

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

PASCUA YAQUI TRIBE,)	
)	
Appellant,	)	Cause No. CA-22-002
v.	)	(CR-22-207)
)	
RICHARD SOTO, JR.,	)	OPINION AND ORDER
)	
Appellee.)	
_____)	

For the Appellant: Coleen Theone, Office of the Prosecutor
For the Appellee: Mark Willimann, Office of the Public Defender

Plevel, Associate Justice

Concurring: Chief Justice Miller and Associate Justice Martinez

This matter comes before the Court of Appeals on appeal from the trial court's decision dismissing the sole count of the criminal complaint with prejudice. Oral argument was heard on May 9, 2023.

Jurisdiction

The Pascua Yaqui Tribe Court of Appeals has jurisdiction to hear this matter pursuant to 3 PYTC §§ 1-1-IO(A) & 2-3-30 *et seq.* The trial court dismissed the complaint with prejudice, finding that there was a lack of probable cause at the Initial Hearing Order. That act constitutes an appealable order. *In the Matter of Alvarez*, CA-17-008 (PYT Ct. App. 2018); *Pascua Yaqui Tribe v. Bustamante*, CA-17-004 (PYT Ct. App. 2017).

Standard of Review

Our standard of review for trial court decisions dismissing a criminal count or complaint without prejudice is for abuse of discretion. *Pascua Yaqui Tribe v. Rodriguez*, CA-19-004, at 2 (PYT Ct. App. Oct. 7, 2019); *Pascua Yaqui Tribe v. Bustamante*, *supra*. A trial 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).

Questions Raised

1. What does “willfully”¹ mean?
2. Can a defense to the charge defeat a probable cause finding?
3. Is dismissal of a charge with prejudice at the probable cause hearing an abuse of discretion?

Background

The parties did not dispute the general facts as to this matter, but a short recitation is important for the questions raised.

The Appellee (hereinafter ‘Defendant’) was served with an Order of Protection (OOP) on Aug 19, 2022, which provides that he was not to have any contact with the listed petitioner and a child and was not to have any contact with the petitioner’s residence at 5050 W. Wichalakas which is critical to the questions presented herein. The OOP specifically warned the defendant that only the court can modify the terms, and that neither party could alter its terms. (Appellant’s Brief, Ex B). That Order also advised the Defendant as the respondent to the Order of Protection, he was entitled to a hearing on a written request made to the court. (*Id.* Ex B, p. 2), The defendant went to 5050 W. Wichalakas on September 1, 2022, at the invitation of his father the homeowner – a third party not involved nor party to the OOP – despite knowing there was an order of protection prohibiting him from being at that residence. (Appellant’s Brief, p. 7 and Attachment D).

At the Initial Hearing, the defendant argued that there was no probable cause as he had been invited to the residence by the homeowner, while acknowledging that he knew of the Order of Protection and its terms. (Appellant’s Brief, Attachment C, Transcript of 9-1-2022 hearing; Attachment A, Probable Cause Affidavit).

The court found that because the homeowner, not the petitioner in the OOP, invited the defendant to the protected residence, the defendant did not *willfully* violate the Order of the court, and thus no probable cause existed. The court then dismissed the complaint *with prejudice*.

Discussion

1. “Willfully” or “willful” is the same mental state as “intentional.”

The PYT Code section “Disobedience of Lawful Order of Court” provides that “Any person **who shall willfully disobey any order**, subpoena, warrant or command duly issued, made or given by the Pascua Yaqui Tribal Court or any officer thereof **shall be deemed guilty of**

¹ Willful and willfully is spelled two ways throughout different resources, cases, and statutes – either as here, or as ‘wilful’ or ‘wilfully,’ thus it will be spelled in this opinion as it is found in the original cited materials.

an offense.” 4 PYTC § 1-570 (emphasis added). The PYT Code does not define willfully. The Pascua Yaqui Tribal Council in its Tribal Code has adopted definitions for intentionally and knowingly:

(1) “Intentionally or with the intent to” means, with respect to a result or to conduct described by a statute defining an offense that a person’s objective is to cause that result or to engage in that conduct.

(2) “Knowingly” means with respect to conduct or to a circumstance described by a statute defining an offense that a person is aware or believes that his or her conduct is of that nature or that the circumstances exists. It does not require any knowledge of the unlawfulness of the act or omission.

4 PYTC § 1-41(A).

In looking to other authorities, such as the Arizona statutes, we find that they define “intentionally” or “with the intent to” much the same as the PYT Code;

(a) “Intentionally” or “with the intent to” means, with respect to a result or to conduct described by a statute defining an offense, that a person’s objective is to cause that result or to engage in that conduct.

Ariz. Rev. Stat. Ann. § 13-105. Additionally, and unlike the Pascua Yaqui Code, Arizona statutes do define willfully in its general statutes; “[w]ilfully’ means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person’s conduct is of that nature or that the circumstance exists.” A.R.S. § 1-215(42).

In Arizona courts willful has been found to mean “with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person’s conduct is of that nature or that the circumstance exists.” *State v. Burke*, 238 Ariz. 322, ¶8 (Ct. App. 2015). In defining willfully in another case, the Arizona Supreme Court found “[t]he word ‘wilfully’ in ARS § 13-541 does not add a specific intent element. “‘Wilfully’, when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or injure another or to acquire any advantage.” *State v. Bell*, 113 Ariz. 279, 281, 551 P.2d 548, 550 (1976)

It is unclear from the Pascua Yaqui Tribal Code what the intent of the Tribal Council was in using the term “willfully” in 4 PYTC § 1-570. When interpreting statutory text, “our inquiry begins with the statutory text, and ends there as well if the text is unambiguous.” *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004). “Where Congress does not furnish a definition of its own, we generally seek to afford a statutory term “its ordinary or natural meaning.” (citation omitted) *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass’n*, 141 S. Ct. 2172, 2176 (2021); *see also, Tomczyk v. Garland*, 25 F.4th 638, 644 (9th Cir. 2022) (when the code text does not define the words, we look at their ordinary meanings).

According to Black’s Law Dictionary, “willful” means “Voluntary and intentional, but not necessarily malicious. A voluntary act becomes willful, in law, only when it involves conscious wrong . . . , or at least inexcusable carelessness, whether the act is right or wrong.” *Willful*, Black’s Law Dictionary (11th ed. 2019). According to Oxford English Dictionary, willful is defined as “[a]sserting or disposed to assert one’s own will against persuasion, instruction, or

command; governed by will without regard to reason; determined to take one's own way; obstinately self-willed or perverse. Done on purpose or wittingly; purposed, deliberate, intentional; not accidental or casual. Voluntarily, of free will." *Willful*, Oxford English Dictionary Online, Oxford University Press, March 2023. www.oed.com/view/Entry/229028.

In the present matter, the defendant went to 5050 W Wichalakas on September 1, 2022 while knowing there was an order of protection prohibiting him from being at that residence, yet he went anyway – he was not forced, coerced or tricked into being at the protected residence, and it was not an accident that he went to the protected residence, he went there under his own power and volition. He intentionally went to the residence at 5050 W Wichalakas on September 1, 2022.

The trial court in this matter improperly implied meaning to the statute, beyond what it states in the text, and what the plain meaning of the words are. In its Initial Hearing Order, the court states, "The Court found that there is not probable cause to find that the Defendant willfully disobeyed the Order of Protection as his Father told him to come to his house." (Appellant's Brief, Attachment C, Initial Hearing Order) However, the court even recognized that the defendant had knowledge of the OOP and that the defendant voluntarily and of his own volition went to the residence, "[i]t, it looks like, uhm, this may be a case of that, uhm, that the Defendant knew about the order, but, uhm, he thought because his father, uhm, asked him to come over, I think it was to do something with the, the outside of the house, the yard, uhm, that maybe he thought it was okay because of his dad's statement." (Appellant's Brief, Attachment C, Initial Hearing Order p. 8).

Unfortunately, the court imposed a higher level of culpability. The court dismissed this complaint for lack of evidence that the defendant had the criminal mental state for the case to proceed. However, the mental state according to the plain language of the statute is that the offender voluntarily, did on purpose or wittingly, consciously wrong, *intentionally* took an action – in this case, went to the protected residence -- in contravention and violation of the terms of the OOP. No other mental state is required.

At oral argument in this matter, the parties agreed that a willful act should be construed the same as an intentional act. Based upon the plain meaning of "willfully" it is clear that it refers to the conduct or actions of the defendant not necessarily the result or consequences of the conduct, that the conduct was intentional, not accidental or casual, and done voluntarily, of one's own free will. Taken together, 'willfully' and 'intentionally' are the same mental state.

2. A potential defense to the charge does not defeat a probable cause finding.

"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." *PYT v. Montana*, CA-21-239 at p.2; *see also PYT v. Rodriguez*, CA-19-004 at p.2. "It "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. 213, 243-44 n. 13 (1983).

When deciding probable cause, the court is not deciding guilt beyond a reasonable doubt. “Conclusive evidence of guilt is not necessary to establish probable cause. Mere suspicion, common rumor, or even strong reason to suspect are not enough, however.” *McKenzie v. Lamb*, 738 F.2d 1005, 1008 (9th Cir.1984) (citing *Henry v. United States*, 361 U.S. 98, 101 (1959)). The court’s ruling here appears to be the result of the court improperly considering whether evidence regarding the father's invitation would result in the prosecution being unable to prove guilt beyond a reasonable doubt. That is not the standard for making a finding of probable cause. *Id.*; U.S. Const., amend IV.

Whether the defendant has any claim of a defense to the charge, or a valid challenge to a lawfully issued OOP, is not determinative of the probable cause finding. “[T]he purpose of the [probable cause] hearing is for the State to produce competent evidence to convince the magistrate that a trial should be held; resolution of non-affirmative defenses is premature at the preliminary hearing stage if the evidence is controverted.” *Brailsford v. Foster*, 242 Ariz. 77, 85, 393 P.3d 138, 146 (Ct. App. 2017). Here, whether the defendant was justified in violating the OOP due to the invitation of a non-party to the OOP is in question, and a matter for the trier of fact, and *is not a bar to the probable cause finding*. Further, any attack on the validity or breadth of the OOP is to be made before the court which issued such. The court here improperly allowed a collateral attack on the OOP in this separate criminal matter. The defendant was challenging the terms of the OOP in the criminal probable cause hearing, which is not proper; in allowing such, the court abused its discretion.

3. Dismissal with prejudice was improper.

Pursuant to Pascua Yaqui Code, “[a]t the initial appearance of any person who was arrested without a warrant and against whom no verified complaints have been filed, the court shall, after informing the accused of his or her rights, as outlined below, first determine whether or not probable cause exists to continue to detain and prosecute the accused, and if not, shall order the accused released from custody immediately.” 3 PYTC § 2-2-180. And while the defendant has the right to challenge the probable cause finding pursuant to 3 PYTC § 2-2-300(C), nothing in that provision provides for dismissal *with prejudice*.

Dismissal with prejudice at the Probable Cause hearing is an abuse of discretion. The remedy pursuant to PYT Code for a finding of no probable cause is either release of the defendant from custody or pretrial detention, or dismissal *without prejudice*, as no prejudice has attached at the Initial Hearing stage. *See, PYT v. Valencia*, CA-19-005 (2019).

Conclusion

The trial court in this matter abused its discretion in finding no probable cause, by misinterpreting the meaning of willfully, finding lack of probable cause based upon disputed evidence of a justification, and by dismissing the case with prejudice. The court incorrectly considered evidence that was for the trier of fact, and which did not defeat probable cause. Further, the court’s dismissal with prejudice is not permitted by the statute.


The September 1, 2022, Order dismissing the complaint with prejudice is hereby reversed, and this case is remanded for further proceedings consistent with this Opinion and Order.

HEREBY ORDERED this 16th day of May, 2023.



Hon. Rebecca Plevel

Concurring:



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

Appellant

vs.

RICHARD SOTO, JR.,

Appellee

APPELLATE CASE NO: CA-22-002

TRIBAL COURT CASE NO: CR-22-207

APPELLANT'S REPLY BRIEF

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REQUEST FOR ORAL ARGUMENT

The Defendant/Appellee's Response does not take a petition regarding the request for oral argument. The Tribe renews its request for an oral argument pursuant to 3 PYTC § 2-3-180, 3 PYTC § 2-3-260(C)(6) and/or (D).

STANDARD OF REVIEW

The parties agree that the standard of review to be applied to this case, based on current Pascua Yaqui Appellate Court precedent is an "abuse of discretion" standard.

ISSUES PRESENTED FOR REVIEW

The Defendant's Response has not raised any additional issues for review other than those outlines in the Tribe's Opening Brief.

STATEMENT OF THE CASE

I. Facts and Proceedings Below:

The factual and procedural summary set forth by Defendant largely mirrors the one included in the Tribe's Opening Brief. However, it includes a factual proffer that was never presented to the Trial Court. Specifically, the Defendant asserts that the Victim "does not commonly reside at the address where [the] Defendant was located." Response, p. 5. A review of the transcript from the September 1, 2022, *see* Opening Brief, Attachment D, and of the affidavit of probable cause, *see* Opening Brief, Attachment A, p.2-4, shows that this proffered fact was not presented to the trial court at the time of the initial hearing.¹

II. Summary of the Argument

The Defendant's Response does not dispute the fact that a valid protective order was issued in OP-22-034, or that it prohibited the Defendant from contacting the Victim or the Wichalakas address at issue. Similarly, the Defendant acknowledges that he made statements at the time of the investigation indicating that he knew about the protective order and was at the Wichalakas address at the request of his father. Instead, he asserts only that there was no probable cause to believe that he had committed the offense of Disobedience of Lawful Order of Court, 4 PYTC § 1-570, because there was no evidence to support a finding that he possessed a "willful" *mens re*. Response at p.4

Disobedience of Lawful Order of Court is, in many regards, a strict liability offense. If a court order exists, it must be followed unless and until the court modifies or rescinds it. Choosing to violate a court's order upon invitation of a third party still constitutes a violation of 4 PYTC § 1-570. As was discussed extensively in the Tribe's Opening Brief, more than ample evidence was

¹ It was also not proffered by counsel at the time of the hearing, and its basis is unclear as of the time of this Reply's filing.

presented demonstrating that the Defendant chose to go to the Wichalakas address. This choice was made with full knowledge of the protective order's restrictions, and, thus, was done in a willful, knowing, and intentional manner. A review of these facts — even when examined in the light most favorable to sustaining the lower court's order — shows that the trial court abused its discretion when it dismissed the case pending against the Defendant.

LAW AND ARGUMENT

I. The Evidence Provided to the Trial Court During the Initial Hearing Established Clear Probable Cause to Believe that the Defendant Willfully went to a Protected Address in Violation of the Order Issued in OP-22-034.

The Defendant is correct that the Tribe's argument "conflates [a person's] willful presence in a location with a willful violation of a court order." Response, p.5. That is because, in the circumstances of this particular case, the Defendant's willful presence at a protected location and his willful violation of a court order pertaining to that same location are, in fact, one and the same. Indeed, the circumstances of this case demonstrate that the Defendant willfully chose to go to an address despite knowing it was protected under court order. That willful choice satisfies the *mens re* requirements of 4 PYTC § 1-570. Accordingly, the trial court's dismissal of the case for want of probable cause constituted an abuse of discretion.

It is clear that a protective order was issued in OP-23-034 on August 16th, 2022, and subsequently served upon the Defendant. Opening Brief, Attachment B. It is also clear that the protective order also prohibited the Defendant from being at the address of 5050 W. Wichalakas. *Id.* at p.1.² It is also clear that the Defendant received written notice that the court alone had the

² Courts possess the power to specifically tailor their orders and rulings to a given situation based on the unique facts of a particular case. For instance, it is relatively commonplace for protective or "conditions of release orders" that prohibit a defendant from contacting a victim to carve out exceptions for certain types of allowable contact. For instance, an order may specifically allow contact to occur between parties as part of an unrelated family court matter regarding child custody issues. The order issued in OP-22-034 did not include any specific exceptions allowing the

power to rescind or modify the terms of the protective order, and that any violations of the court's order could result in criminal prosecution. *Id.* at p.2-3. The Defendant was at the Wichalakas address on September 1, 2022, only thirteen days after the order of protection was served upon him. *See generally* Opening Brief, Attachment A. A police officer investigating a report of him being at the address saw him there when he arrived. *Id.* The Defendant admitted to knowing about the protective order. *Id.* He then said that he had gone to the address upon the invitation of his father, a third party who was not involved in proceedings relating to OP-23-034 and the issuance of the protective order. *Id.* The Defendant further stated that he believed that he could be at the Wichalakas address because his father invited him. *Id.* At no point was it ever suggested that the Defendant was at the address because he believed that the court had somehow altered or rescinded the protective order.

The parties appear to largely agree as to all these facts but differ as to whether these facts show a willful choice on the part of the Defendant. Contrary to the Defendant's arguments, his actions at the time of the offense show that he willfully chose to be at the Wichalakas address. *See also* Response, p.5 ("Certainly, Mr. Soto was located at the incident location in question. And it is *not a question that he arrived there on his own volition.*") (*emphasis added*). This same willful choice, in this instance, just happened to also constitute a willful choice to violate the court's plain and clear protective order.

It is also important to reiterate that, at the initial hearing, the trial court appeared to acknowledge that the evidence showed that the Defendant made a conscious choice to be at the Wichalakas address because "maybe he thought it was okay" to be there because of his father's invitation. Opening Brief, Attachment C, p. 8. Moreover, the court later upheld protective order's validity and went so far as to tell the Defendant could not "go over there unless the Court orders

Defendant to be at the Wichalakas address so long as he was on certain parts of the property, or exceptions allowing the Defendant to be at the address upon the invitation of another person.

that...you can.” *Id.* at 9-10. The court then repeated “[D]on’t go over there no matter who says for you to go over unless it’s the Courts, says that you can... okay?” *Id.* These statements were simply additional warnings that the Defendant could not choose to be at the Wichalakas address, even upon invitation, absent a change to the protective order.


Because there is clear evidence that the Defendant acted willfully as required by 4 PYTC § 1-570, the trial court abused its discretion in determining that there was insufficient probable cause to move forward with the criminal case.³ Accordingly, the requested relief should be granted.

³ Although the Defendant briefly argues that there was no evidence that the Defendant knew that the Victim would be at the residence, or that he went to the residence with the intent to contact the victim, *see* Response, p.5, this argument ignores crux of this case. The Defendant was specifically charged for being at the Wichalakas address in violation of a court order prohibiting him from being there. *See* Opening Brief, Attachment A.

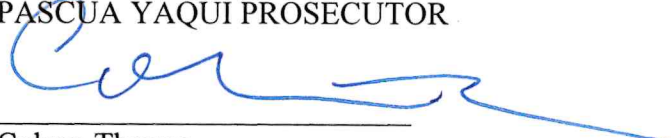
CONCLUSION AND REMEDY SOUGHT

In this case, the trial court abused its discretion in finding that there was no probable cause to believe that the Defendant had violated 4 PYTC § 1-570 based on a finding that he had not acted in a willful manner despite clear evidence showing that he made a willful and intentional choice to be at a protected address. Based on the reasons and arguments set forth above and in the Tribe's Opening Brief, the Tribe respectfully requests that the trial court's ruling be vacated, and that the case be remanded for further proceedings.

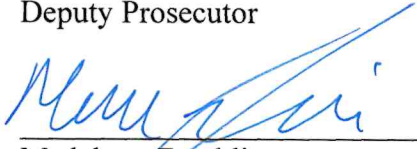
RESPECTFULLY submitted this 18th day of January, 2023.



Malena Acosta
Chief Prosecutor

PASCUA YAQUI PROSECUTOR


Coleen Thoene
Deputy Prosecutor



Madelynn Franklin
Deputy Prosecutor

CERTIFICATE OF SERVICE

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

Benjamin Casey
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Clerk of the Court of Appeals
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And that one (1) copy of 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:


Associate Judge Veronica Darnell
Pascua Yaqui Tribal Court
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Dated this 18th day of January, 2023.


PASCUA YAQUI PROSECUTOR



Malena Acosta
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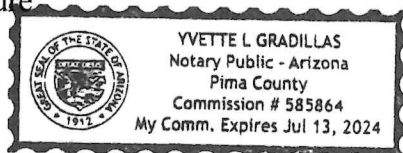


Madelynn Franklin
Deputy Prosecutor

Sworn before me this 18th day of January, 2023



Notary Signature



**IN THE PASCUA YAQUI COURT OF APPEALS
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PASCUA YAQUI TRIBE,)	APPELLATE CASE NO. CA-22-002
Appellant,)	
v.)	PASCUA YAQUI TRIBAL COURT NO.
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)	
RICHARD SOTO JR.,)	
Appellee.)	
_____)	

APPELLEE RESPONSE BRIEF

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State v. Blackmore, 186 Ariz. 630 (Ariz. 1996)
State v. Solano, 187 Ariz. 512 (Ariz.App. 1996)
State v. Hutton, 110 Ariz. 339 (Ariz. 1974)
State v. Howard, 163 Ariz. 47 (Ariz. App.1989).
U.S. v. Crapser, 472 F.3d 1141 (9th Cir. 2007).
State v. Valle, 196 Ariz. 324 (Ariz.App.2000).
Illinois v. Gates, 462 U.S. 213 (1983).
Maryland v. Pringle, 540 U.S. 366 (2003)
State v. Adams, 18 Ariz.App. 292 (1972).
State v. deBoucher, 660 P.2d 471 (Ariz. App. 1982)
Michigan v. Summers, 452 U.S. 692 (1981)
Beck v. Ohio, 379 U.S. 89 (1964).

TRIBAL STATUTES

Constitution of the Pascua Yaqui Tribe, § 1(h)
4 PYTC § 1-570
3 PYTC § 2-2-180
3 PYTC § 1-1-10
3 PYTC § 2-3-90
3 PYTC § 2-2-300

STATEMENT OF THE CASE

Appellant is the Pascua Yaqui Tribe Office of the Prosecutor and Appellee is Richard Soto, Jr. (Mr. Soto). This case was heard for an Initial Appearance on September 1, 2022 at 1:30pm. The case involved a single count of Disobedience of a Lawful Order of Court pursuant to 4 PYTC § 1-570 alleged to have occurred on that same day.

The court heard arguments regarding the Probable Cause for the complaint and ultimately determined that there was not sufficient evidence to proceed with the prosecution. 3 PYTC § 2-2-180. The reason given by the court was that there was no evidence that the defendant had the requisite criminal intent required by the statute.

The affidavit submitted by law enforcement presented facts including the Mr. Soto's reason for being at the residence and his understanding of the parameters of the order of protection lawfully served on him. The suspect candidly admitted knowledge of the order, his understanding of it, and gave a reason as to why he was at the residence. The court found, based on the evidence presented, that the Tribe did not meet the burden of proof necessary to continue with prosecution.

The case was dismissed which lead to this instant appeal.

JURISDICTIONAL STATEMENT

I. Tribe's Jurisdiction

The Pascua Yaqui Tribal Court had jurisdiction under 3 PYTC § 1-1-10 because the Tribe charged Mr. Soto, an enrolled Indian, with offenses enumerated in the Tribal Code. The charges allegedly occurred within the boundaries of the Pascua Yaqui Reservation. *See* 3 PYTC § 1-1-10 (B).

II. Court of Appeal Jurisdiction

Pursuant to the Rules of Appellate Procedure, “[t]he Pascua Yaqui Tribe or prosecutor shall not appeal a judgment acquitting a defendant in a criminal case.” 3 PYTC § 2-3-90(F). The plain language of the statute indicates that appeals in criminal matters by defendants is permitted.

STANDARD OF REVIEW

The standard of review is for an 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. 2015). In *PYT v. Coleman*, this Court held, “[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.” CA-15-003 (Ct. of App. 2015) (citing to *Michaelson v. Garr*, 234 Ariz. 542, 544, 323 P.3d 1193, 1195 (Ariz. App. 2014)).

ARGUMENT

III. The Trial Court Did Not Abuse Its Discretion by Dismissing the Case

a. The Trial Court Has Significant Deference In Determining Probable Cause

A defendant in a criminal proceeding has the right to challenge a criminal complaint for lack of probable cause. 3 PYTC § 2-2-300 (C). All criminal prosecutions for violations of the Pascua Yaqui Tribal Code must be initiated by the filing of a criminal complaint in the Tribal Court. 3 PYTC § 2-2-90 (A). When a person is arrested without a warrant, the Court must review the complaint together with other sworn statements to determine whether probable cause exists to allow the prosecution to proceed. 3 PYTC § 2-2-90 and 3 PYTC § 2-2-180 (A). Although not explicitly stated, these provisions of the Pascua Yaqui Judicial Titles

and Codes demonstrate that when a person is arrested and charged with a violation of the law, it is the Tribe that bears the burden of establishing probable cause.

Probable cause to arrest exists when *reasonably trustworthy* information and circumstance would lead a person of reasonable caution to believe that a suspect has committed the offense for which he is being arrested. *State v. Hoskins*, 199 Ariz. 127, 14 P.3d 997, 1007-08 (Ariz. 2000). In addition, whether officially arrested or not, persons cannot be held without probable cause, even briefly, under conditions resembling formal arrest. *State v. Blackmore*, 186 Ariz. 630, 632, 925 P.2d 1347, 1349 (1996); *State v. Solano*, 187 Ariz. 512, 516, 930 P.2d 1315, 1319 (Ariz.App. 1996).

Probable cause cannot rest upon a mere suspicion that a crime has occurred. *State v. Hutton*, 110 Ariz. 339, 341, 519 P.2d 38, 40 (1974); *State v. Howard*, 163 Ariz. 47, 50, 785 P.2d 1235, 1238 (App.1989). Even reasonable suspicion is not a rubber stamp, and probable cause, a higher evidentiary bar to clear, certainly is not. Reasonable suspicion requires “a particularized and objective basis” for suspecting the person of criminal activity. *U.S. v. Crapser*, 472 F.3d 1141, 1147 (9th Cir. 2007). Probable cause, however, requires not just objective and articulable indicia of the criminal activity but that indicia must also be “credible,” “substantial” and “persuasive.” *State v. Valle*, 196 Ariz. 324, 328, 331, 996 P.2d 125, 129, 132 (Ariz.App.2000).

The Pascua Yaqui Judicial Titles and Codes do not contain a definition of the term “probable cause.” As the United States Supreme Court observed, “probable cause is a fluid concept – turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules.” *Illinois v. Gates*, 462 U.S. 213, 232 (1983). In defining “probable cause,” the Court has observed that “[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt, and that the belief of guilt must be particularized with respect to the person to be searched or seized.” *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (internal quotation marks and citations omitted).

"Reviewing courts pay great deference to a magistrate's determination of probable cause. *State v. Adams*, 18 Ariz.App. 292, 501 P.2d 561 (1972)." *State v. deBoucher*, 660 P.2d 471, 135 Ariz. 220 (Ariz. App. 1982) The Tribe claims that the trial court abused its discretion in that it either redefined the term "willfully", or granted the defendant's father the authority to alter the order with his invite to the incident location. Neither of these claims correctly defines the issue. The court dismissed this complaint for lack of evidence that the defendant had the criminal mental state for the case to proceed. The court has the authority to make this determination at this stage of the proceeding.

Under the Fourth Amendment, a warrantless arrest requires probable cause. *See Michigan v. Summers*, 452 U.S. 692, 700, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981). "Probable cause to arrest exists when officers have knowledge or reasonably trustworthy information sufficient to lead a person of reasonable caution to believe that an offense has been or is being committed by the person being arrested." *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964).

U.S. v. Lopez, 482 F.3d 1067 (9th Cir. 2007). What the affidavit and information assessed by the Trial Court lacked in this probable cause hearing was any indication of mental culpability. Here, the court reviewed the affidavit, the order, and rightfully determined that no crime had been committed. Any reasonably trustworthy information gleaned during this investigation showed the opposite – that the homeowner invited the Defendant to the house to do yard work.

There was no indication that Mr. Soto had gone to that house in knowing violation of the order, but to help his father outside, or within the curtilage of the home. He had no indication of making contact with the plaintiff of the order of protection, nor did he had any

knowledge that she was at this location. In fact, it was indeed his father that lived there, not the plaintiff. The father who had invited him to the house. It is factually and legally possible to be at a specific location without *willfully* violating an order. That was the finding of the court here.

b. Willfully Being at a Location is Distinguishable From Willfully Disobeying an Order of Court

"[W]ilful means an act is done intentionally..." State v. Carriger, 143 Ariz. 142, 692 P.2d 991 (Ariz. 1984). The Tribe conflates the willful presence in a location with a willful violation of a Court Order. Certainly, Mr. Soto was located at the incident location in question. And it is not a question that he arrived there on his own volition. What was in question from the outset of the case was whether or not he realized that his presence there was unauthorized. Even if there was a legal document that related to this issue and he acknowledged its existence, the court still must determine, in the totality of the circumstances, if the defendant's presence in the location was a willful or intentional violation of the court order.

The information that the court had at the probable cause hearing was that Mr. Soto was at that address was not to see the plaintiff, or that he even knew she was at that location. It is notable that the plaintiff in the order of protection does not commonly reside at the address where he was located. His father resides at that location; the father who invited him there.

c. The Trial Judge Did Not Redefine the English Language or Give Extrajudicial Authority to a Civilian

The Tribe's claim that the conduct of the Defendant here was clearly a violation of the law based on the mens rea element of a "willful" mental state was certainly not shared by

the trial judge. There is no dispute that an order of protection was granted and served. The only question, and the one that the court relied upon, was the motivation for being at the location.

It does not require an overhaul of the definition of a commonly understood term to determine an element of an offense has not been shown at the probable cause level. In the affidavit reviewed by the court, Mr. Soto gave a statement to the police about his intentions. He did not flee the scene and was forthcoming with officers. It is commonplace for a judge to take the statements lawfully obtained by law enforcement into consideration when making a determination on probable cause. The role of the court in these circumstances is to make common sense decisions based on information obtained at the scene.

“In dealing with probable cause... 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.” *PYT v. Rodriguez*, CA-19-004.

Unsurprisingly, the Tribe failed to find the statutory or case-based authority that would allow for a judge to grant extrajudicial authority to a civilian. The reason being that this is preposterous and not at all what happened here, or most likely in any other case. A prosecutor disagreeing with a ruling against their position does not implicate a whimsical and fantastic legal theory as an explanation. The judge merely found that by the evidence presented, there was no showing of the required statutory mental element of this offense which is within their broad discretionary authority. This disagreement does not constitute a per se abuse of discretion.

I. CONCLUSION

Wherefore, Mr. Soto respectfully requests this Court to uphold the ruling of the trial court's finding that there was insufficient probable cause in this matter for the Tribe to continue prosecution.

RESPECTFULLY SUBMITTED: January 4, 2023.

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CERTIFICATE OF COMPLIANCE

This brief complies with the provisions set forth in 3 PYTC Part II, Chapter 2-3.

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7

8 PASCUA YAQUI TRIBE,

9 Appellant,

10 vs.

11 RICHARD SOTO JR.,

12 Appellee.

) Case No. CA-22-002

) Tribal Court No. CR-22-207

) **MOTION FOR EXTENSION OF TIME FOR
FILING RESPONSE BRIEF**

13 _____
14 Appellant, through counsel and pursuant to 3 PYTC § 2-3-70 (B) , Pascua Yaqui Rules of Appellate
15 Procedure, respectfully moves this to Court to enter an order extending the time for the filing of the
16 Appellee’s response brief by approximately 30 days.

17 The Tribe has no objection to this motion.

18 WHEREFORE Appellant respectfully moves this Court to enter an order extending the time for
19 the filing of the Appellant’s opening brief.

20 DATED this 5th day of December, 2022.

21 PASCUA YAQUI PUBLIC DEFENDER

22 _____
23 /s/ Stu de Haan

24 Stuart de Haan
25 Senior Staff Attorney

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28 ORIGINAL hand delivered this date

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COPY of the foregoing emailed this date
PY Prosecutor's In-Box by:

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

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

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CLERK _____

PASCUA YAQUI TRIBE

Appellant

vs.

RICHARD SOTO, JR.,

Appellee

APPELLATE CASE NO: CA-22-002

TRIBAL COURT CASE NO: CR-22-207

APPELLANT'S OPENING BRIEF

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CERTIFICATE OF SERVICEA

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REQUEST FOR ORAL ARGUMENT

The primary issue raised by this appeal is simple: how should the term “willful” be defined?¹ In this case, the trial court defined the term in a manner that suggested that the terms and restrictions contained in a Tribal Court order of protection could be changed by a civilian third party, essentially, at will. The trial court’s incorrect definition of “willful” also resulted in it finding that the Tribe failed to establish probable cause to charge the Defendant/Appellee² under 4 PYTC § 1-570, Disobedience of Lawful Order of Court. This was based solely upon information that the Defendant received permission of a third party to visit the Victim’s place of residence. The Pascua Yaqui Court of Appeals has not defined what “willful” means. It has, likewise, never addressed whether a third party may override a court’s order.

Other issues raised in this appeal are closely intertwined with the ones discussed above. For instance, the trial court’s ruling raises questions about whether it is appropriate for a court — during a probable cause hearing — to consider whether the prosecution will be able to prove its case at trial, or to consider potential trial-stage and/or nullification-style defenses when deciding whether a charge is supported by probable cause. While the Court of Appeals has issued a plethora of recent decisions discussing probable cause, it has not directly addressed these particular questions.

¹ The Pascua Yaqui Tribe’s criminal code and rules of criminal procedure were recently amended, effective of October 1, 2022. The amendments do not apply to this Defendant’s case as they are not retroactive to his date of offense. However, even under the new code, “willful” is a term that is both used and yet undefined. Additionally, a number of criminal cases charged under the previous code remain pending. Thus, defining “willful” will have an impact on cases under both code versions.

² For the sake of clarity, Mr. Soto will be referred to as “the Defendant” in this brief.

Given the unique nature of this case and the nuanced arguments that are likely to be raised regarding the aforementioned issues, the Appellant respectfully requests that oral argument be set in this matter. *See* 3 PYTC § 2-3-180, 3 PYTC § 2-3-260(C)(6) and/or (D).

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 § 1-1-10(A) & 3 PYTC § 2-3-30, *et seq.* This includes the right of the Tribe to appeal the dismissal of a criminal case. *PYT v. Montana*, CA-21-002, p.1 (PYT Ct. App. 2022); *In the Matter of Alvarez*, CA-17-008 (PYT Ct. App. 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. 2017); *PYT v. Baltazar*, CA-01-003 (PYT Ct. App. 2001) (reviewed dismissal *with* prejudice); *PYT v. Rodriguez*, CA-19-004 (PYT Ct. App. 2019); *PYT v. Valenzuela*, CA-19-001 (PYT Ct. App. 2019); *PYT v. Valencia*, CA-19-005 (PYT Ct. App. 2019); *PYT v. Thomas*, CA-19-002 (PYT Ct. App. 2019) (remanding a case to the trial court for further proceedings as the trial court made ordered dismissal without making factual findings and at an inappropriate stage in the proceedings).

Defendant is an enrolled member of the Pascua Yaqui Tribe, and was charged with one count of disobedience of a lawful order of court pursuant to 4 PYTC § 1-570. The offense was alleged to have occurred within the physical boundaries of the Pascua Yaqui Reservation. The current appeal is the result of the trial court's decision to dismiss the case against the Defendant with prejudice. Thus, this Court has jurisdiction over the Tribe's appeal.

STANDARD OF REVIEW

A trial court's decision to dismiss a case is reviewed under an abuse of discretion standard. *Montana*, CA-21-002 at p. 1; *Rodriguez*, CA-19-004, at p.2 (PYT Ct. App. 2019); *Bustamante*, CA-17-004 at p.2. "A trial 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.'" *Montana*, CA-21-002 at p. 1-2 (quoting *PYT v. Coleman*, CA-15-003, at p. 2 (PYT Ct. App. 2015)); see also *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).

ISSUES PRESENTED FOR REVIEW

1. Is the plain language definition of term “willfully” equivalent to the statutory definition of “intentionally,” or does it — as suggested by the trial court’s ruling — grant a civilian third party the ability to change or suspend the terms of a lawfully issued order of the Pascua Yaqui Tribal Court?
2. At an initial or probable cause hearing, is it appropriate for a court to consider whether the prosecution will be able to prove its case at trial, or to consider trial-stage defenses when determining whether a charge is supported by probable cause?
3. Is it appropriate to dismiss a case with prejudice based upon a determination that probable cause for charges is lacking, and when there is no legal justification supporting such an extreme sanction?

STATEMENT OF THE CASE

I. Facts³ and Proceedings Below:

On August 16, 2022, the Victim in this case, Nichole Sainz, obtained an order of protection⁴ in the Pascua Yaqui Tribal Court against the Defendant, Richard Soto, under Pascua Yaqui Tribal Court case number OP-22-034. *See* Attachment B (*Sainz v. Soto*, OP-22-034, Copy of Domestic Violence Protective Order and Service Logs). The protective order prohibited the Defendant from having contact with the Victim and a minor child identified only by their initials. It also prohibited the Defendant from contacting the Victim's place of residence, which was located at 5050 W. Wichalakas [*hereinafter* "the Wichalakas address"].⁵ The order included a warning that violations of its terms — even upon invitation of another person — could result in prosecution, and that the court alone had the power to change the order's terms. *Id.* at 2-3. The protective order was lawfully served on the Defendant on August 19, 2022. *Id.* at p.5.⁶

On September 1, 2022, shortly before 9:00 a.m., the Victim contacted the Pascua Yaqui Police Department and reported that the Defendant, was sitting in the back yard of the Wichalakas address. *See* Attachment A (*PYT v. Richard Soto*, CR-22-207, Copy of Complaint and Affidavit), p.3. This was only a few weeks after the protective order was issued in OP-22-034. *See* Attachment B, p.5. The Victim told police about the protective order. *See* Attachment A at p.3-4. PYPD Officer Romero responded to the Wichalakas address and saw the Defendant sitting in the back yard as the Victim had described. *Id.* at p.3. The Defendant identified himself and said that

³ No evidentiary hearings have been held. All facts discussed in this appeal are taken from the complaint and affidavit that was filed on September 1, 2022, and from the transcript of the initial hearing proceeding that was held that same date.

⁴ Hereinafter, the Domestic Violence Order of Protection issued in OP-22-034 shall be referred to as "the protective order."

⁵ This address is located within the physical boundaries of the Pascua Yaqui reservation.

⁶ During the initial hearing held in this case, the trial court ultimately acknowledged its continuing validity. *See* Attachment A (*PYT v. Richard Soto*, CR-22-207, Copy of Complaint and Affidavit), p.9.

he was aware that there was an active protective order against him. *Id.* The Defendant claimed that he was at the Wichalakas address because his father, who resides at the same address, gave him permission to be there in order to clean up the yard. *Id.* Officer Romero reminded the Defendant that the protective order could only be modified by a court. *Id.* The Defendant was ultimately arrested and charged with one count of Disobedience of Lawful Order of Court, committed in violation of 4 PYTC § 1-570. *Id.* at p.1.

An initial hearing was held on September 1, 2022, at 1:30 p.m. *See generally* Attachment C (*PYT v. Soto*, CR-22-207, Initial Hearing Order). The Tribe moved to amend the complaint to include the Defendant's current address, which was located on S. Paaros Voo'o, at the bottom of the complaint.⁷ The motion to amend was granted. *See* Attachment C (*PYT v. Soto*, CR-22-207, Initial Hearing Order), p. 2; Attachment D (*PYT v. Richard Soto*, CR-22-207, Copy of Transcript of Initial Hearing held September 1, 2022), p. 2-3.

Defense counsel moved to dismiss the complaint for want of probable cause. Attachment D, p. 5. In doing so, counsel agreed that there was an order of protection "and that *it does look like [the Defendant] admitted that he was aware of it.*" Attachment D, at p. 2-3. (*emphasis added*). Counsel then argued that there was "no indication that [the Defendant] knew that... [the Victim] was at the home or if he had any reason to be there to try to see her." *Id.* at p.5-6. Counsel then avowed that the Defendant had only gone to the Wichalakas address at the request of his father, the homeowner. *Id.* at p. 5-6. Counsel stated, "I would submit that there's no evidence that [the Defendant] *intentionally* violated this order." *Id.* at 6. (*emphasis added*).

⁷ Information included at the bottom of the complaint is typically included as a matter of professional courtesy to assist the trial court in issues of providing process service to criminal defendants, and identifiers for defendants in the event that warrants are ever issued. Neither the original address listed in the complaint or the amended address were protected by OP-22-034.

In response, the Tribe argued that it had confirmed with court staff that the protective order issued in OP-22-034 had been issued and served upon the Defendant. *Id.* The Tribe also indicated that court staff had confirmed that the protective order prohibited the Defendant from contacting the Victim or the Wichalakas address. *Id.* at 6-7. The Tribe then stated that counsel for both parties had spoken with the Defendant’s father — who happened to be present in the courtroom — who indicated he was unaware that his son had been served with a protective order prohibiting him from being at the Wichalakas address. *Id.* at 7.⁸

After hearing the arguments of the parties, the trial court dismissed the charge against the Defendant. *Id.* at 8. In doing so, the court stated:

“I do find good cause to dismiss [the case] *but only because of the wording that says, willfully, uhm, disobeying the order.* It, it looks like, uhm, this may be a case of that, uhm, that the Defendant knew about the order, but, uhm, he thought because his father, uhm, asked him to come over, I think it was to do something with the, the outside of the house, the yard, uhm, that *maybe he thought it was okay because of his dad’s statement.* But, uhm, so, I’m going to go ahead and grant the motion to dismiss. But, Mr. Soto, uhm, when you have an order, uhm, what you need to understand is that *unless the Court says different from that order, then you, you have to follow it,* or you, this is what’s going to happen... okay? Do you understand that?”

Id. (emphasis added).

At the Tribe’s request, the trial court clarified that the protective order issued in OP-22-034 remained valid. *Id.* at 9. The trial court also reminded the Defendant that the protective order prohibited him from returning to the Wichalakas address. *Id.* at 9-10. Specifically, the court stated:

“So, that still means that you cannot go over there unless the Court orders that, uhm, that you can... okay? So, that other one, still valid, *still don’t go over there no matter who says for you to go over unless it’s the Courts, says that you can... okay?*”

Id. (emphasis added).

⁸ Although defense counsel offered to have the Defendant’s father testify at the initial hearing, *Id.* at p. 6, no testimony was taken.

In its subsequent written ruling, the trial court again acknowledged the validity of the protective order and that it covered the Wichalakas address. *See* Attachment C (*PYT v. Soto*, CR-22-207, Initial Hearing Order, Sept. 1, 2022), p.2. The trial court clarified that the charge had been dismissed with prejudice, a fact that had not been mentioned as part of the court's oral ruling. *Id.* The court also clarified that the dismissal was based on a lack of probable cause based on the Tribe's failure to demonstrate that the Defendant's actions in this case were willful since the Defendant's father had invited him to the residence. *Id.*⁹ The court's order remained silent as to any other reasons supporting a dismissal with prejudice.

The Tribe filed a timely notice of appeal of the trial court's decision on September 7, 2022. This brief is, likewise, timely filed.

⁹ It should be noted that, at the initial hearing, the trial court did not make a determination or any factual findings regarding whether the case was being dismissed with or without prejudice. Similarly, in its written order, the trial court made no factual findings regarding why the case should be dismissed with prejudice.

II. Summary of the Argument

In recent years, this Court has heard a number of appeals seeking review of a lower court's probable cause determination. Throughout each of its decisions, it has consistently held that "[p]robable cause is a determination as to whether it is more likely than not that a crime was committed, and that the accused committed it." *Montana*, CA-21-239 at p.2; *see also Rodriguez*, CA-19-004 at p.2. It has, likewise, repeatedly indicated that probable cause determinations require an analysis of the statute at issue, and reasonable factual and practical considerations of everyday life. *See generally Rodriguez*, CA-19-004 at p. 2-3.

In this case, the trial court abused its discretion when it found that the sole charge levied against the Defendant was unsupported by probable cause. The Defendant had been charged with Disobedience of a Lawful Order of Court pursuant to 4 PYTC § 1-570. That statute criminalizes conduct that amounts to a "willful" violation of a court order. The Defendant admitted that he knew about the protective order issued in OP-22-034 but said that he went to the protected Wichalakas address because his father asked him to help clean up the yard. Under the plain language definition of "willful," the Defendant's conscious and knowing choice to go to the Wichalakas address despite the protective order's prohibitions amounted to a clear violation of 4 PYTC § 1-570.

However, the trial court — while continuing to maintain that the protective order was valid and protected the Wichalakas address — applied a novel definition of the term "willful." Specifically, the trial court found that the mere fact that the Defendant's father requested his presence at the residence for the purpose of assisting with back yard chores meant that the Defendant had not willfully violated the protective order. At best, this evinced a misunderstanding of the term "willful" on the part of the trial court. At worst, it suggested that a civilian third party had the power to unilaterally suspend or override the terms of a lawfully issued court order.

The trial court's ruling is equally problematic for an additional reason. The ruling appears to be partly the result of the court considering whether evidence regarding the father's invitation,

if introduced as a defense at trial, would result in the prosecution being unable to prove guilt beyond a reasonable doubt. Based on caselaw, such a consideration is improper.

For all the aforementioned reasons, the trial court's ruling amounted to an abuse of discretion. Accordingly, the Tribe respectfully requests that the trial court's dismissal be reversed and that the case be remanded for further proceedings.

LAW AND ARGUMENT

I. **An Initial Hearing, held within Twenty-Four Hours of Arrest, 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 sole charge levied against the Defendant. Specifically, the trial court held that, even though the Defendant knew about the protective order issued in OP-22-034 and that it restricted him from being at the Wichalakas address, the mere fact that his father — a civilian third party — invited him to the home to help clean the property meant that the Defendant’s violation of said protective order was not “willful.” As will be discussed in more detail, *infra*, this ruling constituted an abuse of discretion because it was based upon an incorrect definition and misapplication of the term “willful.” Before examining the trial court’s order, it is first necessary to discuss the nature and purpose of a probable cause hearing.

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).

A defendant must be seen by a trial judge within twenty-four hours of arrest for an initial hearing. 3 PYTC § 2-2-170(A); 3 PYTC § 2-2-180.¹⁰ An initial hearing serves as the trial court’s first, and main, opportunity to address the issue of whether a complaint is supported by probable cause. An initial hearing must be held — and probable cause for a complaint found — before the trial court may set an arraignment. 3 PYTC § 2-2-230.¹¹ Neither the initial hearing or arraignment are designed to be full evidentiary hearings requiring the detailed presentation of evidence, the calling of witnesses by the parties, or motions regarding substantive issues unrelated to a finding of probable cause. *See generally* 3 PYTC § 2-2-300.

This short deadline between an arrest and initial hearing means that investigations by either party are still in their infancy. 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 or defense interviews. As this Court noted in *PYT v. Baltazar*, CA-01-003, p.4 (PYT Ct. App., 2001):

“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.” (*emphasis added*).

The reasoning first set out in *Baltazar* was later affirmed by this Court in *Rodriguez*, CA-19-004, at p.2-3, and subsequent cases. *See also c.f. Montana*, CA-21-002, at p. 3 (finding that the “trial

¹⁰ 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 if an arraignment, or other pretrial hearing is set. 3 PYTC § 2-2-190; 3 PYTC § 2-2-200.

¹¹ 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.

court abused its discretion ...when it imposed additional requirements ...unwarranted by law on its probable cause determination”).

It is, likewise, important to note that the 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, an accused discharged or held to answer as the facts warrant.” *Id.* (*internal citations and quotations omitted, emphasis added*). The question then becomes, what does the process of determining whether a charge is supported by probable cause entail?

B. Definition of “Probable Cause” and the Purpose of a Probable Cause Hearing Regarding 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). 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) (*quoting United States v. Stravroulakis*, 952 F.2d 686, 693 (2nd Cir. 1992)) (*emphasis added*). Accordingly, the question that must be asked is whether an item listed in the charging document or considered by the court constitutes an element of the offense with which the Defendant has been charged. This is largely a factual inquiry that depends on the circumstances of a particular case.

“[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) (*emphasis added*). 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.* (*emphasis added*); 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); *Rodriguez*, CA-19-004, at p.3 (*citing McKenzie v. Lamb*, 738 F.2d 1005 (9th Cir. 1984) and *Brinegar*, 338 U.S. at 160, 69 S.Ct. at 1302); *Montana*, CA-21-239 (“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.”).

When determining whether probable cause exists to support charges, it is inappropriate for a court to consider whether the prosecution will be able to prove the defendant’s guilt at a later trial. *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 also c.f. Baltazar*, CA-01-003 at p.3-5 (discussing how the facts of a case can change over its life); also *Rodriguez*, CA-19-004, at p. 3. As this Court has stated:

“The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating...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.” *Rodriguez*, CA-19-004, at p.3 (*quoting Brinegar*, 338 U.S. at 176).

As will be discussed below, the trial court applied an incorrect interpretation of the term “willfully,” and made assumptions that the Tribe would not be able to prove its case at trial based on the Defendant’s statements. Accordingly, the Appellant is entitled to relief.

II. The Trial Court Abused its Discretion When it Found There was No Probable Cause to Believe that the Defendant had Willfully Violated the Protective Order Issued in OP-22-034.

Here, the trial court found that there was no probable cause to charge the Defendant with a violation of 4 PYTC § 1-570 because there was insufficient evidence to suggest that his choice to go to the Wichalakas address amounted to a willful violation of the protective order. This finding was based upon information — which was based on a proffer of defense counsel and statements provided by the Defendant at the time of his arrest — that the Defendant only went to the Wichalakas address because his father invited him over to assist with yard work. This constituted an abuse of discretion because it stemmed from an incorrect definition of the term “willfully.” It also amounted to an abuse of discretion because it suggested that a civilian third party had the power to change or suspend the terms of a validly issued court order.

C.

A. Canons of Statutory Construction:

The Tribal Code provides some direction regarding statutory construction and interpretation. 1 PYTC § 2-30. For instance, “[w]ords shall be given their plain meaning and technical words shall be given their *usually understood meaning where no other meaning is specified.*” 1 PYTC § 2-30 (A) (*emphasis added*); *see also United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989); *United States v. Flores*, 729 F.3d 910, 914 (9th Cir. 2013). Moreover, the Tribal Code “shall be construed as a whole to give effect to all its parts in a logical, consistent manner.” 1 PYTC § 2-30(B) (*emphasis added*); *see also Boise Cascade Corp v. U.S. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991); *Corley v. United States*, 556 U.S. 303, 314 (2009).

The Code is silent with regards to other well-established canons of statutory interpretation. However, Pascua Yaqui Courts may look to Arizona or Federal Authority in the absence of controlling Pascua Yaqui law. *Miranda*, CA-08-015, at p.22. One of the core canons of construction dictates “that if the language of a statute is clear, [courts are to] look no further than that language in determining the statute’s meaning.” *United States v. Lewis*, 67 F.3d 225, 228 (9th Cir. 1995). Moreover, “[p]articlar phrases must be construed in light of the overall purpose and structure of the whole statutory scheme.” *Id.* at 228-29. A court will look to the legislative history of a statute only if that statute’s plain language is unclear. *Id.* at 229. Importantly, a “statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Corley*, 556 U.S. at 314 (*citations and quotations omitted*).

In this case, the statutory elements of 4 PYTC § 1-570, the crime for which the Defendant had been charged, and the definition of “willfully” must both be examined using the aforementioned canons of construction.

B. Statutory Elements of 4 PYTC § 1-570 and the Definition of “Willfully”:

The Defendant was charged with one count of Disobedience of Lawful Order of Court, committed in violation of 4 PYTC § 1-570. That statute provides the following:

“Any person who shall willfully disobey any order, subpoena, warrant or command duly issued, made or given by the Pascua Yaqui Tribal Court or any officer thereof shall be deemed guilty of an offense.”

Id.

Under the plain language of the statute, the Tribe need only establish two elements for a finding of probable cause, or later conviction. First, the Tribe needs to show that there was a lawful order issued by the Pascua Yaqui Tribal Court and what the terms of that order were. Second, the Tribe needs to show that a defendant “willfully disobey[ed]” the terms of that order.

When it comes to the second element, it is important to understand what “willfully” means. The Pascua Yaqui Tribal Code defines several different types of *mens rea*, including those

involving intent,¹² knowledge,¹³ recklessness,¹⁴ and criminal negligence.¹⁵ The Code does *not*, however, define the term “willful.” This term has also remained undefined by this local appellate court precedent. Because the Code and precedent do not define this particular concept, it is appropriate to look to the plain and normally understood meaning of the term. 1 PYTC § 2-30 (A); *also Ron Pair Enters., Inc.*, 489 U.S. at 242; *Flores*, 729 F.3d at 914; *see also Miranda*, CA-08-015, at p.22.

Black’s Law Dictionary, 2nd Ed., defines “willful” as follows:

“In common parlance, ‘willful’ is used in the sense of ‘intentional,’ as distinguished from ‘accidental’ or ‘involuntary.’”

Merriam Webster takes a similar approach and defines “willful,” in part, as something that is done deliberately or intentionally. Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/willful> (October, 2022). While the Pascua Yaqui Tribal code does not define “willful,” it does define the term “intent.” “‘Intentionally or with the intent to’ means, with respect to a result or to conduct described by a statute defining an offense that a person’s objective is to cause that result or to engage in that conduct.” 4 PYTC § 1-41(A)(1). This statutory definition of “intentionally” comports with the plain language dictionary definitions discussed above regarding the term “willfully.” Arizona courts, when faced with defining “willfully,” have adopted

¹²“‘Intentionally or with the intent to’” will be discussed in more detail *infra*.

¹³ “‘Knowingly’ means with respect to conduct or to a circumstance described by a statute defining an offense that a person is aware or believes that his or her conduct is of that nature or that the circumstances exist. It does not require any knowledge of the unlawfulness of the act or omission.” 4 PYTC § 1-41(A)(2).

¹⁴ “‘Recklessly’ means with respect to a result or to a circumstance described by a statute defining an offense that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.” 4 PYTC § 1-41(A)(3).

¹⁵ “‘Criminal negligence’ means with respect to a result or to a circumstance described by a statute defining an offense that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstances exist. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.” 4 PYTC § 1-41(A)(4).

a similar “ordinary meaning” analysis. For instance, the Arizona Supreme Court has indicated that willfully means “an act [that] is done *intentionally*.” *State v. Carriger*, 143 Ariz. 142, 148, 692 P.2d 991, 997 (1984) (*en banc*).

C. The Trial Court abused its discretion in dismissing the charge against the Defendant, because the court used an improper definition of the term “willfully.”

Based on the circumstances of this case, it is clear that the Defendant willfully violated the protective order issued in OP-22-034. According to the court’s file for that case, the order was issued on August 16, 2022. *See* Attachment B, p.2. It was served upon the Defendant on August 19, 2022. *Id.* at p.5. The text of the order prohibited the Defendant from, among other things, contacting the Victim or her residence on Wichalakas. It included a warning that violations of the terms of the order could result in arrest or prosecution. *Id.* at p.2-3. It also included notice that the terms of the order could only be changed by a court. *Id.* at p.3.

On September 1, 2022, only thirteen days after the protective order had been served upon him, the Defendant went to the Wichalakas address. At the time of the investigation, the Defendant told Officer Romero that he knew about the protective order. The Defendant then stated that he thought he could be at the Wichalakas address because his father had invited him over. Clearly, the Defendant chose to go to the residence following his father’s invitation and despite knowing that the protective order prohibited him from going there. Accordingly, the charge of 4 PYTC § 1-570 was supported by adequate probable cause.

Under the Pascua Yaqui Tribal code, the definition of “intent” closely matches the plain language definition of “willful.” The trial court, however, ignored the plainly understood definition of “willful” as involving some form of conscious choice or action. Instead, the trial court seemed to believe that an invitation of a third party who was uninvolved with the protective order — in this case, the Defendant’s father — removed the Defendant’s ability to choose to avoid the Wichalakas address as required by the protective order. According to the court’s reasoning, the

request of a parent may essentially trump the terms of a court-issued protective order because it cancels an individual's ability to exercise free will, or to make a conscious choice. It also renders the notion that only courts may change the terms of a court order meaningless. The Tribe has been unable to find any statutory or case-based authority in any jurisdiction that grants an individual civilian the power to obviate a court's order. Yet, by applying an incorrect definition of the term "willful," the trial court implied that such power exists and is legally appropriate.¹⁶

Because the trial court ignored the plain meaning of the term "willful," its ruling dismissing the case against the Defendant was an abuse of discretion. Thus, the Tribe is entitled to relief.

D. The Trial Court abused its discretion in dismissing the charge against the Defendant, because it implicitly considered whether the Tribe would be able to prove guilt at trial.

"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, an accused discharged or held to answer as the facts warrant." *State ex rel. Mahoney v Stevens*, 79 Ariz. 298, 300-01, 288 P.2d 1077, 1078, 79 (1955) (*internal citations and quotations omitted, emphasis added*). Here, in applying an incorrect definition of the term "willful," the trial court implicitly considered whether the Tribe would be able to prove the Defendant's guilt beyond a reasonable doubt at trial. Although the facts presented in the charging affidavit demonstrated that the Defendant chose to go to the Wichalakas address, the trial court appeared to believe that the ultimate trier of fact would ignore the law and find the Defendant not guilty at trial. It assumed that the Defendant or his father would testify at trial regarding the father's invitation or, at the very least, that the Defendant's self-serving hearsay statements would be admissible at trial, and that this evidence would result in an acquittal. Essentially, if the proper definition of "willful" was


¹⁶ The trial court's ruling is equally problematic because it has the potential to destroy the public's confidence in the sanctity of court rulings, especially protective orders. For victims who seek to obtain an order of protection, it can result in them believing that the judicial process will afford them no protection.

applied, an acquittal could only occur if the trial judge or jury “nullified” the case at trial based on the fact that the Defendant only went to the residence in order to honor the request of his father. Such a consideration was inappropriate at the time of an initial hearing and amounted to an abuse of discretion. Accordingly, the Tribe is entitled to relief.

CONCLUSION AND REMEDY SOUGHT


In this case, the trial court applied an incorrect definition of the term “willful” and improperly considered whether the prosecution would be able to convict the Defendant at trial of violating an order of protection issued in OP-22-034. This amounted to an abuse of discretion. For this reason, the Tribe respectfully requests that the trial court’s ruling be vacated, and that the case be remanded for further proceedings.

RESPECTFULLY submitted this 3th day of November, 2022.

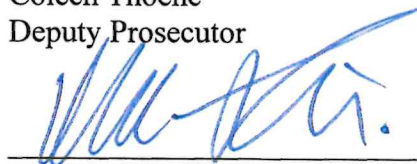


Malena Acosta
Chief Prosecutor

PASCUA YAQUI PROSECUTOR



Coleen Thoene
Deputy Prosecutor



Madelynn Franklin
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:

Stuart de Haan
Stuart.deHaan@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 Veronica Darnell
Pascua Yaqui Tribal Court
7777 S. Camino Huivisim
Tucson, AZ 85757

Dated this 3 day of November, 2022.

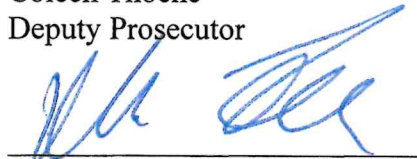
PASCUA YAQUI PROSECUTOR



Malena Acosta
Chief Prosecutor

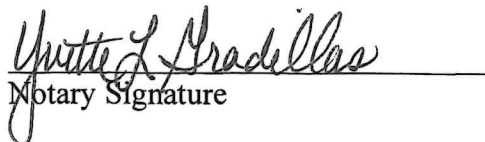


Coleen Thoene
Deputy Prosecutor

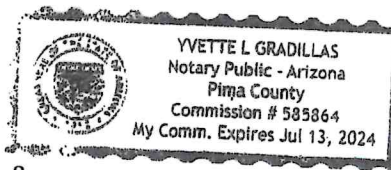


Madelynn Franklin
Deputy Prosecutor

Sworn before me this 3rd day of November, 2022



Notary Signature



ATTACHMENT A
**(*PYT v. Richard Soto*, CR-22-207, Copy of
Complaint and Affidavit, September 1, 2022)**

22 SEP -1 AM 11:29

DOCKET NO. CR 22-007

Case No. CRIM 007

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

Pascua Yaqui Tribe,
Plaintiff,

vs.

SOTO, RICHARD

Defendant.

CRIMINAL COMPLAINT

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 § 1-570 ~ Disobedience of Lawful Order of Court

On or about September 1, 2022, at approximately 8:49 am, at or near 5050 W. Wichalakas, Defendant willfully disobeyed any order, subpoena, warrant or command duly issued, made or given by the Pascua Yaqui Tribal Court or any officer thereof, to wit: *Defendant was at 5050 W. Wichalakas in violation of the Court's order in OP-22-034*

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 1st day of September, 2022.


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: Richard Soto
ADDRESS: 5050 W. Wichalakas, Tucson, Az 85757
DOB: 08/11/1995 SSN: 600-53-7814 ORIGIN: Pascua Yaqui Tribe 2694U09215
SEX: M HT: 5'06 WT: 165 EYES: Brown HAIR: Black

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 22 SEP -1 AM 11:29

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE, Plaintiff Vs. Richard A Soto JR, Defendant	CLERK _____
	COURT USE ONLY Case Number: P22090109
PROBABLE CAUSE AFFIDAVIT	

AFFIRMATION

1. I, Officer Frank Romero #3L60, being a duly authorized law enforcement officer of the Pascua Yaqui Indian Tribe and for the Pascua Yaqui Indian Reservation, do hereby swear OR affirm as follows:

- 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 _____

2. SUSPECTED PARTY (Defendant)

Name: Richard A Soto JR
Driver's License Number: 600-53-7814
Tribal Enrollment Number: 2694U09215
Last Known Address: 5050 W Wichalakas
Date of Birth: 08/11/1995

Richard A Soto Jr is an enrolled member of the Pascua Yaqui Tribe.
 is an Indian subject to the jurisdiction of the Pascua Yaqui Tribe.
 is a non-Indian subject to the Tribal Jurisdiction of the Pascua Yaqui Tribe under the Violence Against Women Reauthorization Act of 2013.

3. The Defendant was arrested cited long formed without a warrant on 09/01/2022 at 08:55 a.m. p.m.

4. I have probable cause to believe that the defendant committed the following offense(s) at or near 5050 W Wichalakas (address) which is with the exterior boundaries of the Pascua Yaqui Indian Reservation:

P.Y.T.C. / A.R.S., Title 4, Chapter 1, Section 570, Disobedience of Lawful Order of Court

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

5. I believe that the defendant committed the above-listed offense(s) because:
(Summarize facts to support the probable claim)

At the above stated date and time at the above referenced location within the exterior boundaries of the Pascua Yaqui Reservation, I did witness the following:

On 09/01/2022 at approximately 0849hrs I, Officer Romero responded to 5050 W Wichalakas reference Nichole Sainz reporting that a person she has an PY Tribal Court Order of Protection on, Richard Soto JR (PY Tribal Court # OP-22-034) who is sitting in the back yard of the property.

I arrived and made contact with a male sitting in the back yard. The male identified himself as Richard Soto Jr. I informed Richard the reason for Police contact. Richard stated that he was aware of the Court Order, but that his father gave him permission to be at the home to clean the back yard. I informed

Richard that his father can not give him permission to violate the court order,
but that they can possibly contest the order in Court.

PY Dispatch then confirmed that the PY Tribal Court Order was valid and was
signed on August 16th, 2022 by PY Tribal Court Judge Cruz.

I then informed Richard that he was under arrest for the following:

PYTC 4-1-570 Disobedience of Lawful Order of Court

Richard was then transported to PY Detention where he was booked.

NFI

Officer Frank Romero #3160

6. The information contained herein is true and accurate to the best of my knowledge and belief. I request that the court make a probable cause determination and if the defendant is in custody, that he/she remain in custody, pending further proceedings.

OFC. Frank Romero #3160

Signature of Officer

EXECUTED ON:

09/01/22

Date

ATTACHMENT B

(Sainz v. Soto, OP-22-034, Copy of Domestic
Violence Protective Order and Service Logs)

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

SAINZ NICHOLE MARIE, <p style="text-align: center;">Petitioner,</p> Vs. SOTO , RICHARD A. JR. <p style="text-align: center;">Respondent.</p>	
	COURT USE ONLY
	OP-22-034

ORDER FOR PROTECTION – DOMESTIC VIOLENCE

TEMPORARY (expires is 14 days) _____
PERMANENT (expires 12 months) X

THE COURT FINDS:

- X Jurisdiction. This court has determined that jurisdiction is proper over the parties and subject matter under the Laws of the Pascua Yaqui Tribe.
- X Ex parte Order. The petitioner appeared and requested an ex parte order.
- _____ The respondent appeared at the hearing for a temporary permanent order.
- _____ Respondent received notice through personal service and failed to appear for a hearing on a permanent protection order.
- X The court has made a factual determination that issuance of this protection order is warranted to prevent further acts of domestic violence and to provide protection to the petitioner.

OTHER PERSON(S) ENTITLED TO ALL PROTECTION OF THIS ORDER:
ALL PERSONS RESIDING IN THIS RESIDENCE INCLUDING THE MINORS: .

IT IS ORDERED THAT RESPONDENT SHALL:

- X Not contact or threaten to commit further acts of domestic violence, and shall not cause petitioner physical harm or bodily injury.
- X Not contact, harass, annoy, telephone or otherwise communicate with the petitioner, and others to be protected under this order, either directly or indirectly. **MINOR CHILD, A.A.D..**
- X Immediately leave the petitioner's residence, 5050 WEST WICHALAKAS, TSN, AZ 85757
- X Stay away from the petitioner's residence, school, place of employment located at: **5050 WEST WICHALAKAS, TSN, AZ, 85757** and place of employment, located at
- X **WEAPONS:** Not possess or use any firearm or other weapon specifically: ANY TYPE and shall turn these weapons into law enforcement for safekeeping immediately. Any weapons registered in your name but in the custody of others must be confiscated, as well. You must identify the location of all weapons you own. If you fail to turn in weapons to the police department, or fail to identify all weapons within your custody or control, it could result in a warrant for your arrest and immediate detention.

TEMPORARY CHILD CUSTODY AND VISITATION:

- _____ Petitioner shall have temporary custody of minor child(ren).
- _____ Respondent's visitation with the minor child(ren) is suspended.

- 1 _____ Respondent shall not remove the children from the Pascua Yaqui Tribal Court jurisdiction for the duration of this order.
- 2 _____ Respondent shall immediately cause the transfer or surrender of custody of the below named minor child(ren) to the Petitioner (or designee).
- 3 _____ Petitioner _____ Respondent shall be the legal custodian of the parties' minor child(ren), solely for the purpose of complying with all other Tribal, State and Federal statutes requiring such a designation. (e.g. UCCJEA, UCCJA, PKPA).

5 This order applies to the following children:

6 **LAW ENFORCEMENT SHALL:**

- 7 _____ Law enforcement officers shall assist Petitioner in obtaining transfer or surrender of custody of the above named child(ren).
- 7 _____ Assist the petitioner in obtaining possession of petitioner's residence/or personal property.
- 8 Confiscate weapons from respondent(s) if he/she is prohibited from possessing or using them, and hold and store those weapons until ordered otherwise by this court.
- 9 Pascua Yaqui Police Department or Pascua Yaqui Court process server shall personally serve respondent a copy of this order at the address of: 5050 WEST WICHALAKAS, TSN, AZ, 85757 and will promptly complete and return this Court proof of service.

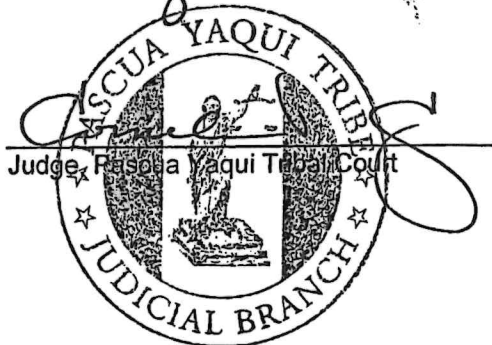
11 **CLERK OF COURT SHALL:**

11 Forward a copy of this order to the Pascua Yaqui Police Department, who shall enter this order into the appropriate law enforcement information system.
 12 Send a copy of this order to : _____
 13 Behavioral Health shall make arrangements for any supervised visitations between the alleged perpetrator and his or her children, and submit its recommendations.

14 **IT IS FURTHER ORDERED THAT:**

15 _____ If this is a Temporary Order, this order shall be valid only until the hearing scheduled on _____
 16 _____, 2010, at _____ A.M. P.M., at the Pascua Yaqui Tribal Court.

17 SO ORDERED THIS 16th DAY OF August, 2022.



22 Cc: Date: 8/16/2022
 22 Plaintiff/Petitioner _____ Respondent/Defendant _____
 23 Other: PYPD.
 23 Clerk: [Signature]

24 The Respondent is entitled to a hearing on written request made to this court located at
 25 7777 SOUTH CAMINO HUIVISIM, TUCSON, ARIZONA 85757. The hearing will be
 26 scheduled ten (10) days of the written request, unless for good cause the Court sets the hearing at a
 27 later date.

28 This is an official court order. If you disobey this Order the Court may find you in contempt of Court. You may also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

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NOTICE TO THE PETITIONER

Modifications or Termination of this Order: If this order is modified or terminated by issuance of another court order, you are responsible for notifying any other state or tribal jurisdiction where you registered this order. If this order protects you at your place of work or school, you may want to consider providing a copy of this order to your supervisor or school officials so they may take appropriate action if this action is violated at work or school.

NOTICE TO THE RESPONDENT

VIOLATION OF THE PROVISIONS OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE AND WILL SUBJECT YOU TO ARREST AND MAY RESULT IN IMPRISONMENT AND THERE REQUIREMENT TO PAY A FINE. A POLICE OFFICER MAY ARREST YOU AND TAKE YOU INTO CUSTODY IF THERE IS PROBABLE CAUSE TO BELIEVE THAT YOU VIOLATED THIS ORDER. VIOLATORS MAY ALSO BE FOUND IN CONTEMPT OF COURT AND SUBJECT TO PENALTIES FOR CONTEMPT.

YOU CAN BE ARRESTED EVEN IF INVITED TO VIOLATE THE PROHIBITIONS OF THIS ORDER BY THE PERSON(S) OBTAINING IT – THEY CANNOT WAIVE OR SUSPEND THE PROHIBITIONS OF THIS ORDER – ONLY THE COURT CAN MODIFY IT UPON WRITTEN APPLICATION. THIS ORDER IS ENFORCEABLE IN ALL 50 STATES, THE DISTRICT OF COLUMBIA, ALL TRIBAL LANDS, AND ALL U.S. TERRITORIES, AND SHALL BE ENFORCED AS IF IT WERE AN ORDER OF THAT JURISDICTION.

VIOLATIONS OF THIS ORDER ARE SUBJECT TO STATE AND FEDERAL CRIMINAL PENALTIES. IF YOU TRAVEL ACROSS STATE OR TRIBAL BOUNDARIES WITH THE INTENT TO VIOLATE THE ORDER (INCLUDING WITH INTENT TO INJURE THE PLAINTIFF) AND THEN COMMIT A VIOLATION OF THE ORDER (INCLUDING COMMITTING A CRIME OF VIOLENCE CAUSING BODILY INJURY), YOU MAY BE CONVICTED OF A FEDERAL OFFENSE UNDER VAWA (sec. 2261[a][1]). YOU MAY ALSO BE CONVICTED OF A FEDERAL OFFENSE IF YOU CAUSE THE PLAINTIFF TO CROSS A STATE OR TRIBAL BOUNDARY FOR THIS PURPOSE (sec. 2262[a][1]).

IF A PERMANENT ORDER IS ENTERED AGAINST YOU AFTER THE HEARING, EVEN IF YOU DID NOT ATTEND, YOU MAY BE PROHIBITED FROM POSSESSING, TRANSPORTING OR ACCEPTING A FIREARM UNDER THE 1994 AMENDMENTS TO THE GUN CONTROL ACT 18 U.S.C. 922 (g)(8). A VIOLATION OF THIS PROHIBITION IS A FEDERAL CRIME.

UNDER THE FULL FAITH AND CREDIT SECTION OF THE VIOLENCE AGAINST WOMEN ACT (VAWA) 18 U.S.C. §2265 THIS ORDER MUST BE HONORED BY ALL STATES, TERRITORIES, AND INDIAN TRIBES AND ENFORCED ACCORDING TO THE RULES OF THE ENFORCING ENTITY

PASCUA YAQUI TRIBAL COURT

7777 S. CAMINO HUIVISIM, TUCSON, ARIZONA 85757 (520) 879-6276

(NOTE TO PROCESS SERVER: Tribal Court Rules require that this log be filled out completely. Please make sure that you include the date, time and location of each service attempt as well as any notes regarding the reason(s) why an attempt was unsuccessful. Illegible handwriting is unacceptable.)

COURT PROCESS LOG

AUG 19 2022

PROCESS: Richard A. Soto Jr.
ADDRESS: 5050 W. Wichalakas., Tucson, AZ, 85757
ALTERNATE ADDRESS:
CASE & DOCKET OP-22-034- Nichole M. Sainz vs Richard A. Soto Jr.

TYPE OF PROCESS: Civil Child Welfare Animal Control Criminal
 Traffic Juvenile Status Juvenile Offender Healing to Wellness

DESCRIPTION: Order for Protection and Petition for Order for Protection

DATE AND TIME OF COURT:

PROCESSED ISSUED: 8/16/2022

ISSUING CLERK: Monica Romero

TO BE RETURNED TO CLERK NO LATER THAN: 8/19/2022

FIRST ATTEMPT (location): 5050 W. Wichalakas
DATE: 8/16/22 TIME: 4:49 A.M. P.M.

SERVICE INCOMPLETE (Reason): no answer no contact
left card on door.

SERVICE COMPLETE Served By: Valenzuela
Name (Print) JSO
Signature Title

SECOND ATTEMPT (location): 5050 W. Wichalakas
DATE: 8-17-22 TIME: 8:30 A.M. P.M.

SERVICE INCOMPLETE (Reason): NO CONTACT
left card on door.

SERVICE COMPLETE Served By: Cynthia Carer
Name (Print) JSO
Signature Title

THIRD ATTEMPT (location): 5050 Wichalakas
DATE: 8/19/22 TIME: 0954 A.M. P.M.

SERVICE INCOMPLETE (Reason): no contact, no answer - left card
on front door.

SERVICE COMPLETE Served By: Tinsah
Name (Print) JSO
Signature Title

Pascua Yaqui Tribal Court
Filed

AUG 19 REC'D

Tribal Court Clerk

(NOTE: IF SERVICE IS NOT COMPLETED AFTER THE SIXTH ATTEMPT, PLEASE RETURN THIS LOG TO THE ISSUING CLERK.)

FOURTH ATTEMPT (location): 580 Wichalakoa
DATE: 8-19-22 TIME: 9:19 A.M. P.M.

SERVICE INCOMPLETE (Reason): NO answer no contact
left card on door.

SERVICE COMPLETE

Served By: Valenzuela

Signature

Title

FIFTH ATTEMPT (location): P.Y.T. Court.
DATE: 8/19/22 TIME: 2:05 A.M. P.M.

SERVICE INCOMPLETE (Reason): _____

SERVICE COMPLETE

Served By: Valenzuela

Richard D. [Signature]
Signature

JSU
Title

SIXTH ATTEMPT (location): _____
DATE: _____ TIME: _____ A.M. P.M.

SERVICE INCOMPLETE (Reason): _____

SERVICE COMPLETE

Served By: _____

Signature

Title

(NOTE: IF SERVICE IS NOT COMPLETED AFTER THE SIXTH ATTEMPT, PLEASE RETURN THIS LOG TO THE ISSUING CLERK).

Pascua Yaqui Tribal Court
Filed

AUG 19 2022

Tribal Court Clerk

ATTACHMENT C
(*PYT v. Soto*, CR-22-207, Initial Hearing Order,
September 1, 2022)

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

<p>PASCUA YAQUI TRIBE</p> <p style="text-align: center;">Plaintiff,</p> <p>Vs.</p> <p>RICHARD A. SOTO,</p> <p style="text-align: center;">Defendant</p>	<p><input checked="" type="checkbox"/> INITIAL HEARING</p> <p><input type="checkbox"/> ARRAIGNMENT</p> <p><input type="checkbox"/> STATUS HEARING</p>
	<p>Case Number: CR-22-207</p>
<p>ORDER</p>	

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On 9/1/2022 defendant , Richard A. Soto, appeared in custody in the Pascua Yaqui Tribal Court before Judge Veronica Darnell for the Initial Hearing Arraignment Status Hearing. Prosecutor Madelynn Franklin appeared for the Tribe. Defendant appeared pro se represented by Stuart deHann,

THE COURT FINDS:

Defendant qualifies for appointment of legal counsel does not qualify for appointment of legal counsel.

Appointment of conflict counsel is required and public defender's office is excused from this proceeding is not required.

Milissa Mace appeared for Pretrial Services.

- Defendant was read his/her rights.
- Defendant waived reading of his/her rights.
- The Court finds that probable cause exists to believe that defendant may have committed the offenses of: _____
- The Court does not find probable cause to believe that defendant may have committed the offenses of: Count 1: Disobedience of Lawful Order of Court
- The defendant plead not guilty to all charges.

The Tribe recommends _____

The defendant did object to the recommendations.

- IT IS ORDERED** that the defendant, Richard A. Soto, shall be released on a
- his/her own recognizance.
- suspended cash bond of _____
- bond of _____
- no bond hold.

The defendant is ordered to appear for all future court hearings, obey all laws, and abide by the following conditions:

- Report to pre-trial services and follow all recommendations of the program.
- Not to possess or consume alcohol, subject to random testing by law enforcement or Pretrial Services.
- Not to possess or consume illicit drugs, subject to random testing by law enforcement and Pretrial Services.
- Not to possess any dangerous or deadly weapons.
- No contact with _____
- Restrained from harming or harassing, _____
- Restrained from the address located at _____
- Not to drive without a valid driver's license.
- Keep animal(s) in fenced yard.
- Restrained from the Casino del Sol and Casino of the Sun properties.

Other: The Tribe moved to amend the complaint to reflect the additional address of 7621 S. Paaros Voo'o, Tucson, Arizona. The Defense did not object. The Court amended the complaint. Defense moved to dismiss based on a lack of probable cause, arguing that the Defendant's Father told him to come over to the house. The Defense also stated that the Defendant was not aware that that Nicole Sainz was even at the house. The Tribe objected, stating that the Defendant was served with the Order and therefore had knowledge that he was not to be there. The Court found that there is not probable cause to find that the Defendant WILLFULLY DISOBEYED the Order of Protection as his Father told him to come to his house. The Court admonished the Defendant that unless he receives notice of a change to that Order of Protection FROM THE COURT, he still needs to follow it. The Court dismisses this case with prejudice. CASE NUMBER OP-22-034 IS STILL IN FULL EFFECT AND DEFENDANT MAY NOT RETURN TO 5050 W. WICHALAKAS, TUCSON, ARIZONA.

IT IS FURTHER ORDERED that the **ARRAIGNMENT** **BENCH TRIAL** shall be set for _____ at _____. **THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.**

IT IS FURTHER ORDERED a Transport Order shall issue and defendant shall be transported to and from any BIA contracted adult detention facility for his/her hearing(s).

IT IS FURTHER ORDERED THE DEFENDANT IS ORDERED TO BE RELEASED FROM CUSTODY IMMEDIATELY.

SO ORDERED THIS 1ST DAY OF , SEPTEMBER.



Date: 9/16/22
 Tribe Defendant/Counsel _____ Detention
 Clerk: Vanessa [Signature]

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

PASCUA YAQUI,	)	NO. CR-22-207
)	
Plaintiff,)	
	)	INITIAL APPEARANCE HEARING
vs.)	
)	
Richard Soto,	)	September 1, 2022
	)	Tucson, Arizona
<u>Defendant.</u>)	

BEFORE: THE HONORABLE VERONICA DARNELL, JUDGE OF THE
PASCUA YAQUI TRIBAL COURT

APPEARANCES:

MADELYNN FRANKLIN, ESQ.
Appearing for Plaintiff

STU de HAAN, ESQ.
Appearing for Defendant

TABLE OF CONTENTS

Defendant's Case:

Motion to Dismiss

1 JUDGE DARNELL: ... (inaudible), and so, uh, this is the
2 matter of the Pascua Yaqui Tribe versus Richard Soto, case
3 number CR-22-207. And will the parties please state your
4 names for the Record?

5 MS. FRANKLIN: Madelynn Franklin, representing the
6 Tribe.

7 MR. DE HAAN: Stu de Haan for Richard Soto, who is
8 present in custody.

9 MS. MACE: Melissa Mace, Pretrial Services.

10 JUDGE DARNELL: Alright. And, uhm, Mr. Soto, can you
11 state your full name, please?

12 MR. SOTO: Richard Soto.

13 JUDGE DARNELL: Okay. Thank you. And what is your
14 date of birth?

15 MR. SOTO: 08/11/1995.

1 JUDGE DARNELL: Can you say that a little bit louder,
2 please?

3 MR. SOTO: 08/11/1995.

4 JUDGE DARNELL: Okay. Okay. Perfect. Alright. And
5 your address?

6 MR. SOTO: Uhm, right now I'm, (inaudible).

7 JUDGE DARNELL: I'm sorry. Can you say that one more
8 time? I'm having a hard time, --

9 MR. SOTO: Uhm, right now I don't have an
10 address.

11 JUDGE DARNELL: Okay. During, uhm, do you have an
12 address where you can get mail at?

13 MR. SOTO: Uhm, --

14 JUDGE DARNELL: Okay.

15 MR. SOTO: -- I don't know what the address is.

16 MS. MACE: (Inaudible), address, or if, --

1 MR. SOTO: Yeah. Okay.

2 MS. MACE: Yeah.

3 JUDGE DARNELL: Oh, okay. The 7621?

4 MS. MACE: Yes.

5 JUDGE DARNELL: Okay. Okay. So, uhm, Ms. Franklin,
6 just being that the, uhm, the complaint contains the 5050 West
7 Wichalakas, do, uhm, do you want to amend that or add this to
8 it, or, --?

9 MS. FRANKLIN: Uh, Your Honor, I'll do a motion to
10 amend for, to reflect the address that he says is his valid
11 one.

12 JUDGE DARNELL: Any objection, Mr. De Haan?

13 MR. DE HAAN: No objection.

14 JUDGE DARNELL: Okay. Okay. Okay. So, this is your
15 initial appearance and the purpose of this hearing is to
16 determine your true name and address to see whether the Tribe

1 needs to amend the complaint to affirm you of your rights, and
2 the charges against you. And to determine whether you should
3 be released on your own recognizance or under a cash bond, and
4 any other special condition of release. And would you like me
5 to read the rights?

6 MR. DE HAAN: Uh, Your Honor, we'll waive the
7 reading, and I would like to be heard on probable cause, if
8 appropriate.

9 JUDGE DARNELL: Okay. Alright. And do you understand
10 the rights that you have in this matter, Mr. Soto?

11 MR. SOTO: Yes.

12 JUDGE DARNELL: Uh, you, did you, (inaudible), read
13 the charge?

14 MR. DE HAAN: Uh, we'll waive, Your Honor.

15 JUDGE DARNELL: Okay. And do you understand what the,
16 uhm, complaint means, uh, the charge in there?

1 MR. SOTO: Yeah.

2 JUDGE DARNELL: Okay. Alright. And go ahead with
3 your, uhm, motion?

4 MR. DE HAAN: And, uh, Your Honor, my issue here
5 with probable cause, what we have is an affidavit that, it
6 looks like a case number that does exist for an order of
7 protection, and it does look like he admitted that he was
8 aware of it. Uh, even an affidavit itself, we don't have
9 information about service, nor about any residency
10 restrictions. Uhm, and besides that, I noticed, (inaudible),
11 that was ascertained, I think by the Prosecutor, and we'll,
12 we'll hear a response. Uhm, but it looks like when he was at
13 that residence, was he was actually invited by the homeowner,
14 uhm, who is present in the courtroom today. Uh, there is no
15 indication that he knew that, uhm, Ms. Saenz was at the home,
16 or if he had any reason to be there to try to see her. So,

1 uhm, I would, I would submit that there's no evidence that he
2 intentionally violated this order.

3 JUDGE DARNELL: So, it's a motion to dismiss?

4 MR. DE HAAN: Yes, Your Honor. For lack of probable
5 cause.

6 JUDGE DARNELL: Alright. And are you wanting, uh, the
7 Court to hear from, uh, his father?

8 MR. DE HAAN: Uhm, yes. If the Court's willing.
9 Uhm, he did confirm some information to me that, uh, I think I
10 would like the Court to know.

11 JUDGE DARNELL: Okay. Uhm, let's see. Okay. So,
12 before we do that, uhm, Ms. Franklin?

13 MS. FRANKLIN: Thank you, Your Honor. Uhm, to meet
14 our burden of probable cause, there is a court order in place.
15 Uhm, once I received this case, before I charged it, I did
16 call the Court to confirm, one, that it was an order of

1 protection, uhm, two, that it was served, and it was, and
2 three, that it not included the, uhm, uh, victim, but it did
3 also include that address. So, there is a court order in
4 place, uhm, in the, uhm, affi--, the, the affidavit it does
5 say that he knew of the order. But because his father gave
6 him permission, uhm, he intentionally violated that court
7 order. Uhm, what Mr. de Haan is, is saying as far as the
8 homeowner being present, that is, uhm, you know, a defense.
9 Uhm, I can say that me and Mr. de Haan did speak to, uhm, uhm,
10 Mr., uh, Soto, uhm, the homeowner. He is present behind me,
11 and he did inform us that he was not, uhm, aware of the, uh,
12 order of protection being included, uhm, his address being
13 included. Uhm, but it is included in the order, uhm, the
14 OP22034, and he did know about it, and he did violate it.

15 JUDGE DARNELL: Alright. So, in this matter I just
16 ask, (inaudible), motion to dismiss. Uhm, I do find good

1 cause to dismiss it but only because of the wording that says,
2 willfully, uhm, disobeying the order. It, it looks like, uhm,
3 this may be a case of that, uhm, that the Defendant knew about
4 the order, but, uhm, he thought because his father, uhm, asked
5 him to come over, I think it was to do something with the, the
6 outside of the house, the yard, uhm, that maybe he thought it
7 was okay because of his dad's statement. But, uhm, so, I'm
8 going to go ahead and grant the motion to dismiss. But, Mr.
9 Soto, uhm, when you have an order, uhm, what you need to
10 understand is that unless the Court says different from that
11 order, then you, you have to follow it, or you, this is what's
12 going to happen... okay? Do you understand that?

13 MR. SOTO: Yeah.

14 JUDGE DARNELL: Okay. Alright. Then so, --

1 MS. FRANKLIN: So, just to clarify, Your Honor, I
2 totally respect the, and understand the Court's order, but I
3 just want to make a Record and make it clear.

4 JUDGE DARNELL: Uh-huh.

5 MS. FRANKLIN: Uhm, that the order of protection that
6 is currently in place in the civil matter does still, uhm,
7 include, uhm, the address that he violated.

8 JUDGE DARNELL: Uh-huh.

9 MS. FRANKLIN: So, is the Court saying even though we
10 have that order in place in a different case, that it's okay
11 for him to violate and go to the home? I just want to be
12 very, very clear.

13 JUDGE DARNELL: No. Absolutely not. Thank you. No.
14 I appreciate that. That's, uhm, that's a good point to
15 reinforce, is that, uhm, in that case that order is still
16 there. So, that still means that you cannot go over there

1 unless the Court orders that, uhm, that you can... okay? So,
2 that other one, still valid, still don't go over there no
3 matter who says for you to go over, unless it's the Courts,
4 says that you can... okay? Uhm, and, uh, thank you for that,
5 Ms. Franklin. And, uhm, thank you to, uhm, the father for
6 coming to court today. And, uh, Ms. Franklin, is there
7 anything else we need to do?

8 MS. FRANKLIN: On this matter, no, Your Honor.

9 JUDGE DARNELL: Okay. And, Mr. de Haan, anything
10 else?

11 MR. DE HAAN: No, Your Honor. Thank you.

12 JUDGE DARNELL: Okay. Ms. Mace?

13 MS. MACE: No, Your Honor.

14 JUDGE DARNELL: Okay. Any questions, sir? Mr. Soto,
15 do you have any questions?

16 MR. SOTO: No.

1 JUDGE DARNELL: Okay. Thank you, all. I'll put it on
2 here for you to be, uh, released immediately.

3 MS. MACE: May I be excused, Your Honor?

4 JUDGE DARNELL: Yes. Okay. But, uhm, so, whenever,
5 I'm not sure what time Detention will get to you, it just
6 depends on what they have going on their schedules. But, uhm,
7 I'll just put, uh, uhm, it's to be immediately, so whenever
8 they can... okay? Thank you. You're Excused.

9 BAILIFF: All rise.

10 [Transcriber's Certification Follows:]
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CERTIFICATE

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: September 20, 2021

**CHRISTINE McGARVEY
LEGAL TRANSCRIPTION SERVICES PLUS
TRANSCRIBED BY: Teresa Altmann**

**SIGNED BY: Christine McGarvey
Christine McGARVEY**

ATTACHMENT D
(*PYT v. Soto*, CR-22-207, Transcript of Initial
Hearing held on September 1, 2022)

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

PASCUA YAQUI,	)	NO. CR-22-207
)	
Plaintiff,)	
	)	INITIAL APPEARANCE HEARING
vs.)	
)	
Richard Soto,	)	September 1, 2022
	)	Tucson, Arizona
<u>Defendant.</u>)	

BEFORE: THE HONORABLE VERONICA DARNELL, JUDGE OF THE
PASCUA YAQUI TRIBAL COURT

APPEARANCES:

MADELYNN FRANKLIN, ESQ.
Appearing for Plaintiff

STU de HAAN, ESQ.
Appearing for Defendant

TABLE OF CONTENTS

Defendant's Case:

Motion to Dismiss

1 JUDGE DARNELL: ... (inaudible), and so, uh, this is the
2 matter of the Pascua Yaqui Tribe versus Richard Soto, case
3 number CR-22-207. And will the parties please state your
4 names for the Record?

5 MS. FRANKLIN: Madelynn Franklin, representing the
6 Tribe.

7 MR. DE HAAN: Stu de Haan for Richard Soto, who is
8 present in custody.

9 MS. MACE: Melissa Mace, Pretrial Services.

10 JUDGE DARNELL: Alright. And, uhm, Mr. Soto, can you
11 state your full name, please?

12 MR. SOTO: Richard Soto.

13 JUDGE DARNELL: Okay. Thank you. And what is your
14 date of birth?

15 MR. SOTO: 08/11/1995.

1 JUDGE DARNELL: Can you say that a little bit louder,
2 please?

3 MR. SOTO: 08/11/1995.

4 JUDGE DARNELL: Okay. Okay. Perfect. Alright. And
5 your address?

6 MR. SOTO: Uhm, right now I'm, (inaudible).

7 JUDGE DARNELL: I'm sorry. Can you say that one more
8 time? I'm having a hard time, --

9 MR. SOTO: Uhm, right now I don't have an
10 address.

11 JUDGE DARNELL: Okay. During, uhm, do you have an
12 address where you can get mail at?

13 MR. SOTO: Uhm, --

14 JUDGE DARNELL: Okay.

15 MR. SOTO: -- I don't know what the address is.

16 MS. MACE: (Inaudible), address, or if, --

1 MR. SOTO: Yeah. Okay.

2 MS. MACE: Yeah.

3 JUDGE DARNELL: Oh, okay. The 7621?

4 MS. MACE: Yes.

5 JUDGE DARNELL: Okay. Okay. So, uhm, Ms. Franklin,
6 just being that the, uhm, the complaint contains the 5050 West
7 Wichalakas, do, uhm, do you want to amend that or add this to
8 it, or, --?

9 MS. FRANKLIN: Uh, Your Honor, I'll do a motion to
10 amend for, to reflect the address that he says is his valid
11 one.

12 JUDGE DARNELL: Any objection, Mr. De Haan?

13 MR. DE HAAN: No objection.

14 JUDGE DARNELL: Okay. Okay. Okay. So, this is your
15 initial appearance and the purpose of this hearing is to
16 determine your true name and address to see whether the Tribe

1 needs to amend the complaint to affirm you of your rights, and
2 the charges against you. And to determine whether you should
3 be released on your own recognizance or under a cash bond, and
4 any other special condition of release. And would you like me
5 to read the rights?

6 MR. DE HAAN: Uh, Your Honor, we'll waive the
7 reading, and I would like to be heard on probable cause, if
8 appropriate.

9 JUDGE DARNELL: Okay. Alright. And do you understand
10 the rights that you have in this matter, Mr. Soto?

11 MR. SOTO: Yes.

12 JUDGE DARNELL: Uh, you, did you, (inaudible), read
13 the charge?

14 MR. DE HAAN: Uh, we'll waive, Your Honor.

15 JUDGE DARNELL: Okay. And do you understand what the,
16 uhm, complaint means, uh, the charge in there?

1 MR. SOTO: Yeah.

2 JUDGE DARNELL: Okay. Alright. And go ahead with
3 your, uhm, motion?

4 MR. DE HAAN: And, uh, Your Honor, my issue here
5 with probable cause, what we have is an affidavit that, it
6 looks like a case number that does exist for an order of
7 protection, and it does look like he admitted that he was
8 aware of it. Uh, even an affidavit itself, we don't have
9 information about service, nor about any residency
10 restrictions. Uhm, and besides that, I noticed, (inaudible),
11 that was ascertained, I think by the Prosecutor, and we'll,
12 we'll hear a response. Uhm, but it looks like when he was at
13 that residence, was he was actually invited by the homeowner,
14 uhm, who is present in the courtroom today. Uh, there is no
15 indication that he knew that, uhm, Ms. Saenz was at the home,
16 or if he had any reason to be there to try to see her. So,

1 uhm, I would, I would submit that there's no evidence that he
2 intentionally violated this order.

3 JUDGE DARNELL: So, it's a motion to dismiss?

4 MR. DE HAAN: Yes, Your Honor. For lack of probable
5 cause.

6 JUDGE DARNELL: Alright. And are you wanting, uh, the
7 Court to hear from, uh, his father?

8 MR. DE HAAN: Uhm, yes. If the Court's willing.
9 Uhm, he did confirm some information to me that, uh, I think I
10 would like the Court to know.

11 JUDGE DARNELL: Okay. Uhm, let's see. Okay. So,
12 before we do that, uhm, Ms. Franklin?

13 MS. FRANKLIN: Thank you, Your Honor. Uhm, to meet
14 our burden of probable cause, there is a court order in place.
15 Uhm, once I received this case, before I charged it, I did
16 call the Court to confirm, one, that it was an order of

1 protection, uhm, two, that it was served, and it was, and
2 three, that it not included the, uhm, uh, victim, but it did
3 also include that address. So, there is a court order in
4 place, uhm, in the, uhm, affi--, the, the affidavit it does
5 say that he knew of the order. But because his father gave
6 him permission, uhm, he intentionally violated that court
7 order. Uhm, what Mr. de Haan is, is saying as far as the
8 homeowner being present, that is, uhm, you know, a defense.
9 Uhm, I can say that me and Mr. de Haan did speak to, uhm, uhm,
10 Mr., uh, Soto, uhm, the homeowner. He is present behind me,
11 and he did inform us that he was not, uhm, aware of the, uh,
12 order of protection being included, uhm, his address being
13 included. Uhm, but it is included in the order, uhm, the
14 OP22034, and he did know about it, and he did violate it.

15 JUDGE DARNELL: Alright. So, in this matter I just
16 ask, (inaudible), motion to dismiss. Uhm, I do find good

1 cause to dismiss it but only because of the wording that says,
2 willfully, uhm, disobeying the order. It, it looks like, uhm,
3 this may be a case of that, uhm, that the Defendant knew about
4 the order, but, uhm, he thought because his father, uhm, asked
5 him to come over, I think it was to do something with the, the
6 outside of the house, the yard, uhm, that maybe he thought it
7 was okay because of his dad's statement. But, uhm, so, I'm
8 going to go ahead and grant the motion to dismiss. But, Mr.
9 Soto, uhm, when you have an order, uhm, what you need to
10 understand is that unless the Court says different from that
11 order, then you, you have to follow it, or you, this is what's
12 going to happen... okay? Do you understand that?

13 MR. SOTO: Yeah.

14 JUDGE DARNELL: Okay. Alright. Then so, --

1 MS. FRANKLIN: So, just to clarify, Your Honor, I
2 totally respect the, and understand the Court's order, but I
3 just want to make a Record and make it clear.

4 JUDGE DARNELL: Uh-huh.

5 MS. FRANKLIN: Uhm, that the order of protection that
6 is currently in place in the civil matter does still, uhm,
7 include, uhm, the address that he violated.

8 JUDGE DARNELL: Uh-huh.

9 MS. FRANKLIN: So, is the Court saying even though we
10 have that order in place in a different case, that it's okay
11 for him to violate and go to the home? I just want to be
12 very, very clear.

13 JUDGE DARNELL: No. Absolutely not. Thank you. No.
14 I appreciate that. That's, uhm, that's a good point to
15 reinforce, is that, uhm, in that case that order is still
16 there. So, that still means that you cannot go over there

1 unless the Court orders that, uhm, that you can... okay? So,
2 that other one, still valid, still don't go over there no
3 matter who says for you to go over, unless it's the Courts,
4 says that you can... okay? Uhm, and, uh, thank you for that,
5 Ms. Franklin. And, uhm, thank you to, uhm, the father for
6 coming to court today. And, uh, Ms. Franklin, is there
7 anything else we need to do?

8 MS. FRANKLIN: On this matter, no, Your Honor.

9 JUDGE DARNELL: Okay. And, Mr. de Haan, anything
10 else?

11 MR. DE HAAN: No, Your Honor. Thank you.

12 JUDGE DARNELL: Okay. Ms. Mace?

13 MS. MACE: No, Your Honor.

14 JUDGE DARNELL: Okay. Any questions, sir? Mr. Soto,
15 do you have any questions?

16 MR. SOTO: No.

1 JUDGE DARNELL: Okay. Thank you, all. I'll put it on
2 here for you to be, uh, released immediately.

3 MS. MACE: May I be excused, Your Honor?

4 JUDGE DARNELL: Yes. Okay. But, uhm, so, whenever,
5 I'm not sure what time Detention will get to you, it just
6 depends on what they have going on their schedules. But, uhm,
7 I'll just put, uh, uhm, it's to be immediately, so whenever
8 they can... okay? Thank you. You're Excused.

9 BAILIFF: All rise.

10 [Transcriber's Certification Follows:]
11

CERTIFICATE

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: September 20, 2021

**CHRISTINE McGARVEY
LEGAL TRANSCRIPTION SERVICES PLUS
TRANSCRIBED BY: Teresa Altmann**

**SIGNED BY: Christine McGarvey
Christine McGARVEY**

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

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RESPECTFULLY submitted this 7 day of September, 2022.

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

1 **ORIGINAL of the forgoing filed**
2 **this 7 day of September, 2022.**

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

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

7 Stu de Haan,
8 Public Defender
9 *Attorney for Appellee Defendant*

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

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

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Attachment A

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

PASCUA YAQUI TRIBE <p style="text-align: center;">Plaintiff,</p> Vs. RICHARD A. SOTO, <p style="text-align: center;">Defendant</p>	<input checked="" type="checkbox"/> INITIAL HEARING <input type="checkbox"/> ARRAIGNMENT <input type="checkbox"/> STATUS HEARING
	Case Number: CR-22-207
ORDER	

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On 9/1/2022 defendant, Richard A. Soto, appeared in custody in the Pascua Yaqui Tribal Court before Judge Veronica Darnell for the Initial Hearing Arraignment Status Hearing. Prosecutor Madelynn Franklin appeared for the Tribe. Defendant appeared pro se represented by Stuart deHann.

THE COURT FINDS:

Defendant qualifies for appointment of legal counsel does not qualify for appointment of legal counsel.

Appointment of conflict counsel is required and public defender's office is excused from this proceeding is not required.

Milissa Mace appeared for Pretrial Services.

- Defendant was read his/her rights.
- Defendant waived reading of his/her rights.
- The Court finds that probable cause exists to believe that defendant may have committed the offenses of: _____
- The Court does not find probable cause to believe that defendant may have committed the offenses of: Count 1: Disobedience of Lawful Order of Court
- The defendant plead not guilty to all charges.

The Tribe recommends _____

The defendant did object to the recommendations.

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- IT IS ORDERED** that the defendant, Richard A. Soto, shall be released on a
- his/her own recognizance.
- suspended cash bond of _____
- bond of _____
- no bond hold.

The defendant is ordered to appear for all future court hearings, obey all laws, and abide by the following conditions:

- Report to pre-trial services and follow all recommendations of the program.
- Not to possess or consume alcohol, subject to random testing by law enforcement or Pretrial Services.
- Not to possess or consume illicit drugs, subject to random testing by law enforcement and Pretrial Services.
- Not to possess any dangerous or deadly weapons.
- No contact with _____
- Restrained from harming or harassing, _____
- Restrained from the address located at _____
- Not to drive without a valid driver's license.
- Keep animal(s) in fenced yard.
- Restrained from the Casino del Sol and Casino of the Sun properties.

Other: The Tribe moved to amend the complaint to reflect the additional address of 7621 S. Paaros Voo'o, Tucson, Arizona. The Defense did not object. The Court amended the complaint. Defense moved to dismiss based on a lack of probable cause, arguing that the Defendant's Father told him to come over to the house. The Defense also stated that the Defendant was not aware that that Nicole Sainz was even at the house. The Tribe objected, stating that the Defendant was served with the Order and therefore had knowledge that he was not to be there. The Court found that there is not probable cause to find that the Defendant WILLFULLY DISOBEYED the Order of Protection as his Father told him to come to his house. The Court admonished the Defendant that unless he receives notice of a change to that Order of Protection FROM THE COURT, he still needs to follow it. The Court dismisses this case with prejudice. CASE NUMBER OP-22-034 IS STILL IN FULL EFFECT AND DEFENDANT MAY NOT RETURN TO 5050 W. WICHALAKAS, TUCSON, ARIZONA.

IT IS FURTHER ORDERED that the **ARRAIGNMENT** **BENCH TRIAL** shall be set for _____ at _____. **THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.**

IT IS FURTHER ORDERED a Transport Order shall issue and defendant shall be transported to and from any BIA contracted adult detention facility for his/her hearing(s).

IT IS FURTHER ORDERED THE DEFENDANT IS ORDERED TO BE RELEASED FROM CUSTODY IMMEDIATELY.

SO ORDERED THIS 1ST DAY OF , SEPTEMBER.

Date: 9/16/22
 ✓ Tribe ✓ Defendant/Counsel _____ Detention
 Clerk: Vanessa Postle



Attachment B

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

22 SEP -1 AM 11:29

DOCKET NO. CR-22-007

Case No. CLPW 10

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

Pascua Yaqui Tribe,
Plaintiff,

vs.

SOTO, RICHARD

Defendant.

CRIMINAL COMPLAINT

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 § 1-570 ~ Disobedience of Lawful Order of Court

On or about September 1, 2022, at approximately 8:49 am, at or near 5050 W. Wichalakas, Defendant willfully disobeyed any order, subpoena, warrant or command duly issued, made or given by the Pascua Yaqui Tribal Court or any officer thereof, to wit: *Defendant was at 5050 W. Wichalakas in violation of the Court's order in OP-22-034*

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 1st day of September, 2022.


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: Richard Soto
ADDRESS: 5050 W. Wichalakas, Tucson, Az 85757
DOB: 08/11/1995 SSN: 600-53-7814 ORIGIN: Pascua Yaqui Tribe 2694U09215
SEX: M HT: 5'06 WT: 165 EYES: Brown HAIR: Black

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]

22 SEP -1 AM 11:29

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE, Plaintiff	CLERK _____
Vs.	
Richard A Soto JR, Defendant	COURT USE ONLY
	Case Number: P22090109
PROBABLE CAUSE AFFIDAVIT	

AFFIRMATION

1. I, Officer Frank Romero #3160, being a duly authorized law enforcement officer of the Pascua Yaqui Indian Tribe and for the Pascua Yaqui Indian Reservation, do hereby swear OR affirm as follows:

- 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

2. SUSPECTED PARTY (Defendant)

Name: Richard A Soto JR
Driver's License Number: 600-53-7814
Tribal Enrollment Number: 2694U09215
Last Known Address: 5050 W Wichalakas
Date of Birth: 08/11/1995

Richard A Soto Jr is an enrolled member of the Pascua Yaqui Tribe.
 is an Indian subject to the jurisdiction of the Pascua Yaqui Tribe.
 is a non-Indian subject to the Tribal Jurisdiction of the Pascua Yaqui Tribe under the Violence Against Women Reauthorization Act of 2013.

3. The Defendant was arrested cited long formed without a warrant on 09/01/2022 at 08:55 a.m. p.m.

4. I have probable cause to believe that the defendant committed the following offense(s) at or near 5050 W Wichalakas (address) which is with the exterior boundaries of the Pascua Yaqui Indian Reservation:

P.Y.T.C. / A.R.S., Title 4, Chapter 1, Section 570, Disobedience of Lawful Order of Court

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

P.Y.T.C. / A.R.S., Title , Chapter , Section ,

5. I believe that the defendant committed the above-listed offense(s) because:
(Summarize facts to support the probable claim)

At the above stated date and time at the above referenced location within the exterior boundaries of the Pascua Yaqui Reservation, I did witness the following:

On 09/01/2022 at approximately 0849hrs I, Officer Romero responded to 5050 W Wichalakas reference Nichole Sainz reporting that a person she has an PY Tribal Court Order of Protection on, Richard Soto JR (PY Tribal Court # OP-22-034) who is sitting in the back yard of the property.

I arrived and made contact with a male sitting in the back yard. The male identified himself as Richard Soto Jr. I informed Richard the reason for Police contact. Richard stated that he was aware of the Court Order, but that his father gave him permission to be at the home to clean the back yard. I informed

Richard that his father can not give him permission to violate the court order,
but that they can possibly contest the order in Court.

PY Dispatch then confirmed that the PY Tribal Court Order was valid and was
signed on August 16th, 2022 by PY Tribal Court Judge Cruz.

I then informed Richard that he was under arrest for the following:

PYTC 4-1-570 Disobedience of Lawful Order of Court

Richard was then transported to PY Detention where he was booked.

NFI

Officer Frank Romero #3160

6. The information contained herein is true and accurate to the best of my knowledge and belief. I request that the court make a probable cause determination and if the defendant is in custody, that he/she remain in custody, pending further proceedings.

OFC. Frank Romero #3160

Signature of Officer

EXECUTED ON:

09/01/22

Date