recognizing that these errors "*can* prejudice the defendant". Order of March 2, 2001. (Emphasis added.) This appeal then

ensued. The appeal essentially asks whether such dismissal constituted an abuse of discretion on the part of the presiding judge.

III. Discussion

The appeal in this matter is rather direct and simple. It asks whether, upon initial examination of a complaint, a judge possesses the discretion to dismiss a complaint with prejudice which is technically defective upon its face with respect to foundational facts. Our primary guidance in this question is presented by the Pascua Yaqui Tribal Code at Chapter 1, Sections 1.28 to 1.30. Specifically, Section 1.30 of that Chapter states that the form of the Complaint must contain (a) the name of the Jurisdiction where it is filed, (b) the name of the party, if the defendants be known, and if not, then such names as may be given by them by the complainant, and a statement signed by the complainant of the acts constituting the offense and the time and place of the commission of the offense, as near as may be ascertained.

It is in the latter requirement regarding a statement of “the time and place” of the alleged offense from which this appeal arises. Section 1.57 of Chapter 1 give us further guidance in stating that a court *must* set aside a complaint (a) where it is found not to comply with the requirements of Sec. 1.29 or 1.30... (b) the defendant has been charged without reasonable of probable cause, [or] (c) upon a determination that the Court has no jurisdiction over the person of the offense. The mandatory nature of this provision suggests that a court upon first examination of a complaint has no discretion in rendering a determination of the sufficiency of a complaint. If a complaint does not meet the requirements of Section 1.30 in its recitation of foundational facts, it would appear that the complaint must be dismissed. But this is misleading.

The terms of Section 1.30 are, themselves, cast in very liberal fashion. For instance, it is not necessary to identify the defendant with precision. See Section 1.30 (b). The “time and place” requirements themselves only require a precision “as near as they can be ascertained”. Section 1.30(c). This suggested tolerance of imprecision built into the criminal process recognizes the immense potential for error or mistake early in the initiation of criminal proceedings. At this point in the criminal process, there has been insufficient time to determine the reliability and veracity of witnesses. The court’s role here is to determine whether the basic information necessary to go forward with a criminal prosecution have been met, whether reasonable or probable cause exists that a crime has been committed and whether the case involves an incident having occurred within the territorial boundaries and involving a person within the Tribe’s jurisdiction. The court is determining whether there has been any mistake *ab initio* as to whether this is even the proper court for the filing of the criminal case; the court is determining whether a gross error exists leading to an erroneous conclusion as to the reasonableness or probability of the conclusion that a crime has been committed.

The appellant cites to United States v. Orbiz, 358 F. Supp. 200 (D. Ct. Puerto Rico, 1973) in which the federal court states that “common sense and reason prevail over mere technicalities”. We are in agreement. When a case of this nature is filed, not only is it a question of fairness to the defendant that provides a court with a policy basis to render determinations. The court must also recognize that a victim, too, relies upon the Tribe to recognize that some harm has occurred and that the Tribe sits in a position of trust to remedy that harm. The court’s superior concern, therefore, must be whether a justice can be accomplished which takes into account these competing concerns. This

becomes more important in the early stages of the criminal process when a confrontational opportunity to examine the factual basis for the complaint has not yet happened.

The appellee has argued that the trial court dismissed the case “*not* for a deficiency in the complaint but rather , [for] the unfairness of subjecting Mr. Baltazar to multiple affidavits regarding the same incident.” Brief in Response at 4. (Emphasis in the original). More precisely, the court stated that it could not allow any amendment to the complaint because to do such “*can* prejudice the defendant”. Order of March 2, 2001. (Emphasis added.) The basis for the dismissal is not inconsequential here. When a dismissal is reached so early in the criminal process, it is incumbent upon the court to state with specificity how such errors do prejudice the defendant. It is not enough that it is an inconvenience to the defendant----it is a truism that all legal process involves inconvenience. But, in a ‘victim’ case, as stated above, the Tribe stands in a trust position to ensure that justice is accorded to all parties. A technical failure early in the legal process must point to a fatal failure on the prosecution’s part, or, to a clear violation of the defendant’s rights. An order at this juncture dismissing a case with prejudice serves as an explanation to the tribal public, in general, and the victim, in particular, why any further pursuit of the criminal prosecution would result in a manifest injustice to the defendant, either through the violation of his rights or through the sabotage of an available defense.

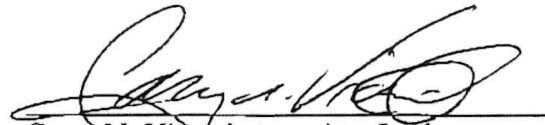
The appellant fulfilled the requirements of 1 PYTC Section 1.30 in the filing of the charges against the appellee. The mere fact that certain allegations were in error

could not work a prejudice either against a defense possessed by the defendant or against any rights he may have.

IV. Conclusion

For the foregoing reasons, we conclude that the trial court abused its discretion in dismissing this case with prejudice. We reverse the trial court and remand this case for further consideration consistent with this opinion and order.

IT IS SO ORDERED, this 12th day of September, 2001.



Carey N. Vicenti, Associate Justice

Appellee's Exhibit A:

PYT v. Baltazar – Appellee's Response Brief

1 J. Vincent González, SBN 018372
2 Pascua Yaqui Public Defender
3 7474 S. Camino de Oeste
4 Tucson, AZ 85746

5 Attorney for Appellee

01 APR 19 PM 4:38
CA-01-003
[Signature]

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

8 PASCUA YAQUI TRIBE,

9 Appellant,

10 vs.

11 BALTAZAR, RANDY,

12 Appellee
13

) Case No.: CA-01-003
) (Trial Court No. CR-01-024)

) BRIEF IN RESPONSE

14
15 COMES NOW, Appellee, Randy Baltazar, by and through counsel undersigned to file his
16 Brief in Response as prescribed by Section 1.22 of the Court of Appeals procedures.

17 **A. Jurisdiction**

18 Appellee concurs that this Court of Appeals has jurisdiction over this matter.

19 **B. Facts of the Case**

20 Appellee agrees with Appellant's Facts of the Case, however, Appellee contests several
21 points of interest, specifically, the Appellant's non-compliance with Rule 3.1(B) of the Tribal
22 Rules of Criminal Procedure.

23 **1. Location/address of alleged incident.**

24 After the arraignment hearing for case number CR-00-166,¹ the Appellant properly
25 disclosed the names and addresses of potential witnesses. Appellee, through counsel had each
26
27

28 ¹ See Appellant's Brief on Appeal, Section B: Facts of the Case.

1 witness subpoenaed to submit to a pre-trial interview, including Josie Valencia.² In his process
2 log, Court Process Server Juan Urbalejo indicated that service could not be completed since the
3 resident at 7700 S. Kau Bo-oh, María Luisa Francisco, stated that Josie Valencia did not live at
4 that disclosed address.³ On November 9, 2000, Defense Counsel contacted the Prosecutor's
5 Office requesting a current address. The Appellant subsequently moved for dismissal based on
6 the mistake in dates of incident.⁴

7 When the Appellant re-filed this case a second time as CR-01-024, Appellant, again,
8 disclosed on December 12, 2000 Josie Valencia, 7700 S. Kau Bo-oh, as a potential witness.⁵
9 Following the same procedure, Appellee attempted to get Ms. Valencia to submit to an
10 investigatory interview. Process Server Juan Urbalejo was still unable to complete service for the
11 same reason as before.⁶ On January 2, 2001, Appellee again contacted Appellant regarding Ms.
12 Valencia's address. On February 6, 2001, Appellant filed a Notice of Disclosure (Supplement)
13 providing Ms. Valencia's address, *a third time*, as 7700 S. Kau Bo-oh, not 7600 S. Kau Bo-oh.⁷

14 Further, on page 3 of the Appellant's brief, lines 8-12, Appellant indicates that the
15 alleged victim, Mr. Ernesto Flores, advised this attorney that he had made a mistake and that the
16 location of the offense had been at 7600 S. Kau Bo-oh, and not 7700 S. Kau Bo-oh. However,
17 Appellant did not attend that interview. On January 3, 2001, this attorney did interview this
18 witness. As a courtesy to the Appellant, and to protect Mr. Flores' rights, this counsel invited the
19 Prosecutor's office to send a representative for this interview. That office declined. Appellant,
20 _____

21 ² A copy of the subpoena is attached as Appellee's exhibit 1. The alleged incident took place at Josie Valencia's
22 residence, which is the address in question.

23 ³ See Appellee's exhibit 2.

24 ⁴ See Appellant's Brief, Facts of the Case. Note: Appellee could not stipulate to the requested amendment, as the
25 proposed change was directed at Officer Pettis' affidavit, not the actual Criminal Complaint (see Appellant's brief
page 2, lines 21-27). This Attorney could not stipulate to change a witness' sworn affidavit.

26 ⁵ See Appellee's exhibit 3.

27 ⁶ See Appellee's exhibit 4.

28 ⁷ See Appellee's exhibit 5.

1 therefore, cannot attest to what Mr. Flores said to this counsel. Mr. Flores never indicated that he
2 made a "mistake" regarding the location of the alleged incident.

3 After this interview, Officer Pettis notified Appellee that Appellant had requested that he
4 re-interview Mr. Flores, regarding the location of this incident. Officer Pettis indicated that Lay
5 Advocate Alycia Tapia made the request. Appellant disclosed this updated report on February 6,
6 2001 as part of the supplemental disclosure.

7 Appellant knew of this defect (location/address) since November 9, 2000 and did not
8 investigate at that time or prior to re-filing this case. Only after Appellee notified Appellant on
9 January 2, 2001 did an investigation take place. Then to help its cause, it had Officer Pettis re-
10 interview Mr. Flores, specifically about the location, amend his report, and amend and file a third
11 sworn affidavit.

12 The Appellant also misstated the proximity of 7600 to 7700 S. Kau Bo-oh in its Brief.
13 These two addresses are a city block apart, separated by several houses and one of the
14 reservation's bigger roads, Torim.⁸ These houses are not next door to each other as the Appellant
15 (or Mr. Flores) has stated.⁹ Even today, confusion still exists as to the location of the alleged
16 incident.

17 **2. Date of incident**

18 The Appellant has provided a detailed synopsis of the problems with the date of incident.
19 However, Appellant failed to mention that it is the trial court's procedure to have the information
20 on the complaint match the information provided for on the affidavit, specifically the date, time,
21 place of incident and the crime charged.¹⁰ Any time this information in the affidavit does not
22 match the information on the complaint, the case may be dismissed. When the Appellant has
23 made a typographical error in the complaint, the trial court does entertain a motion to amend; but
24
25

26 ⁸ See Appellee's exhibit 6.

27 ⁹ See Appellant's Brief, page 3, line 20.

28 ¹⁰ This procedure has been derived from 10 PYTC §3.1.

1 the court does not do the same for an insufficient affidavit since it is a third person's sworn
2 statement, not a legal pleading.

3 In this case, Appellant moved the trial court to accept a *third sworn affidavit*, along with a
4 new complaint, which is what is needed (complaint and affidavit) to begin a new case. In
5 addition, these documents do not match, so a fourth sworn affidavit will be necessary. Again,
6 Appellant and Appellee cannot simply stipulate to change a witness' sworn statement.

7 C. Issue Presented

8 Did the trial court abuse its discretion by dismissing the charges with prejudice and by
9 not permitting Appellant to file the amended complaint and affidavit?

10 D. Arguments

11 1. Appellant has misinterpreted the basis for the Trial Court's ruling to dismiss.

12 Appellant has based its entire appeal on the basis that the trial court dismissed this case
13 for a simple deficiency in the complaint. However, the basis for Appellee's Motion to Dismiss
14 was not for a deficiency in the criminal complaint, but rather, the unfairness of subjecting Mr.
15 Baltazar to multiple affidavits regarding the same incident.¹¹

16 The trial court does follow Rule 3.1(D) of the Pascua Yaqui Rules of Criminal Procedure,
17 which requires a complaint and sworn statement (affidavit) to be filed.¹² From these two
18 documents, the trial court must determine whether sufficient probable cause exists to continue
19 with prosecution. If not, the court may dismiss the matter. As addressed above, the information
20 on these two documents must match to provide sufficient probable cause.

21 The affidavit, of course, is sworn under the penalty of perjury as true and accurate, yet
22 each one of the three affidavits in this case indicates separate dates of incident and/or separate
23 places of incident. How can any one affidavit be the "true and accurate" account when each has
24 been sworn as such? This argument was the basis for Appellee's Motion to Dismiss and the trial
25
26

27 ¹¹ See Appellant's Exhibit I.

28 ¹² See Appellant's Brief, page 5, lines 23-26.

1 court's dismissal. The motion and dismissal was not based on Section 1.57 of Title 1 as
2 Appellant asserts.¹³

3 The Tribe has acknowledged that even the amended complaint and affidavit is flawed
4 since the information does not match.¹⁴ These amended documents would not survive the initial
5 probable cause scrutiny of the trial court, which would result in another dismissal.

6 Appellant incorrectly focuses on the mistakes of the complaint, and claims that the trial
7 court must give Appellant the opportunity to amend the complaint. However, the essence of the
8 motion and dismissal was the unfairness of subjecting Appellant to the multiple affidavits
9 submitted by Officer Pettis, three so far, and a fourth that is needed. Ironically, given the
10 information on the respective affidavits, the complaints in CR-00-166 and in CR-01-024 were
11 not deficient. At those initial hearings, the trial court found sufficient probable cause, and
12 allowed the Tribe to continue with its prosecution. The information in those complaints and
13 affidavits properly matched with each other. The problem for the Appellant was that the
14 information in the affidavits themselves was wrong, not the complaint. Yet, no section in the
15 Pascua Yaqui Code allows the court to amend somebody's sworn statement, and this counsel
16 cannot stipulate to Appellant's request to change that statement made by Officer Pettis. Since the
17 trial court could not grant that request, the trial court had no other just alternative.

18 The errors presented to the trial court could have been avoided and should have been
19 caught prior to filing these pleadings. If Appellant had investigated its case, spoken to its own
20 witnesses, and reviewed its pleadings prior to filing, these mistakes would not have existed.
21 Appellant knew of the problem with the address since November 9, 2000 when Appellee notified
22 Appellant the first time, prior to its re-filing of the case. And, if it had properly investigated its
23 own case, Appellant should have known this defect even before this date. Still, Appellant did
24 nothing to correct that error before it filed the case the second time. This simple defect is
25
26

27 ¹³ See Appellant's Brief, page 11, lines 13-22.

28 ¹⁴ See Appellant's Brief, page 4, lines 4-9. Appellant lists the dates of April 4 and 5; yet, dates in question are August 4 and 5.

1 evidence that the Appellant did not investigate its case, including speaking to its own witnesses,
2 prior to filing.

3 These mistakes are not for the trial court to fix, nor is it Appellee's obligation to stipulate
4 to information needed for a conviction. The Appellant has the responsibility to investigate its
5 cases, prior to filing charges, to communicate with the officers involved, and to review each
6 document filed with the court for accuracy and detail. In this case, the Appellant failed. The
7 Appellant did not did not investigate its own case prior to filing (twice), review Officer Pettis'
8 affidavits (three times), and it did not review documents filed with the court, including a
9 supplemental disclosure with the same incorrect information. If it had, we would not be before
10 this Honorable Court, and the Tribe would have had its day in court.

11 The problems presented in these documents are details overlooked or ignored by
12 Appellant. Its solution to remedy these problems is to file amended pleadings, or to get
13 dismissals without prejudice and try again until it gets it right. But that is not justice. A man's
14 life and liberty are at stake, and Appellant blames the trial court for not allowing Appellant to fix
15 its repeated mistakes.

16 The trial court did not err in dismissing this matter with prejudice. Appellant moved the
17 trial court to accept a third complaint and affidavit, which is essentially the basis of a new case in
18 Tribal Court. The court did not base its ruling on a deficiency of the complaint as Appellant
19 asserts, but rather on the unfairness of subjecting Mr. Baltazar to numerous affidavits and the
20 continued errors committed by the Tribe. The trial court found that these errors prejudiced the
21 Defendant, and dismissed this matter accordingly.

22 **II. The Trial Court maintains discretion to dismiss this case.**

23 Appellant has asserted that that it should be allowed to re-file this case to cure errors it
24 has made a third time, as long as it is within the statute of limitations. However, the repeated
25 filing, dismissals, re-filing, and amendments in Appellee's case is harassing. Federal Courts have
26 held that the prosecuting agent cannot harass a defendant by charging, dismissing, and then re-

1 charging without placing a defendant in jeopardy.¹⁵ This case law derives from Rule 48(a) of the
2 Federal Rules of Criminal Procedure.¹⁶ The court in *Cox* observed that this rule authorized the
3 court to protect defendants from such harassment.¹⁷

4 Even if Appellant asserts that these errors were not intentional, and not made in bad faith,
5 the court in *State v. Austin*, 482 P2d 284 (1971), maintains that “conscious indifference” as well
6 as “willful” acts are subject to dismissal. In *Austin*, the Nevada Supreme Court upheld a trial
7 court’s dismissal on grounds that the State failed to comply with important procedural rules,
8 consistent with its holding in *Maes v. Sheriff*, 86 Nev 317, 468 P2d 332 (1970):

9 “The State also suggests that our holding in *Maes* applied only to “willful” failures to
10 comply with important procedural rules, which the State construes as meaning
11 “intentional.” In essence the State contends that, absent a showing of calculated bad faith,
12 the State’s legal representatives have an unrestricted right to blunder interminably, which
13 they may exercise by repeated re-filing of the same charges, limited only by the
14 applicable statute of limitations. A reading of the *Maes* case, in the light of its facts,
15 should have made it evident that its ruling applies equally to situations where there has
16 been conscious indifference to rules of procedure affecting a defendant’s rights.” At page
17 285.¹⁸

18 The Nevada Supreme Court in *McNair v. Sheriff*, 89 Nev 434, 514 P2d 1175 (1973) then
19 held “...when a justice court has dismissed a charge that subsequently is re-filed, our rulings
20 contemplate that **it is the district court which decides whether a prosecutor has been**
21 **“willful” or “consciously indifferent” so as to be barred from instituting a second**
22 **prosecution.**” (Emphasis added). Simply stated, the decision to dismiss lies with the trial court.

23 In *Austin*, the error violated speedy trial time limits by the State having this case
24 continued three times, and requesting a fourth. The *Maes* analysis of that case found that “basic

25 ¹⁵ See *United States v. Cox*, 342 F2d 167, cert. denied 381 U.S. 935.

26 ¹⁶ The Tribe does not have a similar statute, yet federal rules provide the best guidance since reservations are bound
27 by these decisions also.

28 ¹⁷ Three Circuit Court judges made this observation in a separate opinion, concurring in part and dissenting in part.

¹⁸ See attached copy of the opinion.

1 fairness" bars repeated filings when the prosecutor does not comply with important procedural
2 rules.

3
4 In the case at bar, the issues are similar in nature. Appellee was originally charged on
5 September 28, 2000. Because of the defects in the sworn statement, which is required in Rule 3.1
6 of the Rules of Criminal Procedures, the Appellant moved to dismiss the case, knowing it could
7 not prove the elements beyond a reasonable doubt at trial. After the trial court granted that
8 dismissal, the Tribe re-filed the case. Due to the discrepancies in Tribal witnesses' statements,
9 the Appellant discovered that its pleading and supporting affidavit were insufficient again, not
10 meeting the standards of Rule 3.1. At that time, the Tribe submitted a third complaint and
11 affidavit; this time the information did not match. Similar to *Austin*, the Appellant needed more
12 time, and also needed to change its pleadings numerous times.

13
14 In this case, sloppy prosecution has violated Appellee's due process. Rules of criminal
15 procedures are safeguards and limits on what the government may do in criminal prosecutions.
16 In this case, the Tribe has violated the Defendant's right to fair proceedings. The Appellant has
17 submitted **three** sworn affidavit and **three** criminal complaints. Its method to cure its mistakes is
18 to re-file these documents with total disregard to Appellant. These actions are harassing. Filing,
19 dismissing and re-filing over and over is an abuse of Appellant's authority over Appellee. The
20 Trial court was right to dismiss this matter for that reason alone. But Appellee also asserts that
21 Appellant's lack of attention to detail in its charging documents and its disregard to properly
22 investigate it case, shows extreme indifference to the Tribal procedures. Just on that basis the
23 Trial Court's decision was proper. The Trial court made this finding and ruled accordingly. This
24 Appellate Court should uphold the trial court's decision.
25
26
27
28

1 **III. Appellant's Law and Authority section is not on point, and should not be**
2 **considered.**

3 Appellee does not contest that Appellant can amend technical errors in its complaint.
4 Generally, Appellee will not object to such requests. However, in this case, Appellee was
5 potentially facing four different sworn affidavits, which the trial court found, prejudices Appellee
6 along with the continued mistakes made by Appellant and its witnesses. That was the basis for
7 the dismissal, not the trial court's refusal to allow Appellant to amend the complaint.

8 The case law presented by Appellant addresses errors in the complaint and does not
9 address the problem of subjecting a defendant to numerous sworn statements by the same
10 witness. Appellant needs to present case law pertaining to discrepancies in sworn statements and
11 that the court cannot dismiss when it determines that the actions by the prosecutor has been
12 unfair or prejudices the defendant.

13 The trial court has not prohibited the Appellant from correcting typographical error in its
14 pleadings. Nor has the court, as a policy or practice, prevented the Tribe from filing amended
15 pleadings. However, in this specific case, the court found that the errors on behalf of Appellant
16 and subjecting the Appellee to numerous affidavits prejudice Appellee and dismissed this case.
17 That is within the trial court's discretion.

18 Appellant's arguments were misdirected, and as such, so was the case law provided.
19 Appellee does not contest that simple errors can be amended on the complaint, but the issue was
20 whether the numerous affidavits prejudice defendant. The trial court found that it did. Therefore,
21 this Court should uphold the trial court's findings and holdings.

22 **E. Conclusion**

23 The trial court determined that Appellee was indeed prejudiced by the Appellant's filing
24 of numerous affidavits and by Appellant's continuous mistakes. Appellee did not request, nor did
25 the trial court grant, a dismissal based on an error in the complaint as Appellant asserts. In fact,
26 the complaint contained no errors. The court found probable cause, twice, for each respective
27 complaint. Instead the error was in the Officer Pettis' sworn affidavits, all having different
28 information. These facts were actually Mr. Flores' account of the alleged incident. These

1 mistakes and thus, the errors in the Appellant's pleadings could have been avoided if Appellant
2 was more diligent in its pre-trial investigations.

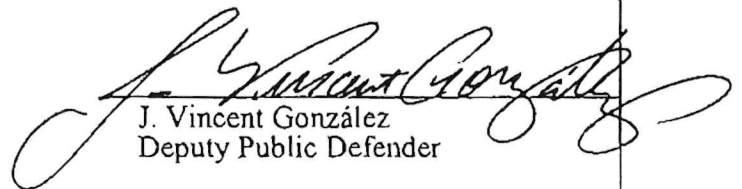
3 Appellant had its chance to prove its case. Appellant actually had two chances. Now, it
4 wants a third. The constant re-filing is harassing. Appellant's disregard for properly following
5 the Rules of Criminal Procedure proves a "conscious indifference." Either way, the trial court
6 had proper discretion to dismiss this matter. But, more simply, the trial court's decision was
7 based on common sense, justice, and fairness. Time after time, Appellant ignored details, refused
8 to investigate its case prior to filing, speak to its own witnesses, and review its own pleadings
9 prior to submitting them. Appellant relied on amended pleadings and the option of a dismissal
10 without prejudice. All the while, Appellant's fate lay in the balance.


11 The trial court did what was just. Its ruling did not prejudice Mr. Flores, as asserted by
12 the Appellant. The Appellant's negligence got this case dismissed. The trial court only ruled on
13 the information presented before it. Appellant blames the trial court, yet its failure to zealously
14 advocate for the Tribe and Mr. Flores is the real reason.

15 Appellant misinterpreted the Motion to Dismiss and the trial court's ruling. As a result,
16 its argument in its brief is not on point and neither is the case law presented. The trial court has
17 the discretion to dismiss when the prosecutor has displayed harassment or intentional or
18 "conscious indifference" to important procedures. Appellee has provided supporting case law.

19 WHEREFORE, Appellee prays that this court uphold the trial court's ruling.

20 RESPECTFULLY Submitted this 19th day of April 2001.

21
22 
23 J. Vincent González
24 Deputy Public Defender

25 COPY of the foregoing hand-delivered this date to
26 Prosecutor's Office, PY Ct. In-box by: 

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

PASCUA YAQUI TRIBE,
OFFICE OF THE PROSECUTOR

Appellant

vs.

ISENA RODRIGUEZ,

Respondent

APPELLATE CASE NO: CA-19-004

TRIBAL COURT CASE NO: CR-19-080

PETITIONER/APPELLANT'S OPENING BRIEF

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REQUEST FOR ORAL ARGUMENT

The issue raised by this appeal is simple: namely, if probable cause to charge a defendant with a criminal offense hinges upon whether law enforcement includes a specific, alleged time of offense as part of the supporting affidavit of probable cause filed with the prosecution's complaint. Although this Court has previously been asked to determine whether the form of a complaint is more important to a finding of probable cause than the substance of a complaint, *See PYT v. Baltazar*, CA-01-003 (PYT Ct. App., Sept. 12, 2001), the issue raised in this appeal is one of first impression in this jurisdiction. Because resolution of this question will turn upon this Court's interpretation of relevant Tribal, Federal, and State law, setting the matter for oral argument would be in the interests of justice. *See* 3 PYTC § 2-3-180; 3 PYTC § 2-3-260(C)(6) and (D). The Tribe, therefore, respectfully requests that this Court set the matter for oral argument.

STATEMENT OF JURISDICTION

The Pascua Yaqui Tribal Rules of Appellate Procedure grant parties the right to appeal in most, but not all, circumstances. *See generally* 3 PYTC § 2-3-30, *et seq.* The Tribe may not, for instance, appeal a judgment acquitting a defendant in a criminal case. 3 PYTC § 2-3-90(G); Art. I, § 1(c), Pascua Yaqui Const.; *PYT v. Montana*, CA-12-001 (PYT Ct. App. July 23, 2013). However, the Tribe may appeal the dismissal of a complaint. *See In the Matter of Alvarez*, CA-17-008 (PYT Ct. App. June 19, 2018) (dismissal with prejudice of a juvenile complaint inappropriate when based on an incorrect interpretation of statutory timelines); *PYT v. Bustamante*, CA-17-004 (PYT Ct. App. July 3, 2017) (dismissal without prejudice appropriate when prosecution failed to include complete statutory language and references in its complaint); *Baltazar*, CA-01-003 (dismissal with prejudice based on technical defects in complaint as to time and location of offense inappropriate).

The Defendant/Appellee, is an enrolled member of the Pascua Yaqui Tribe, and was charged with committing, the offense of Injury to Public Property/Family Violence while on the Pascua Yaqui Reservation, in violation of 4 PYTC § 1-630 and 4 PYTC § 3-10(B). The trial court dismissed the complaint against the Defendant without prejudice at the initial hearing for want of probable cause. Specifically, the court indicated that, because the law enforcement officer's supporting affidavit of probable cause only included a date for when the offense was alleged to have occurred, and not a time that matched the time listed within the complaint itself, the court could not find probable cause to support the charge. This ruling ignored the guidelines set forth in *Baltazar*, and effectively resulted in the court placing greater weight on the form of the complaint—and specifically upon details that the Pascua Yaqui Tribal Code and case law has recognized as being difficult to determine during the early life of a criminal case—than upon the

substance of the complaint, and the information establishing probable cause. Because the Tribe is appealing this dismissal, this Court has jurisdiction over the appeal.

STANDARD OF REVIEW

The dismissal of a criminal case “without prejudice is reviewed for an abuse of discretion.” *Bustamante*, CA-17-004, p.2 (citing *United States v. Adrian*, 978 F.2d 486, 493 (9th Cir. 1992), *overruled on other grounds by Unites States v. Grace*, 526 F.3d 499 (9th Cir. 2008); *Baltazar*, CA-01-003, at pp. 3-6 (applying same abuse of discretion standard of review to dismissals with prejudice). A court “abuses its discretion when it makes an error of law in reaching a discretionary conclusion, or when the record, viewed in the light most favorable to upholding the trial court’s decision, is devoid of competent evidence to support the decision.” *PYT v. Coleman*, CA-15-003, p.2 (PYT Ct. App. Nov. 17, 2015).

The Pascua Yaqui Court of Appeals has never addressed whether the use of a *de novo* standard of review in this context would be more appropriate than using an “abuse of discretion” standard. This is a question that has, however, been addressed by Federal Courts of Appeals in the Ninth and Second Circuits. *See PYT v. Miranda*, CA-08-015, p.22 (PYT Ct. App. 2009) (holding that this Court may look to Arizona or Federal authority in the absence of controlling Pascua Yaqui law). Both circuits have held that, where the dismissal of a charging document involves either pure questions of law, or mixed questions of law and fact, *de novo* review is appropriate. *See United States v. Linick*, 195 F.3d 538, 541 (9th Cir. 1999) (*de novo* review used in light of defendant’s constitutional challenge to the charges listed in the indictment); *United States v. Alfonso*, 143 F.3d 772, 776 (2d Cir. 1998) (*de novo* review where trial court “looked beyond the fact of the indictment” and “dr[ew] inferences as to the proof” it believed the prosecution would produce at trial to establish jurisdiction); *United States v. Spillone*, 879 F.2d 514, 520 (9th Cir. 1989) (*de novo* review appropriate when dismissal based on mixed questions of law and fact regarding alleged prosecutorial misconduct before the grand jury); *United States v.*

Gonzalez-Roque, 301 F.3d 39, 44 (2d Cir. 2002) (*de novo* review of dismissal involving mixed questions of law and fact relating to defendant's prior deportation proceeding).

As will be discussed in more detail, *infra*, probable cause determinations often involve very specific factual inquiries. The definition of probable cause, however, and whether it requires proof of elements such as time, is a purely legal question. Because these questions are intimately intertwined, *de novo* review is appropriate. However, regardless of whether this Court employs a “*de novo*” or an “abuse of discretion” standard of review, it is clear that the trial court erred in dismissing the complaint against the Defendant.

ISSUES PRESENTED FOR REVIEW

1. Does a trial court's pre-arraignment determination of probable cause hinge upon a law enforcement officer's affidavit including a specific time of offense, at a stage when investigation by both parties is still ongoing, and when time is not a statutory element of the charged offense but, rather, a detail of form for the complaint?
2. Did the trial court err when it dismissed the complaint against the Defendant for want of probable cause solely because the supporting affidavit did not include a specific time of offense that corresponded to the time listed in the complaint?

STATEMENT OF THE CASE

I. Facts¹ and Proceedings Below:

On the morning of January 9, 2019, officers were notified of “an unwanted person” located near the front gate of the Pascua Yaqui Police Department (PYPD). *See* Exhibit A, Criminal Complaint and Affidavit of Probable Cause, *PYT v. Rodriguez*, CR-19-080, p.3 (Jan. 9, 2019). An officer made contact with the individual, who was later identified as the victim in this case. *Id.* The victim indicated that she wanted her granddaughter, Isena Rodriguez² — the Defendant — removed from her residence, which was located on the Pascua Yaqui Reservation. *Id.* The victim stated that she had “kicked” the Defendant out of her residence on January 7, 2019, after the Defendant had broken her living room window with a rock. *Id.*³

The officer transported Ms. Luzania back to her residence, where he made contact with the Defendant. *Id.* After being read her *Miranda* rights, the Defendant agreed to speak to the officer. The Defendant indicated that she had had “got[ten] mad and swung [a] broom,” which resulted in her “accidentally” breaking Ms. Luzania’s window. *Id.* The officer prepared an affidavit of probable cause documenting his investigation. While the affidavit included the date and time of the Defendant’s arrest, and the date on which the offense was alleged to have occurred, it did not include a time of offense. *Id.*

Upon receiving a copy of the officer’s probable cause affidavit, the Tribe charged the Defendant via formal complaint with one count of Injury to Public Property, committed in violation of 4 PYTC § 1-630. *Id.* at p.1. The Tribe further alleged that the offense was one of

¹ The facts outlined in this appeal, and in the trial court record, are taken from the criminal complaint, supporting probable cause affidavit, and the trial court’s Initial Hearing order. No motions have been filed, or testimony taken, regarding whether any evidence obtained by officers was done so in violation of the Appellee’s rights under applicable law. As such, the parties may disagree as to some of the facts of the case.

² According to documents filed with the trial court, the Appellee is an enrolled member of the Pascua Yaqui Tribe. *Id.* at p.2.

³ It should be noted that Defense counsel indicated at the initial hearing “that the alleged incident did not happen two days ago.” Exhibit C, p. 9.

family violence, pursuant to 4 PYTC § 3-10(B). *Id.* The complaint, which included an approximate time of offense, indicated as follows:

“On or about January 7, 2019, at approximately 5:00 p.m., at or near [the victim’s address], Defendant, without proper authority, used, injured, or misused any public, Tribal, government or private property, to wit: Broke a window at her grandmother, Helen Luzania’s house.” *Id.* at p.1 (emphasis from original removed).

At an initial hearing held on January 9th, 2019, the trial court advised the Defendant of her rights and indicated that she would be determining whether the complaint was supported by probable cause. *See* Exhibit B, Initial Hearing and Order of Dismissal, *PYT v. Rodriguez*, CR-19-080, p.1 (Jan. 9, 2019); Exhibit C, Transcript of Initial Hearing, *PYT v. Rodriguez*, CR-19-080, p.3. The court indicated that it believed it could not find probable cause for the complaint because — although the complaint included an approximate time of offense —the officer’s supporting affidavit did not include such a time. *Id.* at 6-7.

The prosecution argued that the indictment and probable cause statement, taken together, sufficiently put the Defendant on notice as to what charge she faced and when the offense was alleged to have occurred. *Id.* at 8. Defense counsel, in turn, argued that knowing the exact time of offense was “important for several reasons,” including determining whether there might be a viable alibi defense at trial. *Id.* The Defendant further argued that, unless a specific time was alleged as part of the affidavit, she would be unable to prepare a proper defense to the charge. *Id.* at 9.⁴

The Court dismissed the complaint without prejudice to refile, finding that there was not “sufficient probable cause to believe the Defendant may have committed the [offense] ... *because the alleged time of the incident [wa]s not included in the probable cause statement.*” *Id.*

⁴The Initial Hearing occurred on the same day that the Defendant was arrested. As a result, neither counsel had an opportunity to complete any follow up investigation, interview any witnesses, conduct any relevant forensic analysis, or provide one another with disclosure. The Pascua Yaqui Tribal Code recognizes that evidence is still being gathered during the early life of a criminal case, and, thus, does not require the parties to locate and tender disclosure until after arraignment. *See* 3 PYTC § 2-2-380 (disclosure from prosecution due ten days after arraignment); *also* 3 PYTC § 2-2-390 (disclosure from defense due twenty days after arraignment, or within ten days of receipt of prosecution disclosure).

at 9 (emphasis added); *see also* Exhibit B, at p.1. The Tribe filed a timely notice of appeal on January 11, 2019. This appeal follows.

II. Summary of the Argument

Under the Pascua Yaqui Tribal Code, initial hearings are an opportunity for the trial court to determine whether probable cause exists to support the charges listed in a criminal complaint. This hearing typically happens within twenty-four hours of a defendant's arrest, long before the parties are able to conduct any investigation or witness interviews, and before the parties are able to exchange disclosure. Both the Pascua Yaqui Tribal Code and relevant case law from this Court recognize that probable cause for a complaint is different than the form of complaint. Within the first twenty four hours of a suspect being arrested and a complaint filed, law enforcement and counsel may have information concerning details of a complaint's form—such as time, date, and or location for an offense— which are later discovered to be inaccurate. These slight inaccuracies may not be discovered or recognized until the discovery process has run its course. As a result, issues as to these form elements have been determined to *not* be fatal to a trial court's finding of probable cause. *Baltazar*, CA-01-003, p.4.

In this case, the complaint and supporting affidavit contained evidence demonstrating that the Defendant/Appellee had committed the offense of Injury to Property/Family Violence. The supporting affidavit documented admissions made by the Defendant to law enforcement as to the offense, as well as statements made by the victim. When determining whether probable cause exists to support criminal charges, an exact time of offense is not an element that the Tribe is required to prove at the time of trial. Nevertheless, the trial court dismissed the complaint against the Defendant and determined, in violation of local law, that "time" was an essential element for her finding of probable cause. Because this ruling contravened established Pascua Yaqui law, and impermissibly placed greater weight on certain complaint elements of form as

opposed to the substance of probable cause, the Tribe respectfully requests that the trial court's ruling be reversed.

LAW AND ARGUMENT

I. An Initial Hearing Gives the Trial Court an Opportunity to Determine Whether a Criminal Complaint is Supported by Probable Cause, and Involves a Lower Standard of Proof than What the Prosecution Must Meet at Trial.

The Trial Court erred in this case when it determined that there was no probable cause for the complaint filed against the Defendant. Although the officer's supporting affidavit, Exhibit A at p.2-4, did not include a specific time of offense, it detailed evidence meeting the elements of the crime of Injury to Property/Family Violence for which the Defendant had been charged. The affidavit and complaint adequately apprised the Defendant as to what charge she faced, and the day upon which the offense allegedly occurred. In the event that the complaint had not been dismissed at the probable cause hearing, and an arraignment and trial hearing set, the information provided in complaint and affidavit would have allowed her to mount a full and complete defense.

A. The life of a criminal case under the Pascua Yaqui Tribal Code.

Criminal proceedings are governed by the Pascua Yaqui Tribal Code Rules of Criminal Procedure. 3 PYTC § 2-2-10. The goal of these rules is "to secure simplicity in procedure, fairness in administration, and the *elimination of unnecessary delay and expense*, and to protect the fundamental rights of the individual *while preserving the public welfare*." 3 PYTC § 2-2-20(A) (*emphasis added*). When the Tribe wishes to prosecute an individual for a violation of the Pascua Yaqui Tribal Code, it must first file a written complaint with the trial court. 3 PYTC § 2-2-90(A). "A complaint is a written statement of *the essential facts constituting an offense*, signed by a law enforcement officer or a prosecutor... and charging that a named individual has committed a particular criminal offense." *Id.* (*emphasis added*). Ultimately, "[i]f the complaint, or the complaint together with other signed statements, is sufficient to establish probable cause to

believe that a crime has been committed by the person charged, the court shall issue a summons commanding the accused to appear before the court at a specified time and place to answer to the charge.” 3 PYTC § 2-2-90(D). While the Pascua Yaqui Tribal Code requires that a criminal complaint include a time and place of offense “as nearly as may be determined,” 3 PYTC § 2-2-90(A), as will be discussed more fully below, it also builds in an accepted “tolerance of imprecision” regarding this detail of form that “recognizes the immense potential for error or mistake early in the initiation of criminal proceedings.” *Baltazar*, CA-01-003, at p.4.⁵

If a complaint is filed subsequent to a defendant’s arrest, the defendant must be seen by a trial judge within twenty-four hours for an initial hearing. 3 PYTC § 2-2-170(A); 3 PYTC § 2-2-180. Initial hearings give the trial court a chance to advise a defendant of his rights and the charges against him, and, if necessary, appoint counsel. 3 PYTC § 2-2-180(B). It also provides the parties an opportunity to address release conditions in the event that an arraignment, or other pretrial hearing is set. 3 PYTC § 2-2-190; 3 PYTC § 2-2-200. An initial hearing must be held — and probable cause for a complaint found — before the trial court may set an arraignment. 3 PYTC § 2-2-230.⁶ Arraignment hearings afford a defendant an opportunity to enter a formal plea to the charges, set a trial date, and to be advised of important court deadlines and of their rights going forward. *Id.*

Based on the plain language of the Pascua Yaqui Tribal Code, the trial court’s first, and main, opportunity to address the issue of whether a complaint is supported by probable cause is at the initial hearing within twenty-four hours of arrest. This short deadline means that investigation — whether it be by the prosecution or law enforcement — is still in its infancy.

⁵ The Tribe recognizes, and will discuss in Section I.b, *infra*, that there is certain information contained in a complaint that are not considered “details of form” as contemplated by the Code, *Baltazar*, or federal case law. Such elements include language identifying the statutory elements of a charge, and identification of the statute and or subsection of offense a defendant is being charged with. See generally *PYT v. Bustamante*, CA-17-004 (PYT Ct. App., July 3, 2017).

⁶ In practice, the Pascua Yaqui Trial Court grants defendants the opportunity to proceed directly to arraignment at the conclusion of the initial hearing, or to set an arraignment within ten days.

Oftentimes, police reports have yet to be written or finalized. Forensic lab tests, if any are appropriate, have yet to be completed, and witnesses may still need to be located for police interviews. As this Court noted in *Baltazar*, CA-01-003 at p.4:

“At this point in the criminal process, there has been insufficient time to determine the reliability and veracity of witnesses. The court’s role [at an initial hearing] is to determine whether the basic information necessary to go forward with the criminal prosecution have been met, whether reasonable or probable cause exists that a crime has been committed, and whether the case involves an incident having occurred within the territorial boundaries and involving a person within the Tribe’s jurisdiction.”

Accordingly, and as will be discussed more fully, *infra*, the Pascua Yaqui Tribal Code allows for a certain “tolerance of imprecision,” at the initial stages of the court process, reflecting an understanding that criminal cases can change over the course of continued investigation and witness interviews. *Id.* For this reason, disclosure deadlines are not set until *after* arraignment — the second hearing in the process. *See* 3 PYTC § 2-2-380 (prosecution’s initial disclosure due within ten days of arraignment); *also* 3 PYTC § 2-2-390 (defense initial disclosure due twenty days after arraignment, or within ten days of receipt of prosecution disclosure). More importantly, parties are not required to conduct a formal, complete trial of the evidence until later in the life of a case. *See, e.g., State ex rel. Mahoney v Stevens*, 79 Ariz. 298, 300-01, 288 P.2d 1077, 1078, 79 (1955) (“A preliminary hearing... is not a trial...nor is the determination thereof a final judgment. It is simply a course of procedure whereby a possible abuse of power may be prevented, and accused discharged or held to answer as the facts warrant.”) (*internal citations and quotations omitted*).

B. Definition of “Probable Cause” and the Contents, Sufficiency and Purpose of a Criminal Complaint:

The chief purpose of a charging document is to provide a defendant with notice of the charges against him, thereby giving him an opportunity to “defend or plead his case adequately.” *United States v. Neill*, 166 F.3d 943, 947 (9th Cir. 1999) (quoting *United States v. James*, 980 F.2d 1314, 1316 (9th Cir. 1992)); *Hamling v. United States*, 418 U.S. 87, 117, 94 S.Ct 2887, 2907 (1974) (noting that an adequate charging document allows a defendant to establish a bar for future prosecutions for the same crime). While, in general, the “failure of an indictment to detail each *element* of the charged offense constitutes a fatal defect...a minor or technical deficiency in the indictment will not cause reversal of a conviction absent prejudice to the defendant.” *Neill*, 166 F.3d at 947. (*internal quotations and citations omitted, emphasis added*). Nevertheless, a charging document “need do little more than to track the language of the state charged and state the time and place (in approximate terms) of the alleged crime.” *United States v. Alfonso*, 143 F.3d 772, 776-77 (2nd Cir. 1998) (quoting *United States v. Stravroulakis*, 952 F.2d 686, 693 (2nd Cir. 1992)). Accordingly, one of the first questions that must be asked is whether an item listed in the charging document constitutes an element of the offense with which the Defendant has been charged, or an element of form that has no bearing on the statutory elements of offense. This is largely a factual inquiry that depends on the circumstances of a particular case. The second issue that must be addressed, which is intimately intertwined with the question of statutory elements, is whether the charge levied against a defendant is supported by probable cause. This is inherently a question of law.

The phrase, “probable cause,” has been used as a requirement in a number of situations, including whether there is legal support to initially file charges against a defendant, to whether a

suspect may be arrested without a warrant, to whether a court has the authority to issue a warrant. While all of these situations address probable cause in different contexts, the standard is simple at its core and regardless of context. “[P]robable cause [exists] when reasonably trustworthy information and circumstance would lead a person of reasonable caution to believe that a suspect has committed an offense.” *State v. Hoskins*, 199 Ariz. 127, 137-38, 14 P.3d 997, 1007-08 (Ariz. 2000). It is a concept that “deal[s] with probabilities.” *Brinegar v. United States*, 338 U.S. 160, 175 (1949). These probabilities “are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Id.*; also *Baltazar*, CA-01-003 at p.4 (indicating that “common sense and reason prevail over mere technicalities”) (*quoting United States v. Orbitz*, 358 F. Supp. 200 (D.Ct. Puerto Rico, 1973)).

When a court is determining whether probable cause exists to support charges, it is inappropriate to consider whether the prosecution will be able to prove the defendant’s guilt at a later trial beyond a reasonable doubt. *See Alfonso*, 143 F.3d at 776-77 (finding that the trial court acted inappropriately when it made inferences from evidence provided at the probable cause stage of the criminal case to determine whether the prosecution could prove its case at trial); *see generally Baltazar*, CA-01-003 at p.3-5 (discussing how the facts of a case can change over the life of court proceedings).

As will be discussed below, the trial court incorrectly assumed that establishment of a specific time of offense in law enforcements supporting affidavit was required before probable cause for the complaint could be found to exist.

C. Differences in technical aspects of a complaint's form in a complaint and supporting affidavit regarding the time of an alleged offense have no bearing on the substance of probable cause.

The Pascua Yaqui Court of Appeals has previously addressed whether issues in a criminal complaint regarding non-statutory elements of an offense are fatal to a finding of probable cause. *See Baltazar* CA-01-003, at p.1. Pursuant to the Pascua Yaqui Tribal Code Rules of Criminal Procedure, complaints must 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,” as well as “[t]he section of the Tribal Code allegedly violated.” 3 PYTC § 2-2-90(B) (*emphasis added*). Although 3 PYTC § 2-2-90(B) has not recently been analyzed by this Court, the *Baltazar* court analyzed the statutory precursors to this procedural rule. *Id.*⁷ In *Baltazar*, the Court stated:

“The terms of Section 1.30 are, themselves, cast in very liberal fashion. For instance, it is not necessary to identify the defendant with precision. *See* Section 1.30(b).⁸ The “time and place” requirements themselves only require a precision “as near as they can be ascertained.” Section 1.30(c).⁹ This suggested tolerance of imprecision built into the criminal process recognizes the immense potential for error or mistake early in the initiation of criminal proceedings. At this point in the criminal process, there has been insufficient time to determine the reliability and veracity of witnesses. The court’s role here is to determine whether the basic information necessary to go forward with a criminal prosecution have been met, whether reasonable or probable cause exists that a crime has been committed and whether the case involves an incident having occurred within the territorial boundaries and involving a person within the Tribe’s jurisdiction. The court is determining whether there has been any mistake *ab initio* as to whether this is even the proper court for the filing of the criminal case; the court is determining whether a gross error exists leading to an erroneous conclusion as to the reasonableness or probability of the conclusion that a crime has been committed.” *Id.*

⁷ *Baltazar* addressed the scope of initial hearings and the sufficiency of criminal complaints filed under § 1.30(b)-(c) of the old Pascua Yaqui Tribal Code that was in effect in 2001. The language of the older code provisions is nearly identical in terms of form and substance to the current code.

⁸ Equivalent to 3 PYTC § 2-2-90(B)(1) under the current code.

⁹ Equivalent to 3 PYTC § 2-2-90(B)(1) under the current code.

In *Baltazar*, the Court of Appeals was tasked with determining whether defects contained in a complaint and amended complaint required dismissal. In that case, the defendant had been charged with assaulting a victim and causing bodily injury. *Id.* at 2. The complaint filed against the defendant was based upon a probable cause affidavit submitted by law enforcement, which included an incorrect date of offense.¹⁰ *Id.* The prosecution first requested a stipulation from defense counsel to amend the complaint, but ultimately elected to dismiss the complaint and file an amended complaint with the correct date, a motion which was granted, which allowed the case to proceed through the discovery process. *Id.*

When the complaint was filed, law enforcement and the prosecution believed that the offense had occurred at one address. *Id.* However, after the initial hearing, and after the parties had an opportunity to conduct their own investigations and witness interviews, the victim clarified that the offense occurred at a different address located on the same street. *Id.* The Prosecution asked law enforcement to submit a new affidavit of probable cause in support of a motion to amend the complaint. *Id.* Although law enforcement corrected the address of offense in the new complaint, they, again, entered the incorrect date of offense. *Id.* Defense counsel argued that “mistakes of date and location would prejudice the defenses available to the Defendant.” *Id.* The court dismissed the complaint with prejudice, and found that the mistakes and resulting amendments “can prejudice” a defendant. *Id.* at 2, 5.

On review, the Court of Appeals ultimately determined that the trial court had abused its discretion in dismissing the complaint with prejudice. *Id.* at 6. Specifically, the Court indicated that the prosecution had “fulfilled the requirements of 1 PYTC § 1.30 in the filing of the charges.” *Id.* at 5. “The mere fact that certain allegations [as to location and date] were in error could not work a prejudice either against a defense possessed by the defendant or against any

¹⁰ The affidavit and complaint mistakenly indicated that the offense had happened on August 4, 2000, when it actually occurred on August 5, 2000. *Id.*

rights he may have.” *Id.* at 5-6. In reaching this ruling, the Court of Appeals acknowledged that a trial court has to balance competing interests at the initial hearing stage. On the one hand, there is “a question of fairness to the defendant that provides a court with a policy basis to render determinations.” *Id.* However, a “court must also recognize that a victim, too, relies upon the Tribe to recognize that some harm has occurred and that the Tribe sits in a position of trust to remedy that harm.” *Id.* For these reasons, trial courts are required to balance “these competing concerns” to determine “whether... justice can be accomplished.” *Id.* “This becomes more important in the early stages of the criminal process when a confrontational opportunity to examine the factual basis for the complaint has not yet happened.” *Id.* at 4-5. This is compounded by the fact that, at the time of an initial hearing, almost no investigation has been conducted by the parties. *Id.* at p.4. Indeed, the Pascua Yaqui Tribal Code does not contain any criminal offenses in which the prosecution is required to prove a specific time of offense as an element of the crime.

In this case, any inconsistencies as to the time that the alleged offense occurred between the complaint and supporting affidavit are technical errors that fall within the scope of *Baltazar*. As such, they have no bearing on probable cause. Victims often delay reporting crimes to law enforcement, especially when the crime was perpetrated by a relative. Victims and witnesses also typically have poor memories as to the exact time that an offense occurred, whether it be because they are not trained witnesses, or because the stress of the offense prevented them from documenting the timing of events. In some situations, usually involving homicides or cases involving nonverbal victims or young children, the victim may not be in a position to be able to tell law enforcement when they were victimized. In this case, there was no indication in the officer’s supporting affidavit that the victim was able to articulate a time of offense. Furthermore, in light of the fact that complaints and their supporting affidavits are meant to be read together, the fact that the affidavit did not contain information that the victim did not, or

could not, supply, does not mean that there was not probable cause to believe that the Defendant had committed the offense of injury to public property.

II. The Complaint and Affidavit Filed in this Case Twenty-Four Hours After Arrest Adequately Established Probable Cause to Believe that the Defendant Committed a Criminal Offense in Violation of the Pascua Yaqui Tribal Code, and Provided the Defendant with Sufficient Notice of the Charges so that she Could Prepare a Defense.

Any analysis of probable cause must start with an analysis of the statutory elements of the offense with which a defendant has been charged. Here, the Defendant was charged with committing the offense of Injury to Public Property, in violation of 4 PYTC § 1-630. That statute provides, in relevant part, that, “[a]ny person who shall without proper authority use, injure, or misuse any public, Tribal, government or private property shall be deemed guilty of an offense.” *Id.* The Tribe further alleged that the offense was one of family violence pursuant to 4 PYTC 3-10(B). That statute indicates that an offense can be considered a family violence offense when a defendant “directs an offense” against a victim who is related to the defendant by virtue of blood or marriage, and includes grandparents.

The officer’s supporting affidavit made clear that there was probable cause to believe that the offense of Injury to Public Property had been committed, and that the Defendant was the one who committed it. The victim identified the Defendant as her granddaughter. Exhibit A, p.3. The victim indicated that she had “kicked” the Defendant out of her house two days earlier when the Defendant broke her living room window with a rock. *Id.* The officer saw the Defendant at the victim’s home. *Id.* Post-*Miranda*, the Defendant admitted to breaking the window, but claimed that she had accidentally broken the window when she “got mad” and “swung [a] broom.” *Id.* Under these circumstances, it is clear that the Defendant injured private property belonging to her grandmother, the victim.

Even though the complaint and attached affidavit established probable cause for the charged offense, an argument that was raised by the Defendant at the initial hearing centered on the issue of notice. This was an issue that was also raised by the Defendant in *Baltazar*, CA-01-003, p. 2 & 5. Although the issue of notice was not fully explored in *Baltazar*, the Court's detailed analysis of whether technical issues in a complaint — considered in light of the fact that complaints are often filed before the parties have a chance to exchange disclosure or conduct any investigation — suggests that the Court found the notice provided in that case to be adequate.

As stated previously, the chief purpose of a charging document is to provide a defendant with notice of the charges he faces, and an opportunity to begin preparing a defense. *Neill*, 166 F.3d at 947; *Hamling*, 418 U.S. at 117, 94 S.Ct at 2907; *Alfonso*, 143 F.3d at 776-77 (noting that a charging document “need do little more than to track the language of the statute charged and state the time and place (*in approximate terms*) of the alleged crime”) (*emphasis added, internal citations and quotation omitted*). The complaint issued in this case addressed all of these concerns. Although the Defendant indicated at the initial hearing that she had a potential alibi defense that depended on knowing the exact time of offense, this hearing occurred well before the parties had an opportunity to engage in a detailed investigation of the case, to interview witnesses, or to exchange disclosure. Knowing the date of offense would be sufficient to allow the Defendant a chance to determine whether she had an alibi on that date. Additionally, the Defendant also told law enforcement that, at the time of the offense, she had gotten mad, swung a broom, and “accidentally” broke the victim's window. *See Exhibit A*, p. 3-4.

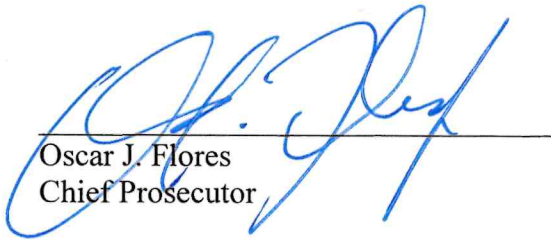
Based on this Court's ruling in *Baltazar*, the Defendant was given adequate notice of the charges against her at the time of the initial hearing. This notice, provided in advance of arraignment hearings, pretrial hearings, disclosure deadlines, and trial, would have allowed her

and her attorney to better shape and guide their pretrial investigation and disclosure requests. Because there was sufficient notice to the Defendant of the charge against her, and there was probable cause supporting that charge, and the trial court erred when it dismissed the complaint.

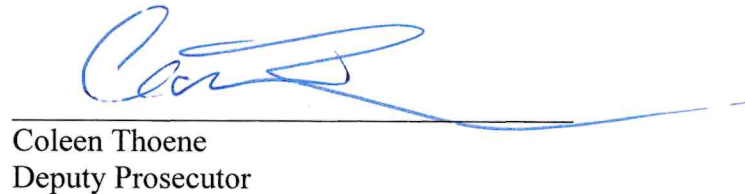
CONCLUSION AND REMEDY SOUGHT

The trial court's dismissal of the complaint against the Defendant at the initial hearing was contrary to the Pascua Yaqui Tribal Code and relevant case law. The Appellant respectfully requests this Court reverse the trial court's ruling, reinstate the complaint, and remand the case to the trial court for further proceedings.

RESPECTFULLY submitted this 5th day of April, 2019.



Oscar J. Flores
Chief Prosecutor



Coleen Thoene
Deputy Prosecutor

CERTIFICATE OF SERVICE

I hereby certify that the Tribe's pleading was delivered this date to:

Benjamin Casey
Ben.Casey@pascuayaqui-nsn.gov
Clerk of the Court of Appeals
Pascua Yaqui Court of Appeals
7777 S. Camino Huivisim
Tucson, AZ 85757

And that one (1) copy of the Tribe's pleading was delivered, this date to:

Annamarie Valdivia
Annamarie.Valdivia@pascuayaqui-nsn.gov
Pascua Yaqui Office of the Public Defender
7474 S. Camino de Oeste
Tucson, AZ 85757

And that one (1) copy of the Tribe's pleading was delivered this date to:


Associate Judge Margaret Flores
Pascua Yaqui Tribal Court
7777 S. Camino Huivisim
Tucson, AZ 85757

Dated this 5 day of April, 2019.

PASCUA YAQUI PROSECUTOR




OJ Flores
Chief Prosecutor



Coleen Thoene
Deputy Prosecutor

Sworn before me this 5th day of April, 2019



Notary Signature

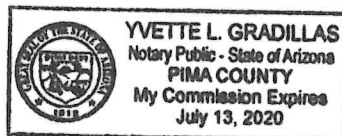


Exhibit A
Criminal Complaint and Supporting Affidavit
(*PYT v. Rodriguez*, CR-19-080)

IN THE PASCUA YAQUI TRIBAL COURT

2019 JAN -9 AM 11:11

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA

DOCKET NO. CR-19-080

~~Pascua Yaqui Tribe~~

Plaintiff,

Case No.

vs.

CLERK *[Signature]*

RODRIGUEZ, ISENA

CRIMINAL COMPLAINT

Defendant.

The PASCUA YAQUI TRIBE, hereby complains and alleges, upon information and belief, that the above named defendant, an Indian, while on the Pascua Yaqui Reservation, did commit the following offense(s):

COUNT 1: 4 PYTC § 1-630 ~ Injury to Public Property / 3-10(B) ~ Family Violence

On or about January 07, 2019 at approximately 5:00 p.m., at or near 5091 W. Calle Tarook, Defendant, without proper authority, used, injured, or misused any public, Tribal, government or private property, to wit: *Broke a window at her grandmother, Helen Luzania's house.*

And such violations, upon conviction, are punishable under the Pascua Yaqui Tribal Codes. The undersigned hereby swears or affirms that this complaint is based upon information and belief, and the attached Affidavit and Verification, or signed statement.

DATED this 9th day of January, 2019.

[Signature]
Complainant/Attorney

Pursuant to Article I, § 1(g) of the Pascua Yaqui Constitution, 4 PYTC § 4-20, and 25 U.S.C. § 1302(a)(b), If found guilty at sentencing or plea agreement, the Pascua Yaqui Tribe will seek punishment that includes imprisonment.

DEFENDANT: Isena Rodriguez
ADDRESS: 5091 W. Calle Tarook Tucson, AZ 85757
DOB: 06/07/1994 SSN: 601-41-7998 ORIGIN: Pascua Yaqui Tribe # 2694U09099
SEX: Female HT: 5'03" WT: 180 EYES: Brown HAIR: Brown

Note: Accused persons may obtain disclosure information about their case ten days after arraignment by contacting the Prosecutor's Office at 7777 S. Camino Huivisim, Bldg A, 2nd Floor, Tucson AZ 85757. [3 PYT R.Crim.P. Rule 38]

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

AL COURT
TIME

11:11

CR-19-080

PASCUA YAQUI TRIBE, Plaintiff	COURT USE ONLY
VS: Rodriguez, Isena Cassandra, Defendant	
	CASE NUMBER P19010908
PROBABLE CAUSE STATEMENT	

AFFIRMATION

1. I, Kevin Wells, being a duly authorized law enforcement officer of the Pascua Yaqui Indian Tribe and for the Pascua Yaqui Indian Reservation, declare under penalty of perjury, the following is true and correct:

- A. I am the arresting officer in this case; OR
 I am a law enforcement officer and make this statement on information and belief derived from Officer Select Officer

2. **SUSPECTED PARTY (Defendant)**

Name: Rodriguez, Isena Cassandra
Driver's License Number: D04988585 / AZ
Tribal Enrollment Number: 2694U09099
Non-Tribal Member (VAWA)
Date Of Birth: 06/07/1994

- Rodriguez, Isena Cassandra is an enrolled member of the Pascua Yaqui Tribe.
- is an Indian subject to the jurisdiction of the Pascua Yaqui Tribe.
- is subject to the Tribal Jurisdiction of the Pascua Yaqui Tribe under the Violence Against Women Reauthorization Act of 2013 (VAWA).

3. The Defendant was Arrested on 1/9/2019 at 6:23:00 AM

4. I have probable cause to believe that the defendant committed the following offense(s) at or near, 5091 W Tarook which is within the exterior boundaries of the Pascua Yaqui Indian Reservation.

PYTC 4-1-630 Injury to Public Property
Select...

5. Statement Of Probable Cause:

Narrative:
On January 9, 2019 at approximately 0549 hours, I responded to the front gate of the PY Police Department (7777 S Camino Huivisim) in reference to an unwanted person.
Upon my arrival at the Police Department front gate, I made contact Helen Luzania, DOB 11/19/1951 who stated that she wanted her granddaughter (Isena Cassandra Rodriguez, DOB 06/07/1994) out of her residence. MS Luzania stated she kicked her out of the residence on Monday (01/07/2019) when she broke her living room window with a rock. I explained to MS Luzania that she would have to have MS Rodriguez evicted from the residence and that Victim Services could help her with the paperwork. I contacted Victim Services and requested that they respond to the 5091 Tarook to assist MS Luzania on the paperwork.
I then asked MS Luzania if she wanted to press charges against MS Rodriguez for breaking the living room window. MS Luzania stated that she would so I transported MS Luzania back to her residence so I could speak with MS Rodriguez. Upon our arrival at the residence, I made contact with MS Rodriguez, obtaining her information and then I read her the Miranda Warnings directly from my Patrol Pocket Book. MS Rodriguez stated that she understood the Miranda Warnings and would answer my questions.
I asked MS Rodriguez how the window was broken. MS Rodriguez stated that she accidentally broke the window with a broom handle. I asked MS Rodriguez to explain and she stated that she got mad and swung the broom and accidentally broke the window.
I placed MS Rodriguez under arrest for violation of PYTC 4-1-630 – Injury to Public Property
NFI

The information contained herein is true and accurate to the best of my knowledge and belief.

6. I request that the Court make a probable cause determination and, if the defendant is in custody, that he/she be continued in custody, pending further proceedings.

Kenn W. Wells

Signature of Officer

EXECUTED ON:

01-09-2019

Date

Exhibit B
Initial Hearing and Order of Dismissal
(PYT v. Rodriguez, CR-19-080)

1 IN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 PASCUA YAQUI TRIBE,)
4)
5 Plaintiff,)
6 vs.)
7)
8 RODRIGUEZ, ISENA,)
9)
10 Defendant.)

Case No.: CR-19-080

INITIAL HEARING AND
ORDER OF DISMISSAL

8 On January 9, 2019, the defendant, Isena Rodriguez, appeared in custody in this matter
9 with Court-Appointed counsel, Glauca Brannock for the defendant's unscheduled Initial hearing,
10 in compliance with 3 PYTC § 2-2-170 and § 2-2-180. Appearing for the Tribe was Alicia Rene
11 Robertson. Milissa Mace appeared for Pretrial Services.

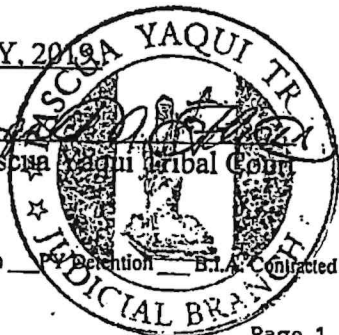
12 The Court finds that defense counsel requested that the Court read the defendant her rights.
13 The defendant, through counsel, confirmed that the defendant's name on the complaint is her leal
14 name and that her address and date of birth are correct; however the defendant's height is incorrect
15 and should be 5'4". The Tribe moved the Court to amend the complaint to correct the defendant's
16 height. Defense counsel had no objections and good cause appears to grant the motion to amend.
17 The Court informed the parties that the Court does not find sufficient probable cause to believe the
18 defendant may have committed the allegation of Count 1: Injury to Public Property, Family
19 Violence because the alleged time of the incident is not included in the probable cause statement.
20 After hearing from the Tribe and Defense Counsel, the Court finds good cause to dismiss Count 1
without prejudice. The defendant will immediately be released from custody.

21 Count 1: Injury to Public Property, Family Violence Plea: dismissed without prejudice

22 THE COURT ORDERS that the complaint is amended as to the defendant's height from
23 5'3" To 5'4". Count 1 is dismissed without prejudice to refile due to no finding of probable
24 cause. The defendant shall be immediately released from custody and this matter is closed.

25 SO ORDERED THIS 9TH DAY OF JANUARY, 2019

26 
27 Chief Judge, Pascua Yaqui Tribal Court



28 Cc: Date January 07 2019
Tribe Defendant Defense Counsel Pretrial Services P.Y. Probation P.Y. Detention B.I.A. Contracted Detention Facility
Clerk: [Signature]

Exhibit C
Transcript of Initial Hearing
(PYT v. Rodriguez, CR-19-080)

IN THE PASCUA YAQUI TRIBAL COURT
COUNTY OF PIMA, STATE OF ARIZONA

PASCUA YAQUI TRIBE,)	NO. CR19080
Plaintiff,)	
vs.)	
)	
ISENA RODRIGUEZ,)	
Defendant.)	January 9, 2019
)	Tucson, Arizona
_____)	

BEFORE: THE HONORABLE MARGARET FLORES, JUDGE OF THE
PASCUA YAQUI TRIBAL COURT

APPEARANCES:
ALICIA RENEE ROBERTSON, ESQ.
appearing for the State

GLAUCIA BRANNOCK, ESQ.
appearing for Defendant

RE: INITIAL HEARING

Christine McGarvey
Legal Transcription Services Plus

1 **INDEX**

2 Witness(s)

3 -----
4 BAILIFF: All rise.

5 THE COURT: Please be seated.
6

7 BAILIFF: Honorable Judge Flores.

8 THE COURT: The Pascua Yaqui Tribal Court is in
9
10 session in the matter of The Pascua Yaqui Tribe versus Isena
11 Rodriguez in Docket Number CR19080. Today's date is the 9th of
12 January, 2019. This is the date and time, uh, or the scheduled,
13 unscheduled initial hearing in the matter. Appearing on behalf of
14 the Tribe, uhm, is Miss Alicia Renee Robertson. The Defendant is
15 present and appears in custody in this matter and is with Court
16 Appointed Counsel, Miss Glaucia, and did I get that correct?
17
18
19
20

21 GLAUCIA BRANNOCK: Yes.

22 THE COURT: And at this time, uh, the Court
23 will ask Defense Counsel if you wish for the Court to read your
24 client's rights or do you waive the reading?
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26
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28

1 GLAUCIA BRANNOCK: I wish to read (inaudible) please.

2 THE COURT: All right. The Court will inform,
3
4 uh, well also, for the Record, the Court will note that the Office
5
6 of Pretrial Services is represented today by Milissa Mace. The
7
8 purpose of the hearing today, uh, for Miss Rodriguez is for the
9
10 Court to determine the Defendant's true name and address. To see
11
12 whether the prosecutor wishes to amend the complaint. To inform
13
14 the Defendant of her rights and to determine if there is probable
15
16 cause to continue with the matter. If probable cause is not
17
18 found, the matter will be dismissed without prejudice. And the
19
20 Court will need to determine release conditions pending further,
21
22 uh, hearings in this matter. The Court will inform Miss Rodriguez
23
24 that you have the right to be informed of the charges filed
25
26 against you. You have the right to remain silent as anything that
27
28 you say may be used against you, and no inference may be drawn
from your exercise of the right not to testify. You have the
right to a speedy trial by a judge or a jury if the sentence may

1 impose jail time on you, unless the right to a speedy trial or a
2 jury trial, speedy trial or a speedy jury trial is waived. You
3 have the right to, uhm, request a trial by jury in writing if that
4 is done (inaudible) days before your trial date. Uhm, if it's not
5 done by that time, then you waive your right to a jury trial.
6 Uhm, the Court will inform you that you have the right to plead
7 not guilty and that you have the right to a defense in person or
8 by counsel. And you have the right to confront or cross-examine
9 the witnesses who may testify against you. You have the right to
10 subpoena and call witnesses on your own behalf. You have the
11 right to ask the Court to issue a subpoena for the production of
12 any books, records, documents or other things necessary to defend
13 the charges. And you have the right to be free from excessive
14 bail and cruel or unusual punishment. You also have the right to
15 appeal any decision of this Court to the Pascua Yaqui Court of
16 Appeals. And you have the right to file for a writ of habeas
17 corpus through the Court of Appeals if you remain in custody in
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1 this matter. Do you understand your rights, Miss Rodriguez?

2
3 MISS RODRIGUEZ: Yes.

4 THE COURT: All right. And at this time, can
5
6 you inform me, uh, if the name on that criminal complaint, uh,
7 that says that your name is Isena Rodriguez? It's spelled I-S-E-
8
9 N-A, Rodriguez, uhm, is that your legal name?

10 GLAUCIA BRANNOCK: I'm sorry.

11
12 THE COURT: Is that Defendant's legal name?

13 GLAUCIA BRANNOCK: Yes, the information is correct.
14
15 The only information that is misstated here is the height. Her
16
17 height is five-four.

18 THE COURT: All right. And, uh, so the, so the
19
20 Calle Tarook address is correct and date of birth is correct, is
21
22 that --

23 MISS RODRIGUEZ: Yes, Your Honor.

24 THE COURT: All right. And are there any
25
26 preliminary matters before the Court addresses the matter of
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28

1 | probable cause?

2 | ALICIA ROBERTSON: Your Honor, we just move to amend
3 |
4 | that portion to include, uhm, her actual height, which is five-
5 |
6 | four.

7 | THE COURT: Any objections to that?

8 |
9 | GLAUCIA BRANNOCK: No objection.

10 | THE COURT: All right. So, the Court will, uh,
11 |
12 | grant that motion to amend the criminal complaint to correct the
13 | Defendant's height from five-three to five-four. And the, uh,
14 |
15 | Court having reviewed the probable cause statement and the
16 | criminal complaint, uh, has an issue with the finding of probable
17 |
18 | cause and I will bring that up to the parties at this time. That
19 | is, uh, where, uh, for Count 1 injury to public property, family
20 |
21 | violence, Defendant is being charged with an allegation that she
22 | committed an offense on or about January 7th, 2019. The Court saw
23 |
24 | that in the probable cause statement, uh, it's two days prior to
25 |
26 | today's date, which is acceptable, it's only that the, uh, the
27 |
28 |

1 alleged time, uh, I could not find that in the probable cause
2 statement, uh, it was only the time in which it was, the phone
3 call was made on today's date or, uhm, whenever it was called for,
4 uh, police department to, uhm, respond to, to the, uh, and it was
5 on today's date. So, based upon that the code does include for
6 probable cause finding that, uhm, or for, for charges and in any
7 criminal complaint the, uh, date and time need to be, uh, included
8 in the complaint or as near as may be determined. Uhm, so I'm
9 not, it's not clear as to what time the allegation actually
10 occurred according to my reading of the probable cause statement.
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16 ALICIA ROBERTSON: And, Your Honor, uhm, with regards
17 to that, I don't think that the time is, is necessarily needed. I
18 know that it indicates that that the victim in this case stated
19 that, uhm, she kicked, uhm, she kicked her out when she broke the
20 living room window with a rock on 1/7, uhm, I think that that
21 provides enough specific facts for the particular charge, I don't
22 think that there's any confusion here. If she had kicked out
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1 multiple windows on multiple days then I think that that would
2 lend to maybe not being aware of the charge, but I think the
3 point, uh, for having, uhm, that specific, uhm, time is so that
4 that they can be aware of, uhm, of the particular charge. My
5 understanding is that I know, uhm, Mr. Wilson added 5:00 p.m.,
6 it's very possible that he got that information from police
7 reports, but, uhm, and, Your Honor, I don't see a specific time
8 with regards to, uhm, regards to the actual affidavit, but I do
9 think that it allows enough specific facts so that, uhm, it would
10 not lend to any confusion for the Defendant so that she would know
11 what she is being charged with.
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18 THE COURT: All right. Thank you. And Miss
19 Glaucia?
20

21 GLAUCIA BRANNOCK: Thank you, Your Honor. I
22 respectfully disagree with the Court, with the Tribe, uh, I think
23 that the time is important for several reasons and then down the
24 line if there is an alibi (inaudible) we need to understand when
25
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1 the actions actually happened. My client indicated that the
2 alleged incident did not happen two days ago, uhm, and we won't
3 make any further statements regarding to that. It is the Tribe's
4 burden. Uhm, I don't have a problem with all the discrepancies,
5 there are like, I, I see different times here, see a different
6 date, uhm, I think it is a warrant of dismissal, uhm, I understand
7 it could be without prejudice, but then the Tribe can, uh,
8 provide, uh, accurate probable cause affidavit where Defense can
9 work with the case and properly defend the client. Thank you.
10
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15 THE COURT: And I will allow, uh, if there's
16 anything further from Tribe?
17

18 ALICIA ROBERTSON: No, Your Honor. If the Court does,
19 I'm just, we just ask that it be without prejudice.
20

21 THE COURT: All right, thank you. And in this
22 matter based upon, uh, the, uh, Court having the, uh, issue as to
23 the alleged time of the incident, the Court is, uh, dismissing
24 without prejudice Count 1, injury to public property, family
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1 violence. Thereby releasing the Defendant immediately, uh, since,
2 uh, the matter is dismissed without prejudice, meaning the Tribe
3 can refile if the Tribe wishes and, uh, anything further?
4

5 ALICIA ROBERTSON: No, Your Honor.
6

7 GLAUCIA BRANNOCK: No, Your Honor, thank you.
8

9 THE COURT: Court is adjourned.
10

11 BAILIFF: All rise.
12

13 [END OF INITIAL HEARING]
14

15 [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: February 24, 2019

CHRISTINE MCGARVEY
LEGAL TRANSCRIPTION SERVICES PLUS
TRANSCRIBED BY: Stacey Archambault

SIGNED BY: Christine McGarvey
Christine MCGARVEY

OFFICE OF THE PROSECUTOR

PASCUA YAQUI TRIBE
7777 S. CMO. HUIVISIM
TUCSON, ARIZONA 85757
(520) 879-6251

PYT ODA '19/03/29 PM04:32

1

IN THE PASCUA YAQUI COURT OF APPEALS

2

IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA

THE PASCUA YAQUI TRIBE,
OFFICE OF THE PROSECUTOR

Appellant

vs.

ISENA RODRIGUEZ,

Appellee

CA-19-004

TRIBAL COURT CASE NO: CR-19-080

NOTICE Re: SUBMISSION OF TRANSCRIPT

3

COMES NOW the PASCUA YAQUI TRIBE/Appellant, by and through Chief Prosecutor,

4

Oscar J. Flores, and Deputy Prosecutor, Coleen Thoene, and hereby notifies the Court that a

5

transcript of any relevant lower court hearings has been prepared and submitted to the Clerk of

6

Court for the Court of Appeals.

7

On March 27, 2019, the Clerk indicated that a copy of the transcript could be added to the

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“shared drive” for the Pascua Yaqui Court. Because undersigned counsel did not have IT

9

permissions to be able to upload copies of the transcript to the appropriate shared drive, a copy of

10

the transcript was emailed to this Court’s Clerk that same date.

11

A copy of the transcript has been provided to counsel for the Appellee.

12

RESPECTFULLY submitted this 29 day of March, 2019.

13

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR

14

15

16

17

OSCAR J. FLORES

18

CHIEF PROSECUTOR

19

Oscar.J.Flores@pascuayaqui-nsn.gov



COLEEN THOENE

DEPUTY PROSECUTOR

Coleen.Thoene@pascuayaqui-nsn.gov

OFFICE OF THE PROSECUTOR

PASCUA YAQUI TRIBE
7777 S. CMO. HUIVISIM
TUCSON, ARIZONA 85757
(520) 879-6251

1 **ORIGINAL of the forgoing filed**
2 **this 29 day of March, 2019.**

3 Clerk of the Court
4 Pascua Yaqui Tribal Court of Appeals

5 **Copy of the foregoing**
6 **delivered/mailed/provided to:**

7 Annamarie Valdivia,
8 Public Defender
9 *Attorney for Appellee Defendant*

10
11 Clerk of the Court (x1)
12 Pascua Yaqui Tribal Court
13

14 Clerk of the Court (x4)
15 Pascua Yaqui Tribal Court of Appeals

16 By: _____

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

2 **IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA**

THE PASCUA YAQUI TRIBE,
OFFICE OF THE PROSECUTOR

Appellant

vs.

ISENA RODRIGUEZ

Appellee

CA-19-004

TRIBAL COURT CASE NO: CR-19-080

ORDER

3 Upon application from the Pascua Yaqui Office of the Prosecutor, and for good cause
4 shown, IT IS ORDERED that the deadline for Appellant to file its opening brief shall be extended
5 for thirty (30) days. Appellant shall file its opening brief no later than April 5, 2019.

6 SO ORDERED this 20 day of February, 2019.


7 **Hon. Robert Miller**

Sent via electronic mail this 20th day of February, 2019, to:

Kendrick Wilson
Pascua Yaqui Office of the Prosecutor
Attorney for Appellant

8 Glaucia Brannock,
9 Public Defender
10 *Attorney for Appellee Defendant*
11

12 By: _____

OFFICE OF THE PROSECUTOR

PASCUA YAQUI TRIBE
7777 S. CMO. HUIVISIM
TUCSON, ARIZONA 85757
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PYT COA *19/02/19 PM03:27

1

IN THE PASCUA YAQUI COURT OF APPEALS

2

IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA

THE PASCUA YAQUI TRIBE,
OFFICE OF THE PROSECUTOR

Appellant

vs.

ISENA RODRIGUEZ,

Appellee

CA-19-004

TRIBAL COURT CASE NO: CR-19-080

Motion to Extend Deadline for Filing of
Appellant's Opening Brief

3

COMES NOW the PASCUA YAQUI TRIBE/Appellant, by and through Chief Prosecutor,

4

Oscar J. Flores, and Deputy Prosecutor, Coleen Thoene, and hereby requests that this Court order

5

that the filing deadline for the Appellant's Opening Brief be continued by a period of thirty (30)

6

days for the reasons outlined below.

7

The Appellant filed its Notice of Appeal in this case on January 11, 2019. On February 4,

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2019, a notice issued pursuant to 3 PYTC § 2-3-120(a), indicating that the record from the trial

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court had been transmitted to the Court of Appeals. Copies of that record were delivered to counsel

10

for both parties. On February 11, 2019, undersigned counsel discovered that the Record on Appeal

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(ROA) did not include a copy of the audio/visual recording of the hearing that is the subject of this

12

appeal, or a transcript of said hearing. A copy of the recording was requested, and was provided

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on February 18, 2019. Counsel for the Appellant contacted an outside agency that same date and

14

requested that a transcript of the recording be prepared. However, due to ongoing issues with the

15

Pascua Yaqui Tribe's email system, there have been difficulties in delivering copies of the

16

recording to the transcriptionist, or to receive confirmation as to whether the transcriptionist will

OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE
7777 S. CMO. HUIVISIM
TUCSON, ARIZONA 85757
(520) 879-6251

1 be able to prepare a transcript on short notice. Even if the transcript can be prepared on short
2 notice, it will leave the Appellant with a limited opportunity to review the record before filing a
3 meaningful and accurate brief.

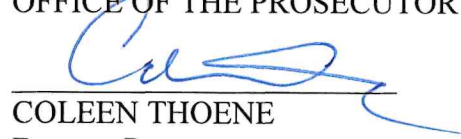
4 The Appellant's Opening Brief is currently due on March 6, 2019. The Appellant
5 respectfully requests that this deadline be continued for thirty (30) days to allow the parties to
6 obtain and review copies of the hearing transcript prior to preparing their respective briefs.

7 Pursuant to 3 PYTC § 2-3-50 the Appellate Court may "suspend the requirements or
8 provisions of any of" the Pascua Yaqui Rules of Appellate procedure "upon motion for good cause
9 shown." Additionally, 3 PYTC § 2-3-70(B) allows the Court to shorten or extend the time for
10 parties to file briefings with the Court either "upon stipulation of the parties ... filed with the
11 appellate court, or upon written motion for good cause shown." The Tribe respectfully requests
12 that this Court find that extraordinary circumstances exist, and that there is good cause for a thirty
13 day continuance.

14 The Tribe has contacted counsel for the Appellee/Defendant, who has indicated that she
15 has no objection to the requested continuance.

16 **RESPECTFULLY** submitted this 19 day of February, 2019.

17
18
19
20
21 
22 OSCAR J. FLORES
23 CHIEF PROSECUTOR
Oscar.J.Flores@pascuayaqui-nsn.gov

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR

COLEEN THOENE
DEPUTY PROSECUTOR
Coleen.Thoene@pascuayaqui-nsn.gov

OFFICE OF THE PROSECUTOR

PASCUA YAQUI TRIBE

7777 S. CMO. HUIVISIM

TUCSON, ARIZONA 85757

(520) 879-6251

1 **ORIGINAL of the forgoing filed**
2 **this 19 day of February, 2019.**

3 Clerk of the Court
4 Pascua Yaqui Tribal Court of Appeals

5 **Copy of the foregoing**
6 **delivered/mailed/provided to:**

7 Annamarie Valdivia,
8 Public Defender
9 *Attorney for Appellee Defendant*

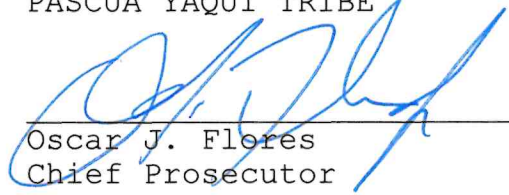
10
11 Clerk of the Court (x1)
12 Pascua Yaqui Tribal Court

13
14 Clerk of the Court (x4)
15 Pascua Yaqui Tribal Court of Appeals


16 By: _____

Respectfully submitted this 11th day of January, 2019.

OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE



Oscar J. Flores
Chief Prosecutor



Kendrick Wilson
Deputy Prosecutor

Original delivered/mailed
This **date** to:

Clerk of the Court, Pascua Yaqui Tribe Court of Appeals

Copy delivered/mailed to:
Pascua Yaqui Tribal Court

Pascua Yaqui Appellate Court

Glaucia Brannock
Public Defender's Ofc.
Attorney for Defendant

By:

KW

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)
Plaintiff,)
vs.)
RODRIGUEZ, ISENA,)
Defendant.)

Case No.: CR-19-080

INITIAL HEARING AND ORDER OF DISMISSAL

On January 9, 2019, the defendant, Isena Rodriguez, appeared in custody in this matter with Court-Appointed counsel, Glauca Brannock for the defendant's unscheduled Initial hearing, in compliance with 3 PYTC § 2-2-170 and § 2-2-180. Appearing for the Tribe was Alicia Rene Robertson. Milissa Mace appeared for Pretrial Services.

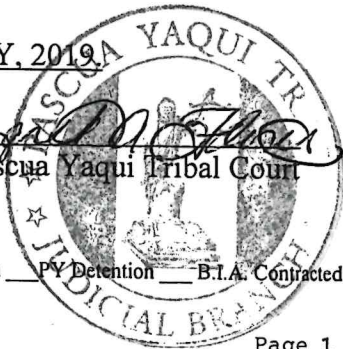
The Court finds that defense counsel requested that the Court read the defendant her rights. The defendant, through counsel, confirmed that the defendant's name on the complaint is her leal name and that her address and date of birth are correct; however the defendant's height is incorrect and should be 5'4". The Tribe moved the Court to amend the complaint to correct the defendant's height. Defense counsel had no objections and good cause appears to grant the motion to amend. The Court informed the parties that the Court does not find sufficient probable cause to believe the defendant may have committed the allegation of Count 1: Injury to Public Property, Family Violence because the alleged time of the incident is not included in the probable cause statement. After hearing from the Tribe and Defense Counsel, the Court finds good cause to dismiss Count 1 without prejudice. The defendant will immediately be released from custody.

Count 1: Injury to Public Property, Family Violence Plea: dismissed without prejudice

THE COURT ORDERS that the complaint is amended as to the defendant's height from 5'3" To 5'4". Count 1 is dismissed without prejudice to refile due to no finding of probable cause. The defendant shall be immediately released from custody and this matter is closed.

SO ORDERED THIS 9TH DAY OF JANUARY, 2019

Chief Judge, Pascua Yaqui Tribal Court



Cc: Date January 9, 2019
Tribe Defendant Defense Counsel Pretrial Services P.Y. Probation PY Detention B.T.A. Contracted Detention Facility
Clerk:

SCANNED