

No. CA-07-017
Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellant,

v.

Sally Gonzales, Defendant/Appellee.

ORDER

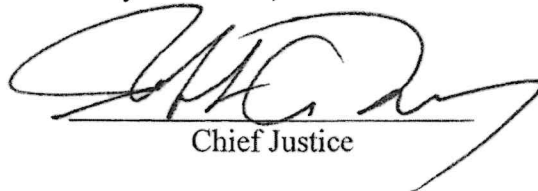
Appeal of a decision of the Pascua Yaqui Tribal Court in Case No. CR-07-307.

Yancy A. Jencsok, Esq., Pascua Yaqui Tribe Office of the Prosecutor, Tucson, Arizona, for the Plaintiff/Appellant.

Kathleen N. Carey, Esq., Phoenix, Arizona, for the Defendant/Appellee.

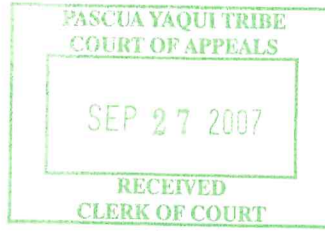
The Court reviewed the pleadings, including the Appellee's motion to dismiss the appeal and the Tribe's response thereto, and finds as follows: 1) The trial court dismissed counts 1, 3, and 5 of the charges against the Appellee for lack of probable cause; 2) The Tribe appealed the dismissal of the counts to this Court on August 24, 2007; 3) The Appellee moved to dismiss the appeal alleging that the Tribe can bring the charges again in the trial court; 4) The Tribe responded to the motion arguing that its Probable Cause Affidavit contains enough facts to find probable cause on each of the dismissed counts; and 5) While the Tribe argues for sufficient probable cause in support of the dismissed counts, it did not attach a copy of the Affidavit. See Rule 6(B), PYTRAP. Without the Affidavit, the Court cannot determine if there is probable cause to support each count and thereby prevent dismissal of the appeal. Accordingly, the motion to dismiss the appeal shall be granted.

So ORDERED this 9th day of October, 2007.


Chief Justice

Pascua Yaqui Tribe
Office of the Prosecutor
7474 S. Camino de Oeste
Tucson, Arizona 85757
(520) 879-6251

Yancy A. Jencsok
Interim Chief Prosecutor



PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

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DOCKET NO. CA-07-017

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

PASCUA YAQUI TRIBE,)	Tribal Court Case No. CR-07-307
Appellant,)	
)	Appellate Court Case No. CA-07-017
vs.)	
)	APPELLANT'S RESPONSE TO MOTION
GONZALES, SALLY,)	TO DISMISS
Appellee.)	
_____)	

The Tribe/Appellant responds to Appellee's Motion to Dismiss as follows:

1. The Tribal Court's dismissal of counts 1, 3 and 5 was without prejudice; however, refileing the charges is not an appropriate remedy in this case. The Criminal Complaint and Probable Cause Affidavit accurately and completely summarized the police report and investigatory materials. As a practical matter, the Tribe would not be able to add any substantive information to the charging documents. The Tribe disagrees with the Tribal Court's dismissal and has therefore appealed.
2. The authority cited by Defendant, *PTY v. McAdams*, does not apply. First, the facts of the case are not at all similar. *McAdams* was dismissed at the pretrial stage because the defendant's name was misspelled. In other words, the dismissal was based on a procedural defect rather than on the facts supporting probable cause. And second, the *McAdams* decision is designated as an "Order" rather than an "Opinion." Therefore, it is not to be cited as precedent. 3 PYTRAP Rule 22(B).

WHEREFORE, Appellee's motion to dismiss should be denied.

RESPECTFULLY SUBMITTED this 26th day of September, 2007.

OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE

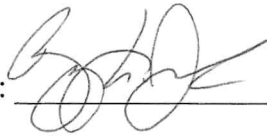


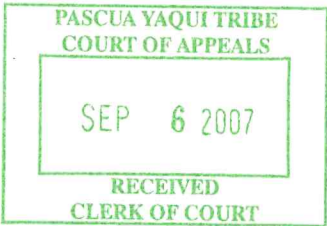
Nancy A. Jencsok
Interim Chief Prosecutor

Copy delivered/mailed to:

Kathleen N. Carey, Esq.
One Renaissance Square #170-239
Two North Central Avenue
Phoenix, AZ 85003

On September 26, 2007 by:





1 KATHLEEN N. CAREY, Bar No. 019695
One Renaissance Square - #170-239
2 Two North Central Avenue
Phoenix, Arizona 85004
3 (480) 705-6688 Office/Fax
(480) 227-7922 Mobile
4 careyleglaw@gmail.com Email

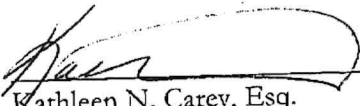
5 Attorney for Appellees

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

9 PASCUA YAQUI TRIBE,) Case No.: CA-07-017
10)
Appellant,) **MOTION TO DISMISS APPEAL**
11 vs.)
12)
GONZALES, SALLY,)
13)
Appellee.)
14)

15 COMES NOW Appellee Sally Gonzales, through undersigned counsel and pursuant to Rule
16 6, Pascua Yaqui Rules of Appellate Procedure and the Court's Order in *Pascua Yaqui Tribe v.*
17 *McAdams*, CA-06-011 (6/21/07), and respectfully moves this Court to enter an order dismissing the
18 Appellant's appeal. As in *McAdams*, the trial court dismissed the charges without prejudice and the
19 Appellant's remedy lies with the trial court.
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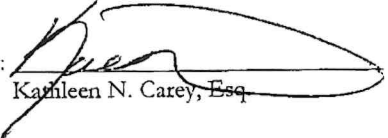
21 LAW OFFICE OF KATHLEEN N. CAREY

22 
23 Kathleen N. Carey, Esq.
24 Attorney for Appellee
25

1 ORIGINAL hand-delivered this date to
Pascua Yaqui Court of Appeals;

2 COPY of the foregoing delivered via U.S. mail
3 To PYT Prosecutor;

4 By:


Kathleen N. Carey, Esq.

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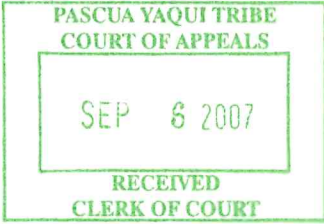
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NOA - 2



1 KATHLEEN N. CAREY, Bar No. 019695
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4 Phoenix, Arizona 85004
5 (480) 705-6688 Office/Fax
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7 careyleglaw@gmail.com Email

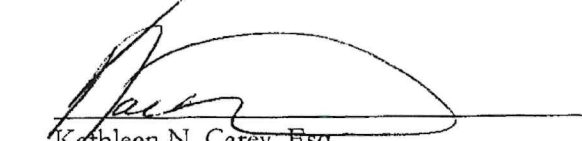
8 Attorney for Appellees

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


11 PASCUA YAQUI TRIBE,) Case No.: CA-07-017
12)
13 Appellant,)
14 vs.) **NOTICE OF APPEARANCE**
15)
16 GONZALES, SALLY,)
17)
18 Appellec.)

19 COMES NOW Kathleen N. Carey, undersigned counsel, and respectfully enters her Notice
20 of Appearance on behalf the Appellee Sally Gonzales in the above-captioned matter.

21 LAW OFFICE OF KATHLEEN N. CAREY

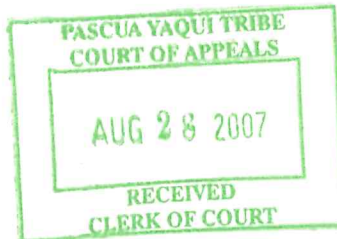
22 
23 Kathleen N. Carey, Esq.
24 Attorney for Appellee

25 ORIGINAL hand-delivered this date to
Pascua Yaqui Court of Appeals;
COPY of the foregoing delivered via U.S. mail
To PYT Prosecutor;

By: 
Kathleen N. Carey, Esq.

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

6 Yancy Jencsok
7 Deputy Prosecutor



PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

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DOCKET NO. CA-07-017

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8 **IN THE PASCUA YAQUI TRIBE COURT OF APPEALS**
9 **IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA**

10 PASCUA YAQUI TRIBE,
11 Appellant,

12 Vs.
13 GONZALES, Sally

14 Defendant.

NO. CA-07-
(Tribal Court No. CR-07-307)

NOTICE OF APPEAL
Oral argument requested

15 Notice is hereby given that the Pascua Yaqui Tribe appeals to
16 the Appellate Court of the Pascua Yaqui Tribe from the judgment
17 entered in this action by the Pascua Yaqui Tribal Court on July 27,
18 2007, copy attached. At the Initial Hearing on the matter,
19 Defendant was represented by attorney Kathleen Carey. Based upon
20 the filed Complaint and Affidavit, and *sua sponte*, pro tem Judge
21 Moore declared that probable cause did not exist to support Counts
22 One: Disorderly Conduct; Three: Assault, and Five: Assault and
23 Battery on a Tribal Official. The Tribe appeals the Trial Court's
24 decision as it fails to see how the affidavit submitted by
25 Sergeant/Detective Thomas Snyder did not contain sufficient sworn
26 information to support a showing that Defendant may have committed
27 Disorderly Conduct, Assault, and Assault and Battery on a Tribal
28 Official. The Tribe submits that, *inter alia*, the requisite
elements of the crimes are present in the detective's affidavit to

1 meet, at least, a probable cause threshold and that any reasons for
2 a finding of perceived deficiency relate to those matters or issues
3 which the trier of fact is entitled to evaluate at trial.

4 The Pascua Yaqui Tribe requests oral argument and a three-
5 Justice appellate proceeding. Furthermore, if a stay of the
6 underlying proceeding must be requested (or is not automatic) the
7 Tribe makes such a request as well, pending resolution by this
8 Court of Appeals.

9
10
11 **Respectfully submitted this 24th day of August, 2007.**

12 OFFICE OF THE PROSECUTOR
13 PASCUA YAQUI TRIBE

14 

15 Yancy Jencsok,
16 Deputy Prosecutor

17 Original delivered/mailed to:

18 Clerk of the Court, Pascua Yaqui Tribe Court of Appeals

19 Copy delivered/mailed to:
20 Pascua Yaqui Tribal Court Clerk

21 Defendant, c/o
22 Kathleen N. Carey
23 One Renaissance Square - #170-239
24 2 North Central Avenue
25 Phoenix, Arizona 85004

26 By: R.V.F

27 On: 8/24/05

**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. GONZALES, SALLY, <p style="text-align: center;">Defendant</p>	COURT USE ONLY
	Case Number: CR-07-307
INITIAL HEARING ORDER	

In compliance with Rule 13 and 18 of the Pascua Yaqui Rules of Criminal Procedure, defendant appeared on a criminal summons with her legal counsel, on July 27, 2007 for Initial hearing. Present for the Tribe was Yancy Jencsok. Defendant, Sally Gonzales appeared with her legal counsel Kathleen Carey.

The court finds that probable cause does not exist to believe defendant may have committed the offenses of Count One, Disorderly Conduct, Count Three, Assault and Battery on a Tribal Official, and Count Five, Assault and Battery on a Tribal Official. The court finds that probable cause does exist to believe defendant may have committed the offenses of Count Two, Threats or Intimidation, and Count Four, Threats or Intimidation. The Tribe recommends defendant be released on her own recognizance. She should be ordered to appear at all future hearings, obey all laws, and it should be order that the defendant not contact the alleged victim, Herminia Frias, by mail, telephone, facsimile, email or text message, and she should be restrained from the address of 7474 Camino de Oeste. In addition the Tribe recommended that defendant not consume alcohol outside of her home subject to random testing by law enforcement and probation. The defendant did not object. Defendant waived time limits for the purposes of scheduling the arraignment in this matter.


IT IS ORDERED that the defendant, Sally Gonzales, shall be released on her own recognizance. She should be ordered to appear at all future hearings, obey all laws, and it is ordered that the defendant not contact the alleged victim, Herminia Frias, by mail, telephone, facsimile, email or text message, and she should be restrained from the address of 7474 Camino de Oeste. In addition it is ordered that defendant not consume alcohol outside of her home subject to random testing by law enforcement and probation.

ms

AN ARRAIGNMENT shall be scheduled for August 17, 2007 at 2:00 p.m..

THIS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

SO ORDERED THIS 27th DAY OF JULY, 2007.


 Pro Tem Judge, Pascua Yaqui Tribal Court

Date: 07-30-07
 Tribe Defendant/Counsel Other
 Clerk: *ms*

