

No. CA-17-003
Pascua Yaqui Court of Appeals

In Re Pascua Yaqui Tribe

Extraordinary Writ regarding Pascua Yaqui Trial Court in Case No. CR-16-236, the Honorable Melvin Stoof presiding.

Kendrick Wilson, Office of the Prosecutor, 7777 S. Camino Huivisim, Bld.A, Tucson AZ 85757.

Honorable Melvin Stoof, Respondent, 7777 S. Camino Huivisim, Bld. B, Tucson AZ 85757.

Party in Interest, Frank Jaimez represented by William Soland, Office of the Public Defender, 7474 S. Camino de Oeste, Tucson AZ 85757.

Opinion

Jurisdiction

Petitions for extraordinary writs, other than those for mandamus, prohibition, or habeas corpus shall conform so far as practicable to the procedures prescribed in this rule. 3 PYTC § 2-3-260. Although this petition was filed as a Special Action Writ, it is closer to a writ of mandamus. The Court of Appeals proceeds with this case pursuant 3 PYTC § 2-3-260.

Summary

The issue before this Court is whether the Respondent Court abused its discretion by allowing the introduction of jury instructions permitting the jury to consider whether Petitioner has proven that Defendant is a non-Indian beyond a reasonable doubt under 25 U.S.C. § 1304. This Court holds that Respondent Court did not abuse its discretion.

Procedural Background

On April 28, 2017 Petitioner filed a Petition for Special Writ pursuant 3 PYTC §2-3-260(D) asking that this Court find that Respondent Court abused its discretion in allowing a jury instruction requiring Petitioner to prove beyond a reasonable doubt that Defendant is a non-Indian. On May 1, 2017 the Tribal Court administrative attorney filed a Response to Special Writ Request and a Supplement to Response to Special Writ on behalf of Respondent Court. On May 4, 2017 Respondent Court withdrew its Response to Special Writ Request and Supplement to Response to Special Writ. Real Party in Interest Jaimez filed a Motion to Strike Tribe's Petition for Special Writ and a Response in the Alternative on May 4, 2017. Jury trial for this case is scheduled for May 9th, 10th, and 11th of 2017.

I. Jury Instruction

Petitioner contends that Respondent Court erred in allowing Proposed Jury Instruction #17 which reads:

Instruction No. 17

The Tribe must prove all the elements below beyond a reasonable doubt:

- 1) The Tribe must prove beyond a reasonable doubt that Ms. Aydeluz Sewa Leyva Jaimez is an Indian.
- 2) That Mr. Jaimez:
 - i) *is a non-Indian*
 - ii) resided in the Pascua Yaqui Community
 - iii) was employed by the Pascua Yaqui Tribe
 - iv) was a spouse, intimate partner, or dating partner of
 - i) a member of the Pascua Yaqui Tribe
 - ii) an Indian who resided on the Pascua Yaqui reservation
- 3) That the offense occurred on the Pascua Yaqui reservation.

If you find that any element above has not been proven beyond a reasonable doubt deliberations cannot proceed. (Emphasis ours)

The question before this Court is whether this instruction is improper since 25 U.S.C. §1304 is silent regarding proving Defendant's status as an Indian or non-Indian.

A court's formulation of jury instructions is reviewed for abuse of discretion. *See PYT v. Molina*, CA-14-003 citing *United States v. Garcia-Rivera*, 353 F.3d 788, 791-92 (9th Cir. 2003) (citing *United States v. Hicks*, 217 F.3d 1038, 1045 (9th Cir. 2000)). In reviewing jury instructions, the relevant inquiry is whether the instructions as a whole are misleading or inadequate to guide the jury's deliberation. *Id.* "The trial court has substantial latitude so long as its instructions fairly and adequately cover the issues presented." *Id.*

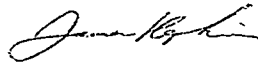
The Tribe has inherent authority to prosecute crimes committed by Indians against Indians within the external boundaries of the Pascua Yaqui Indian Reservation. *See, e.g.*, The Constitution of the Pascua Yaqui Tribe, Article II, Jurisdiction; 3 PYTC §§ 1-1-10 and 1-1-20. Therefore, 25 U.S.C. § 1304 provides that federally recognized Indian tribes have special jurisdiction over non-Indians in crimes of domestic violence. The Senate Report on the VAWA Reauthorization explains that this special domestic violence criminal jurisdiction would apply "in a very narrow set of cases over non-Indians who voluntarily and knowingly established significant ties to the tribe." 18 VAWA Reauthorization, S. 1925, H.R. 4271, §904 (§204(d)(2)); SAVE Act, S. 1763, H.R. 4154, §201 (§204(d)(2)). Petitioner is correct that the specific words stating that the Tribe must prove a defendant's status as an Indian or a non-Indian are not present in the statute. Still, it is clear that Congress's intent in passing 25 U.S.C. § 1304 was to expand a participating tribe's jurisdiction over persons it could not otherwise exercise jurisdiction over.

The issue of whether the defendant's non-Indian status is an essential element of jurisdiction pursuant §1304 is novel for this Court because §1304 is relatively recent law. Still, several older federal statutes and federal case law address the issue of a defendant's non-Indian status as an element of a crime and provide guidance for tribal courts. Federal courts have held that for the purposes of 18 U.S.C. §1152 (General Crimes Act) the prosecutor must prove the

defendant's and victim's status as non-Indian or Indian. *See U.S. v. Prentiss*, 206 F3d 960 (10th Cir. 2000) (holding that the government has the burden of proving the non-Indian or Indian status of both the defendant and the victim in a federal prosecution under 18 U.S.C. §1152). *See, for example, U.S. v. Reza Ramos*, 816 F.3d 1103 (9th Cir. 2016).

The instruction proposed by Respondent Court is consistent with federal interpretation of similar statutes. Respondent Court's proposed jury instruction was not misleading nor was it inadequate to guide a jury's deliberation on the issues presented. For these reasons, this Court finds that Respondent Court did not abuse its discretion.

So ordered this 8th day of May 2017.



Chief Justice James Hopkins