

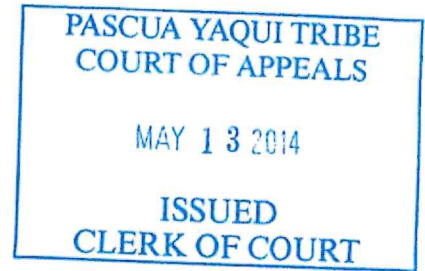
No. CA-14-001

Pascua Yaqui Court of Appeals

\_\_\_\_\_  
Pascua Yaqui Tribe, Appellant,

vs.

Escamilla, Manuel, Appellee,



Interlocutory Appeal of a Tribal Court Order Granting Motion to Compel Disclosure in Case No. CR-14-144, the Honorable Melvin Stoof presiding.

G. Allen Osburn, Office of the Prosecutor of the Pascua Yaqui Tribe, 7777 Camino Huivisim, Tucson, AZ for the Appellant.

Melissa Acosta, Pascua Yaqui Public Defender, 7474 S. Camino de Oeste, Tucson AZ 85757 for the Appellee.

\*\*\*\*\*

**Opinion Denying Petition to Reconsider**

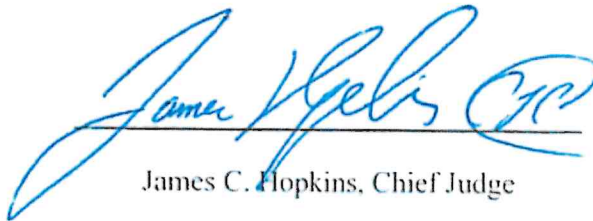
Appellant filed an interlocutory appeal seeking review of a Tribal Court order compelling Appellant to disclose records of a physical examination completed by the fire department as well as the issuance of a suspended \$100.00 sanction against Appellant for a discovery violation. This Court found that the Tribal Court judge did not abuse his discretion in compelling disclosure of the fire department reports or by imposing the suspended fine against Appellant. See Pascua Yaqui Court of Appeals opinion, 4/2/14.

Appellant then filed a Petition for Reconsideration alleging: 1) the Tribal Court abused its discretion in ordering the Tribe to disclose the Fire Department report, 2) the Tribal Court erred by extending 3 PYTC § 2-2-380(D) to the Pascua Yaqui Fire Department, and 3) the Tribal Court was without jurisdiction to impose a fine against the Tribe without a waiver of the Tribe's sovereign immunity. Appellee filed a Motion to Dismiss citing 3 PYTC § 2-3-210(D)(3) and 3 PYTC § 2-3-210(B). Appellant responded by filing a Motion for Leave to File Petition for Reconsideration.

The Pascua Yaqui Tribal Code provides, "A petition for reconsideration and supporting memorandum shall be directed solely to discussion of those specific points or matters of law in which it is claimed the **appellate court** erred." See 3 PYTC § 2-3-210(B) (emphasis added). The Code offers parties an opportunity to request that this Court reconsider its own decision in the event that a mistake as a matter of law occurred. In this case, Appellant's Petition for Reconsideration discusses the points in which the Tribal Court erred in determining facts or law. The Petition also re-urges the arguments initially raised in the interlocutory appeal. Appellant does not present specific points or matters of law in which this Court erred. This Court already held that the Tribal Court judge did not abuse his discretion and there is no evidence in the Petition for Reconsideration or otherwise that this Court erred as a matter of law in our finding.

For the foregoing reasons, this Petition for Reconsideration is denied.

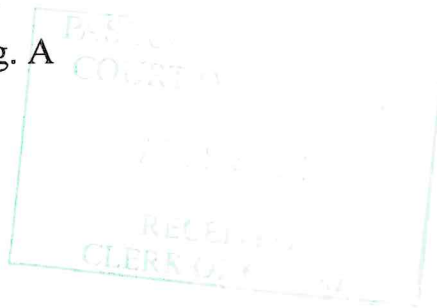
So ORDERED this 13<sup>th</sup> day of May 2014



James C. Hopkins, Chief Judge

Office of the Tribal Prosecutor  
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(520) 879-6251 Telephone  
(520) 879-6260 Facsimile

By Frederick Lomayesva  
Deputy Prosecutor



PASCUA YAQUI TRIBAL COURT  
FILED DATE AND TIME  
2014 APR 29 AM 8:31  
DOCKET NO. \_\_\_\_\_  
CLERK \_\_\_\_\_

**IN THE PASCUA YAQUI APPELLATE COURT**

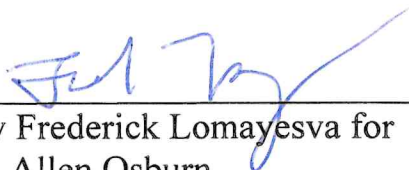
**IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**

PASCUA YAQUI TRIBE	)	Case No. CA-14-001
	)	
Appellant,	)	
	)	
v.	)	MOTION FOR LEAVE TO
	)	FILE PETITION FOR
ESCAMILLA, MANUEL,	)	RECONSIDERATION
	)	
<u>Defendant.</u>	)	

The Pascua Yaqui Tribe moves for leave to file a petition for reconsideration of this court's April 2, 2014, order. The interlocutory appeal raises issues of law as to the trial court's jurisdiction. Issues of the court's jurisdiction can be raised at any time including upon appeal. Additionally, this court entered its order without briefing on the issue of whether the trial court abused its discretion in ordering the tribe to produce a copy of the Pascua Yaqui Fire Department Report. If the court of appeals had the benefit of briefing, it may have held that the trial court abused its discretion.

WHEREFORE, the Pascua Yaqui Tribe requests that it be granted to leave to file a petition for reconsideration. The Tribe requests that the petition for reconsideration previously filed in this matter be permitted to stand and be considered as its petition for reconsideration.

Respectfully Submitted this 29 day of April, 2014.

  
\_\_\_\_\_  
By Frederick Lomayesva for  
G. Allen Osburn,  
Deputy Prosecutors

A copy of the foregoing was delivered  
This \_\_\_\_\_ day of April, 2014, to:

Melissa Acosta,  
Office of the Public Defenders  
Attorneys for the Defendant



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

3 Melissa L. Acosta  
PYT Bar No. 10185  
4 COUNSEL FOR: Appellee

PASCUA YAQUI TRIBE  
COURT OF APPEALS  
  
APR 23 2014  
  
ISSUED  
CLERK OF COURT

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

8 PASCUA YAQUI TRIBE,  
9 Appellant,  
10  
11 vs.  
12 ESCAMILLA, MANUEL,  
13 Appellee.

CA-14-001

**MOTION TO DISMISS APPELLANT'S  
PETITION FOR RECONSIDERATION**

14 Appellee Manuel Escamilla, through counsel, moves this Court to dismiss Appellant's Petition for  
15 Reconsideration. In its Petition for Reconsideration, hereinafter "Petition", the Tribe submits that the  
16 Court of Appeals has jurisdiction over the Petition pursuant to 3 PYTC § 2-3-210. Perhaps the Tribe did  
17 not read 3 PYTC § 2-3-210 in its entirety. The Petition in this case is clearly precluded by 3 PYTC § 2-3-  
18 210(D)(3) which states:  
19

20 (D) Petitions not permitted. Unless permitted by specific order of the appellate court, no party shall  
21 file a petition for reconsideration of:  
22

23 (3) a decision denying an appeal

24 The opinion issued by the Court of Appeals on April 2, 2014 denying the Tribe's appeal qualifies as a  
25 "decision" for purposes of 3 PYTC § 2-3-210(D)(3) because a "decision" as defined in 3 PYTC § 2-3-40(B)  
26 is "a written disposition of an appeal, including a disposition by *opinion*..." (emphasis added). The Tribe is  
27 simply not permitted to petition the Court of Appeals to reconsider its decision to deny the appeal. As a  
28

1 result, the Court of Appeals does not have jurisdiction over the Petition for Reconsideration and it must be  
2 dismissed.

3  
4 Furthermore, even if the Court of Appeals found that it did have proper jurisdiction over the  
5 Petition, the form of the Petition does not comply with the Appellate Rules of Procedure. According to 3  
6 PYTC § 2-3-210(B), “A petition for reconsideration and supporting memorandum shall be directed solely to  
7 discussion of those specific points or matters of law in which it is claimed the appellate court erred.” In its  
8 Petition, the Tribe fails to discuss any specific points or matters of law concerning the Court of Appeals  
9 Opinion. In fact, the Tribe’s Petition, particularly in form, appears to be an attempt to force the Court of  
10 Appeals to view what would have been its Appellate Brief, had the Court of Appeals found one necessary  
11 prior to issuing its Opinion.  
12

13 For the foregoing reasons, the Appellee moves to dismiss the Appellant’s Petition for  
14 Reconsideration<sup>1</sup>,  
15

16 DATED this 23<sup>rd</sup> day of April 2014.  
17  
18  
19  
20

21 PASCUA YAQUI PUBLIC DEFENDER  
22

23  
24 

25 \_\_\_\_\_  
Melissa L. Acosta  
Chief Public Defender  
26

27 <sup>1</sup> Because the Appellee’s position is that the Petition for Reconsideration is not properly before the Court of Appeals,  
28 the Appellee has not substantively responded to the Petition. Should this Court disagree, and find that the Petition  
for Reconsideration can proceed, the Appellee is prepared to respond to the substance of the Petition. As a result, the  
Appellee requests the Court stay the time for Appellee to respond to the Petition pending the Court’s decision on this  
Motion.

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**CERTIFICATE OF SERVICE**

A copy of the foregoing was delivered this 23<sup>rd</sup> day of April, 2014 to :

G. Allen Osburn  
Office of the PYT Prosecutor

DATED this 23<sup>rd</sup> day of April, 2014.

PASCUA YAQUI PUBLIC DEFENDER



\_\_\_\_\_  
Melissa L. Acosta  
Chief Public Defender

PASCUA YAQUI TRIBE  
COURT OF APPEALS  
APR 22 2014  
ISSUED  
CLERK OF COURT

IN THE PASCUA YAQUI APPELLATE COURT


IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,	)	Case No. CA-14-001
	)	
Appellant,	)	
	)	
v.	)	
	)	
ESCAMILLA, MANUEL	)	
	)	
Defendant.	)	
_____	)	

PETITION FOR RECONSIDERATION

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By G. Allen Osburn,  
Deputy Prosecutor

  
\_\_\_\_\_  
By G. Allen Osburn  
Deputy Prosecutor

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## STATEMENT OF THE CASE

On or about January 1, 2014, the Defendant, Manuel Escamilla, allegedly came home intoxicated. He argued, then fought his step-son, Isaiah Gutierrez. In the course of the escalated argument, the defendant struck his step-son with a closed fist. When his son, Vicente Escamilla, attempted to stop the fight, the defendant attacked the other son. **ROA 16** The police responded and the defendant was arrested.

A *Criminal Complaint* was filed on January 2, 2014, and an initial hearing was held on the same date. **ROA 15** The defendant appeared with counsel and was released. **ROA 13** The arraignment was set for January 10, 2014. On January 13, 2014, the defendant appeared for his arraignment with counsel. He entered a denial and trial was set for April 7, 2014. **ROA 11**

On January 23, 2014, the Tribe filed its *Notice of Witnesses and Disclosure*. **ROA 10** Within the notice the Tribe listed its witnesses and potential exhibits. Seven days later, the defendant filed his *Request for Disclosure*. **ROA 08** The tribe filed its response on February 10, 2014. **ROA 07** Defendant filed his reply on February 12, 2014, and requested a hearing on the motion. **ROA 06** The hearing was set for March 12, 2014. **ROA 05**

At the hearing the parties presented oral arguments on defendant's request for disclosure. The Tribe presented the testimony of Patty Ramirez, the Communication Technician for the Police. The court entered its orders on the motion on March 12, 2014. **ROA 04**

The Tribe filed an interlocutory appeal from a tribal court order entered on March 12, 2014. The Appellate Court has proper jurisdiction to hear an interlocutory appeal pursuant to its decision In Re. Pascua Yaqui Tribe, CA-13-005 (2014). The Appellate Court issued its order without briefing on April 2, 2014, affirming the trial court's order. This court has jurisdiction to hear this Petition for Reconsideration pursuant to 3 PYTC §2-3-210.

### **STATEMENT OF FACTS**

On or about January 1, 2014, the defendant, Manuel Escamilla, came home intoxicated. He allegedly argued, then struck his step-son, Isaiah Gutierrez. When his son, Vicente Escamilla, attempted to stop the fight, the defendant attacked the other son. **ROA 16**

He was arrested on January 1, 2014, and charged the next day. **ROA 15** On January 23, 2014, the Tribe filed its Notice of Witnesses and Disclosure. The Tribe listed three witnesses; Officer Eutimio Molina, Isaiah Guterrez, and Vicente Escamilla. **ROA 10** A police report was disclosed to the defendant at the same

time. The Tribe asserted it may use photographs. No photographs were disclosed on January 23, 2014.

On January 30, 2014, the defendant filed his *Request for Disclosure*. He specifically requested photographs that may have been taken in this case and a “copy of any and all reports made in the investigation of this case...” **ROA 08** On February 10, 2014, the Tribe responded. **ROA 07** The Tribe stated that there were no other reports other than Officer’s Molina and Officer’s Wells report. Further, the Tribe asserted that photographs are in process and will be disclosed upon receipt. **ROA 07**

On February 12, 2014, the defendant replied. **ROA 06** He asserted that there was a fire department report mentioned in the disclosed police report. Defendant demanded immediate disclosure of the photographs. Defendant demanded the court impose sanctions upon the Tribe. **ROA 06**

On March 12, 2014, the Tribe disclosed eight photographs to the defendant. At the hearing, defendant again demanded the court sanction the Tribe for failure to disclose the photographs prior to March 12, 2014, and demanded an order from the court requiring the Tribe to produce the fire department report. The Tribe responded to the defendant’s demands that the photographs were not released to the Office of the Prosecutor by the police until March 12, 2014, and they were disclosed immediately upon receipt of the photographs.

The Tribe objected to defendant's demand to produce the fire department report. The Tribe pointed out that the fire department is not part of the prosecutorial team and the defendant had equal access to the report. Further, the Tribe had not intended to use the report in its case against the defendant.

### **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Did the court abuse its discretion in finding that the fire department was under the control of the Tribal Prosecutor's Office without any evidence to support the finding?
2. Did the court err as a matter of law by extending 3 PYTC §2-2-380(D) to governmental departments who has no role in the prosecution of tribal crimes.
3. Did the court err as a matter of law in imposing a fine against the Office of the Tribal Prosecutor in the absence of an express waiver of sovereign immunity?

## ARGUMENT

### A. THE COURT ABUSED ITS DISCRETION IN ORDERING THE TRIBE TO DISCLOSE THE FIRE DEPARTMENT REPORT.

1. The Tribe had no obligation to disclose a statement whose author was not named as a witness.

The defendant demanded that the court enter an order ordering the Tribe disclose the report made by the Fire Department. The Fire Department's report memorialized their emergency response on January 1, 2014, to treat potential injuries sustained by the defendant's attack. The Tribe had never intended to use the report in its case against the defendant nor did the Tribe list any member of the Fire Department as a witness. The Tribe has a duty to disclose all statements made by witnesses it intends to call. See 3 PYTC §2-2-380(A)(1). As the tribe never intended to call the author of the report as a witness, there was no obligation to disclose the report (a witness statement) pursuant to 3 PYTC §2-2-380(A)(1). There was no legal basis for the defendant's request pursuant to this section of the code.

2. The Tribe had no duty to disclose a statement of a separate agency that was not under its control and did not participate in the investigation of the criminal charge.

The Tribe has a duty to disclose “all material or information which tends to mitigate or negate the defendant’s guilt as to the offense charged or which would tend to reduce his or her punishment...” 3 PYTC §2-2-380(A)(6). When the demand was made, the Tribe did not have a copy of the report. The Tribe did not have a copy of the report on the date of March 12, 2014, hearing. As this was not a police report, the Police Department did not have a copy of the report. As the Prosecutor did not have the report (nor did the Prosecutor have the report indirectly through the Police Department), it had complied with 3 PYTC §2-2-380(A)(6) by turning over all information its possession that may mitigate guilt or reduce punishment within its possession.

The defendant argued that the Prosecutor should turn over the Fire Department Report because the Fire Department participated in the investigation of the case and is under the control of the prosecutor.

Extent of the prosecutor’s duty to obtain information. The prosecutor’s obligation under this Section extends to material and information in the possession or control of members of his or her staff and of any other persons who have participated in the investigation of the case and who are under the prosecutor’s control.

See 3 PYTC §2-2-380(D). The Tribe objected to the disclosure as the Fire Department did not participate in the prosecutorial investigation and was not under the control of the prosecutor. Whether the Fire Department participated in the

investigation of the case and was under the control of the prosecutor were issues of fact and law.

The court's finding that the Fire Department participated in the investigation of the case and was under the control of the prosecution is an abuse of discretion where there was no evidence to support the finding. "A discretionary finding of fact based on no evidence is arbitrary and an abuse of discretion. See Grant v. Arizona Public Service, 133 Ariz. 434, 652 P.2d 507 (1982)." United Imports and Exports v. Superior Court, 134 Ariz. 43, 46, 53 P.2d 691, 694 (Ariz., 1982) See also Walsh v. Walsh, 230 Ariz. 486, 490, 286 P.3d 644 1099 (Ariz. App., 2012) (A court abuses its discretion if ... the record fails to provide substantial evidence to support the trial court's finding.") In this case, the court held an evidentiary hearing on March 12, 2014.<sup>1</sup>

However, the defendant did not introduce any evidence (witnesses or exhibits) in support of his *Request to Disclose*. Nor did the defendant introduce any evidence that the Fire Department participated in the investigation of the criminal charges against the defendant.<sup>2</sup> Nor did the defendant introduce any evidence that the prosecutor was in superior position to obtain the report.<sup>3</sup> The

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<sup>1</sup> The prosecutor presented evidence in the form of witness testimony of Isabel Quintero. She testified solely on the issue of the defendant's request for 911 and dispatch communications.

<sup>2</sup> There was no evidence that the Fire Department report contained photographs. There was no evidence that report investigated any matter related to the defendant's guilt or innocence.

<sup>3</sup> The prosecutor avowed during the hearing that he contacted the Fire Department and was told he would be required to complete a form for review by the Fire Department to determine whether they would release it to the prosecutor. When asked whether they would release it to the defendant, the prosecutor was informed the defendant

defendant did not even reveal whether he or his counsel had attempted to acquire the report, but were denied. Despite being an evidentiary hearing on defendant's motion, defendant introduced no evidence! Thus, the court had *no evidence* upon which to support its findings that the prosecutor owed a duty to disclose the report pursuant to 3 PYTC §2-2-380(D) and 3 PYTC §2-2-380(A)(1). The failure of the record to support the court's finding is an abuse of discretion.

The lack of evidence to support its findings suggests that the court found that Fire Department was under the control of the prosecution and participated in the investigation against the defendant *as a matter of law*.<sup>4</sup> A court abuses its discretion when it misapplies the law. See Ruben M. v. Arizona Department of Economic Security, 230 Ariz. 236, 239, 282 P.3d 437, 440 (Ariz. App., 2012) "A court abuses its discretion if it commits an error of law in reaching a discretionary conclusion..." Walsh v. Walsh, 230 Ariz. 486, 490, 286 P.3d 644 1099 (Ariz. App., 2012), Romer-Pollis v. Ada, 223 Ariz. 300, 303, 222 P.2d 916, 919 (Ariz. App., 2009) The Code provides no evidence that the Fire Department is under the control of the Prosecutor's Office or the Police Department.

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would also have to complete a request form implying both parties had an equal opportunity to acquire the report. Defense counsel offered no evidence that she had tried to obtain the report but was denied. This suggests a failure to the defendant to comply with 3 PYTC §2-2-380(E) prior to asking for a court order. That section requires the defendant to make a showing that he is unable to obtain the report without incurring undue hardship. Here there is no showing that he even tried to obtain the report.

<sup>4</sup> Issues of law are review de novo in the court of appeals and the rulings by the trial court have no binding affect.

The Fire Department has no function to investigate crime. The Fire Department is an executive division department. The head of the Fire Department is supervised by the Chairman of the Pascua Yaqui Tribe. 2 PYTC §2-16-50 (E). The Fire Chief is not supervised by the Chief Prosecutor or the Chief of Police nor is the Fire Chief required to coordinate or share information with the Chief Prosecutor or Chief of Police. The mission of the Fire Department is “to provide quality service as it pertains to fire suppression, prevention, education, and emergency medical services...” 2 PYTC §2-16-40. Its programs do not include any component to investigate crime. See 2 PYTC §2-16-90. Thus, there is no basis to argue under the code that the Fire Department is under the control of the prosecutor or participated in the investigation.

The Court abused its discretion in ordering the Tribe to disclose the Fire Department report where there was no evidence or law to support its finding that the Fire Department was under the control of the Prosecutor’s Office and participated in the investigation of the criminal matter.

B. The Court was without jurisdiction to impose a monetary fine against the Tribe without a waiver of the Tribe’s sovereign immunity.

The court sanctioned the Tribe (the Pascua Yaqui Tribe) \$100 for the delay in disclosing photographs. The court did not make a finding that the Tribe waived its sovereign immunity.

Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers. *Turner v. United States*, 248 U.S. 354, 358, 39 S.Ct. 109, 110, 63 L.Ed. 291 (1919); *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 512–513, 60 S.Ct. 653, 656, 84 L.Ed. 894 (1940); *Puyallup Tribe, Inc. v. Washington Dept. of Game*, 433 U.S. 165, 172–173, 97 S.Ct. 2616, 2620–2621, 53 L.Ed.2d 667 (1977). This aspect of tribal sovereignty, like all others, is subject to the superior and plenary control of Congress. But “without congressional authorization,” the “Indian Nations are exempt from suit.” *United States v. United States Fidelity & Guaranty Co.*, *supra*, 309 U.S., at 512, 60 S.Ct. at 656.

It is settled that a waiver of sovereign immunity “ ‘cannot be implied but must be unequivocally expressed.’ ” *United States v. Testan*, 424 U.S. 392, 399, 96 S.Ct. 948, 953, 47 L.Ed.2d 114 (1976), quoting, *United States v. King*, 395 U.S. 1, 4, 89 S.Ct. 1501, 1502, 23 L.Ed.2d 52 (1969). Nothing on the face of Title I of the ICRA purports to subject tribes to the jurisdiction of the federal courts in civil actions for injunctive or declaratory relief. Moreover, since the respondent in a habeas corpus action is the individual custodian of the prisoner, see, *e. g.*, 28 U.S.C. § 2243, the provisions of § 1303 can hardly be read as a general waiver of the tribe's sovereign immunity. In the absence here of any unequivocal expression of contrary legislative intent, we conclude that suits against the tribe under the ICRA are barred by its sovereign immunity from suit.

*Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59, 98 S. Ct. 1670, 1677, 56 L.

Ed. 2d 106 (1978) “As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.

See *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877, 890, 106 S.Ct. 2305, 2312-2313, 90 L.Ed.2d 881 (1986); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58, 98 S.Ct. 1670, 1676-1677, 56 L.Ed.2d 106 (1978); \*\*1703 *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 512, 60 S.Ct. 653, 656, 84 L.Ed. 894 (1940) (*USF & G.*)” Kiowa Tribe of Oklahoma v. Mfg. Technologies, Inc., 523 U.S. 751, 754, 118 S. Ct. 1700, 1702-03, 140 L. Ed. 2d 981 (1998) Sovereign immunity presents a question of law that is reviewed *de novo*. Orff v. United States, 358 F.3d 1137, 1142, (9<sup>th</sup> Cir., 2004). In this case, there is no expressed waiver of the Tribe’s sovereign immunity, the court is without jurisdiction to impose a fine upon the tribe.

## CONCLUSION

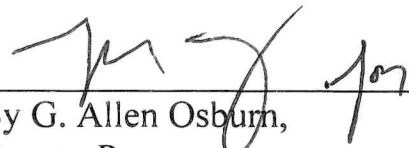
The Court of Appeals found that the trial court had not abused its discretion in ordering the Tribe to produce and disclose a report issued by the Pascua Yaqui Fire Department. However, the Opinion was issued without briefing. The issue of law and fact presented to the court was whether 3 PYTC §2-2-380(D) required the Tribe to do so. It is clear that the trial court did not base its decision upon *any* evidence presented by the defendant. In fact, the defendant did not produce or introduce any evidence at the evidentiary hearing (that he requested) to support his *Request for Disclosure*. The court found that the Tribe was obligated to disclose

the report. The court's finding and order lacks evidentiary support in the record. It was an abuse of discretion for the court to have ordered the disclosure. It is therefore submitted to this Court that it should reconsider its prior ruling.

Additionally, jurisdiction can be raised at any time in a proceeding. The court fined the Tribe \$100. The Pascua Yaqui Tribe is a tribal government. As a tribal government, it has sovereign immunity. That immunity must be waived by the tribe to allow it to be subject to suit. The court did not find that the Tribe had waived its sovereign immunity. The court's ruling is contrary to law and an abuse of discretion.

Wherefore, the Tribe respectfully requests that this court reconsider its prior ruling in this appeal, and find that the Court's rulings were an abuse of discretion and vacate those portions of the trial court's order inconsistent with the law.

RESPECTFULLY SUBMITTED this 22 day of April, 2014.

  
\_\_\_\_\_  
By G. Allen Osburn,  
Deputy Prosecutor

## CERTIFICATE OF SERVICE

I certify that the above Petition for Reconsideration was delivered this 22 day  
of April, 2014, to:

Melissa Acosta  
Office of the Public Defender  
Attorneys for the Defendant

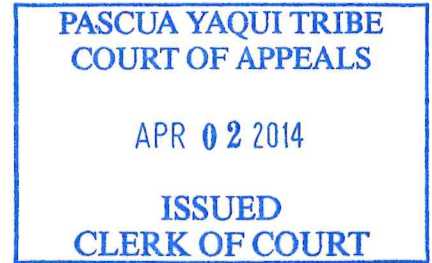
No. CA-14-001

Pascua Yaqui Court of Appeals

\_\_\_\_\_  
Pascua Yaqui Tribe, Appellant,

vs.

Escamilla, Manuel, Appellee,



Interlocutory Appeal of a Tribal Court Order Granting Motion to Compel Disclosure in Case No. CR-14-144, the Honorable Melvin Stoof presiding.

G. Allen Osburn, Office of the Prosecutor of the Pascua Yaqui Tribe, 7777 Camino Huivisim, Tucson, AZ for the Appellant.

Melissa Acosta, Pascua Yaqui Public Defender, 7474 S. Camino de Oeste, Tucson AZ 85757 for the Appellee.

\*\*\*\*\*

**I. Opinion**

The Tribe seeks review of the Tribal Court’s order compelling the Tribe to disclose fire department reports as well as a \$100.00 sanction against the Tribe for producing photographs nearly two months after the disclosure request. The fine is suspended as long as the Tribe complies with ongoing court orders. The scope of discovery is within the discretion of the lower court and therefore is reviewed for abuse of discretion. We find that the Tribal Court judge did not abuse his discretion in compelling disclosure of fire department reports or in the imposition of a suspended fine against the Tribe.

The main issue is whether the Tribal Judge abused his discretion regarding the scope of discovery in the ongoing criminal case. The scope of discovery is within the discretion of the lower court. We view the Tribal Court’s discovery ruling for abuse of discretion. *U.S. v. Williams*, 791 F.2d 1383 (9th Cir. 1986) (*Citing U.S. v. Clegg*, 740 F.2d 16, 18 (9th Cir. 1984).

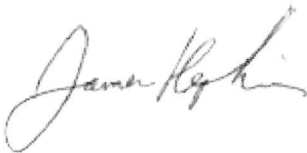
There is no general federal constitutional right to discovery in a criminal case. *Weatherford v. Bursey*, 429 U.S. 545, 559, 97 S.Ct. 837, 845, 51 L.Ed.2d 30 (1977). “However, the Constitution does impose on the prosecution a due process obligation to disclose exculpatory evidence that is material on the issue of guilt or punishment.” *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). There is a duty to disclose regardless of whether the accused has requested the material. *United States v. Agurs*, 427 U.S. 97 (1976).

The statement of probable cause indicates that Appellee stated he had been physically assaulted by his two sons. Appellee received medical attention for his injuries. Photographs were taken of Appellee’s injuries and his son’s injuries and submitted into evidence. The Tribal judge stated that the fire department records, including photographs “may have been part of the basis of the officer’s probable cause statement, and the reports may contain information that is exculpatory, . . . .” Thus, the court found it was improper for the Tribe to fail to disclose “such possibly exculpatory evidence.”

The Tribal judge did not abuse his discretion in compelling disclosure of fire department reports or in the imposition of the suspended fine. This Court affirms the Tribal Court’s ruling granting the motion to compel and upholds the imposition of the fine, which has been suspended unless the Tribe fails to comply with the Tribal Court’s order.

For the foregoing reasons, the Tribal Court’s judgment is affirmed.

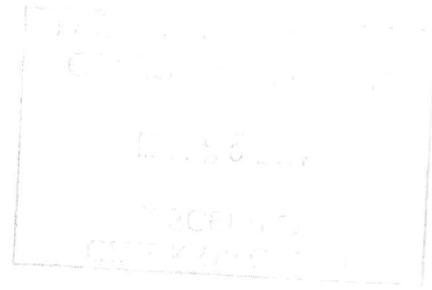
So ordered on this 2nd day of April 2014.



---

Chief Justice, James Hopkins

Office of the Tribal Prosecutor  
7777 S Camino Huivisim, Bldg. A  
Tucson, AZ 85757  
(520) 879-5257 Telephone  
(520) 879-6260 Facsimile



By G. Allen Osburn, and  
Frederick Lomayesva  
Deputy Prosecutors

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,	)	App. Case No. CA-14-001
	)	(CR-14-144 Below)
Plaintiff,	)	
	)	<b>AMENDED</b>
v.	)	<b>NOTICE OF APPEAL</b>
	)	<b>(INTERLOCUTORY)</b>
ESCAMILLA, MANUEL,	)	
	)	
<u>Defendant.</u>	)	Assigned to J. Stoof

COMES NOW the Plaintiff and gives notice of its filing an *Interlocutory Appeal* of a tribal court order filed on March 12, 2014, pursuant to *Rules of Appellate Procedure* (3 PYTC §2-3-10 *et.seq.*) and *In Re. Pascua Yaqui Tribe*, CA-13-005 (2014).

The Plaintiff below is designated as the “Appellant” and the Defendant below is designated as the “Appellee.”

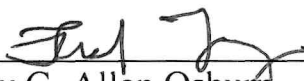
The order appealed from is the tribal court's *Order Granting Motion to Compel Disclosure* signed March 12, 2014. A copy of the order is attached to this notice and by this reference is made a part of this notice.

The Plaintiff (Appellant) designates the following parts of the order as being appealed:

1. The part of the order compelling the disclosure of the fire department report.
2. The part of the order sanctioning the tribe \$100 suspended.

This matter is set for a trial on April 07, 2014, it is respectfully requested that an accelerated briefing schedule be set.

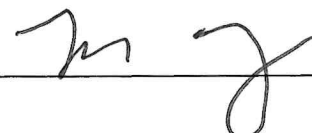
RESPECTFULLY SUBMITTED this 25 day of March, 2014.

  
By G. Allen Osburn,  
Deputy Prosecutor

### CERTIFICATE OF SERVICE

A copy of the foregoing was delivered this 25 day of March, 2014, to:

Melissa Acosta, Esq.  
Office of the Tribal Public Defender  
Attorneys for the Defendant  
Clerk of the Tribal Court

By: 



1 in case no. CR-14-143, and that such reports may provide exculpatory information. The Tribe  
2 objected that they have no control over the fire department in its investigative role in criminal  
3 matters. Under Pascua Yaqui law, the Tribe's prosecutor, as an officer of the court, is subject  
4 to the American Bar Association (ABA) standards of conduct:

5 **Dignity & ethics. Any attorney practicing in the Pascua Yaqui Courts shall**  
6 **conform to the usual standards and conduct of the American Bar Association in**  
7 **the performance of their duties. 3 PYTC § 1-4-40.** (emphasis added).

8 Although the "standards" of the ABA are rules of practice that have been developed to assist  
9 practitioners who specialize in certain areas of practice, the Court has interpreted the above  
10 provision to include a lawyer's duty to follow both the ABA Model Rules of **Professional**  
11 **Conduct.** (emphasis added), and the "standards," also formerly, in prior ABA drafts, referred  
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14 **These standards are intended to be used as a guide to professional conduct and**  
15 **performance.** (emphasis added).

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17 **A lawyer shall act with reasonable diligence and promptness** in representing a  
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20 Prompt Disposition of Criminal Charges:

- 21 (a) A prosecutor should avoid unnecessary delay in the disposition of cases.  
22 **A prosecutor should not fail to act with reasonable diligence and promptness**  
23 **in prosecuting an accused.**  
24 (b) A prosecutor should not intentionally use procedural devices for delay for which  
25 there is no legitimate basis.  
26 (c) The prosecution function should be so organized and supported with staff and  
27 facilities to enable it to dispose of all criminal charges promptly. The prosecutor  
28 should be punctual in attendance in court and in the submission of all motions,  
briefs, and other papers. The prosecutor should emphasize to all witness the  
importance of punctuality in court.  
(d) A prosecutor should not intentionally misrepresent facts or otherwise mislead the  
court in order to obtain a continuance.

ABA Standard 3-2.9 Prompt Disposition of Criminal Charges, ABA Criminal Justice Section.

1 The ABA Standards for Criminal Justice call generally for prosecutorial disclosures of any  
2 evidence tending to exculpate or mitigate. See ABA Standards for Criminal Justice,  
3 Prosecution Function and Defense Function, Sec. 3-3.11(a) (3<sup>rd</sup> Ed. 1993) (“A prosecutor  
4 should not intentionally fail to make timely disclosure to the defense, at the earliest feasible  
5 opportunity, of the existence of all evidence or information which tends to negate the guilt of  
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10 recent formal ABA opinion defines a Prosecutor’s Duty to Disclose Evidence and Information  
11 Favorable to the Defense. American Bar Association Formal Opinion 09-454, July 8, 2009.  
12 The ABA formal opinion notes, that under Model Rule of Conduct Rule 3.8(d) above, “the  
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16 knows of evidence and information favorable to the defense to disclose it as soon as  
17 reasonably practicable so that the defense can make a meaningful use of it in making  
18 such decisions as to whether to plead guilty and how to conduct its investigation.  
19 . . . [y]et despite the importance of prosecutors fully understanding the extent of the  
20 separate obligations imposed by Rule 3.8(d), few judicial opinions or state or local  
21 ethics opinions, provide guidance in interpreting the various analogs to the rule. See  
22 Az. State Bar, Comm. On Rules of Prof’l Conduct, Op. 2001-03 (2001); Arizona State  
23 Bar Comm. On Rules of Prof’l Conduct, Op. 94-07 (1994).

24 Id., at p. 1.

25 The ABA opinion states the scope of the pretrial disclosure obligation: a disclosure obligation  
26 under Rule 8(d) is more extensive than the constitutional obligation of disclosure. Id., as p. 2.  
27 The ABA has interpreted the rule above to require “prosecutors to disclose favorable evidence  
28 so that the defense can decide on its utility.” The ABA opinion continues to define the role of  
public prosecutors:

. . . lawyers who serve as public prosecutors have special obligations as representatives  
“not of an ordinary party to a controversy, but of a sovereign whose obligation to  
govern impartiality is as compelling as its obligation to govern at all; and whose  
interests, therefore, in a criminal prosecution is not that it shall win a case, but that

1 justice shall be done.” Citing affirmatively to *Berger v. U.S.* 295 U.S. 78, 88 (1935)  
2 (role of U.S. Attorney).

3 Id., at 2-3.

4 The opinion continues with a prosecutor’s ethical duty to disclose:

5 Similarly, Comment [1] to Model Rule 3.8 states that:

6 “A prosecutor has the responsibility of a minister of justice and not simply that  
7 of an advocate. This responsibility carries with it specific obligations to see if  
8 the defendant is accorded procedural justice, that guilt is decided upon the  
9 basis of sufficient evidence, and that special precautions are taken to prevent  
10 and to rectify the conviction of innocent persons.”

11 Id, at p. 3.

12 The prosecutor acts on behalf of the Tribe in all criminal matters, and can obtain  
13 access to documents related to criminal defendants, and because the fire department records,  
14 including any possible photographs, in addition to the police photographs provided to the  
15 defendant today, may have been part of the basis of the officer’s probable cause statement,  
16 and the reports may contain information that is exculpatory, it is improper for the prosecutor  
17 to fail to disclose such possibly exculpatory evidence. An accused has a “constitutionally  
18 guaranteed access to evidence.” *California v. Trombetta*, 467 U.S. 479, 485 (1984); U.S.  
19 Const., Amends V,VI, XIV; Ariz. Const., Art 2, §§4 & 24. The purpose of this guarantee is to  
20 deliver “exculpatory evidence in the hands of the accused, thereby protecting the innocent  
21 from erroneous conviction and ensuring the integrity of our criminal justice system.” 467 U.S.  
22 at 485. In *U.S. v. Agurs*, the Supreme court held that a prosecutor has a constitutional duty to  
23 disclose exculpatory evidence to the defense, even without a defense request. 427 U.S. 97,  
24 107-13 (1976); accord *State v. Fowler*, 101 Ariz. 561, 564, 422 P.2d 125, 128 (1967). Failing  
25 to disclose this type of evidence is a constitutional violation, even in the absence of bad faith.  
26 *Agurs*, 427 U.S. at 110; see also Rule 15.1 ARCP. The court should order that the Tribe  
27 produce the fire department reports by March 19, 2014.

28 The defendant requested a list of all prior convictions of the alleged victim in this case,  
who is a named defendant in a case arising out of the same incident, CR-14-143. The  
prosecutor is obligated to obtain information from persons who have investigated the case and  
are under the prosecution’s control. Rule 15.1(f) ARCP; *State v. Crone*, 182 Ariz. 319, 321  
n.3, (1995). The Prosecution has a duty to keep itself apprized of the evidence related to the

1 case, and it may be held accountable for the negligence of its investigators. *State v. Towery*,  
2 186 Ariz. 168, 186-87 (1996); accord *Kyles*, 514 U.S. at 437. The Tribe's prosecutor can  
3 obtain such documents requested by the defendant by using due diligence to do so. The Tribe  
4 shall use all due diligence to obtain the information requested. This order is not subjecting the  
5 Tribe to any "fishing expedition" or requiring it to perform the defendant's investigation, but  
6 rather, it is merely requiring the Tribe to access information to which it has easy access and  
7 may obtain from persons who have investigated the case. Under *Brady v. Maryland*, 373 U.S.  
8 83, (1963), *U.S. v. Augurs*, 427 U.S. 97 (1976), *U.S. Bagley*, 473 U.S. 667 (1985), the Tribe  
9 has a duty to produce such disclosure, whether such request for police reports are made as a  
10 specific request, or as a general or no request, if there is a reasonable probability that had the  
11 evidence not been disclosed to the defense, the result of the proceeding would have been  
12 different:

13 . . . **the individual prosecutor has a duty to learn of any favorable evidence known**  
14 **to the others acting on the government's behalf in the case, including the police.**  
15 But whether the prosecutor succeeds or falls in meeting this obligation, . . . the  
16 prosecution's failure to disclose known, favorable evidence rising to a material level of  
17 importance is inescapable.

18 *Kyles v. Whitley*, 514 U.S. 419 (1995). (emphasis added).

19 The Court, for good cause shown, should grant the defendant's motion to compel  
20 production of the criminal history of the defendant named in CR-14-143, who is the named  
21 victim in this case, involving the defendant in this case, no later than March 19, 2014.

22 As to the last item that had been requested by the defendant, but which was produced  
23 today, several photographs of the defendant evidencing his alleged injuries, the court finds  
24 that the Tribe failed to comply with the statutory provisions of the criminal code, as well as  
25 standards established by the Court of Appeals for disclosure of evidence because the tribe on  
26 January 23, 2014 disclosed that it may be using photographs at the time of trial, the  
27 photographs were available on January 1, 2014, and in its February 10, 2014 response stated:

- 28 4) The requested photos are in the process and will be disclosed in due course  
upon receipt; the tribe objects to requests for unspecified "other evidence" as  
vague and overly broad.

The Court finds that a delay in producing the known photographs on March 12, 2014, nearly 2  
½ months after the date of the alleged crime, is not a timely production of disclosure

1 materials, does not comport with the statutory requirements for disclosure, or with the court of  
2 appeals cases, or any of the other written materials that have previously been sent by the court  
3 to the prosecutor and defense counsel in prior hearings in other cases involving disclosure  
4 including the following:

5 copies of 3 PYTC § 2-2-380, **DISCOVERY, Disclosure by Tribe**, ABA Criminal  
6 Justice Standards for prosecutors, ABA Opinion 09-054, Prosecutor's Duty to  
7 Disclose Evidence and Information Favorable to the Defense, Memorandum for  
8 Department Prosecutors, Jan, 4, 2010, from David Ogden, Deputy Attorney General,  
9 Re: Guidance for Prosecutors Regarding Criminal Discovery, US Attorney's Manual,  
10 9-5.00, Issues Related to Trials and Other Court Proceedings, Policies regarding  
11 Exculpatory and Impeachment Information and Policy Regarding the Disclosure to  
Prosecutors of Potential Impeachment Information Concerning Law Enforcement  
Agency Witnesses ("Giglio Policy"), and Federal Rules of Criminal Procedure as to  
Producing a Witness's Statement and Discovery and Inspection.

12 Although the court is not unsympathetic with the Tribe's dilemma that it requests disclosure  
13 from the police department, and that department fails to respond timely, then the prosecutor  
14 can advise the department that evidence may be excluded, or the Tribe can dismiss the action  
15 if the police do not want to cooperate. Once a prosecutor undertakes prosecution, they must  
16 do so with due diligence, and based on a delay of nearly two months in producing the  
17 photographs, that may be exculpatory because they may indicate injuries to the defendant  
18 caused by the alleged victim, the court should fine the prosecutor \$100.00, such fine  
19 suspended, so long as there are no other failures to comply with the court orders in this matter.



20 **IT IS ORDERED** that the court grants the defendant's motion to compel for good  
21 cause shown, and the prosecutor shall provide a copy of fire department investigative reports,  
22 and copies of the criminal history of the named defendant in CR-14-143, who is the alleged  
victim in this case, no later than 5:00 p.m. on March 19, 2014.

23 **IT IS FURTHER ORDERED** that the court shall sanction the Tribe for producing  
24 photographs nearly two months after such photos should have been disclosed, fines the  
25 prosecutor \$100.00, such fine suspended, so long as there are no other failures to comply with  
26 the court orders in this matter.

27 **IT IS FURTHER ORDERED** that the attorneys for the parties have been previously  
28 been provided with copies of 3 PYTC § 2-2-380, **DISCOVERY, Disclosure by Tribe**, ABA  
Criminal Justice Standards for prosecutors, ABA Opinion 09-054, Prosecutor's Duty to

1 Disclose Evidence and Information Favorable to the Defense, Memorandum for Department  
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5 Information and Policy Regarding the Disclosure to Prosecutors of Potential Impeachment  
6 Information Concerning Law Enforcement Agency Witnesses ("Giglio Policy"), and Federal  
7 Rules of Criminal Procedure as to Producing a Witness's Statement and Discovery and  
8 Inspection. It is hoped that all of the attorneys will share the attached documents made part  
9 of this order, with their co-workers to alleviate future motions to compel and to ensure  
10 compliance with disclosure standards for both prosecution and defense.

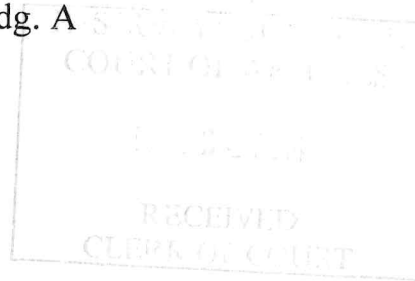
11 SO ORDERED THIS 12<sup>th</sup> DAY OF MARCH, 2014.

12   
13 Associate Judge, Pascua Yaqui Tribal Court  
14 

13 Date 03/14/14  
14 cc:  Tribe  Defendant  Counsel  
15 Celina [unclear]  
16 Clerk

Office of the Tribal Prosecutor  
7777 S Camino Huivisim, Bldg. A  
Tucson, AZ 85757  
(520) 879-5257 Telephone  
(520) 879-6260 Facsimile

By G. Allen Osburn, and  
Frederick Lomayesva  
Deputy Prosecutors



PASCUA YAQUI TRIBAL COURT  
FILED DATE AND TIME  
2014 MAR 24 PM 12:05  
DOCKET NO. CR-14-144  
CLERK *AW*


IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,	)	Case No. CR-14-144
	)	
Plaintiff,	)	
	)	<b>NOTICE OF FILING</b>
v.	)	
	)	
ESCAMILLA, MANUEL,	)	
	)	
<u>Defendant.</u>	)	Assigned to J. Stoof

COMES NOW the Plaintiff and gives Notice of Filing this court's Order granting Motion to Compel Disclosure.

RESPECTFULLY SUBMITTED this 24 day of March, 2014.


  
\_\_\_\_\_  
By G. Allen Osburn,  
Deputy Prosecutor

## CERTIFICATE OF SERVICE

A copy of the foregoing was delivered this 24 day of March, 2014, to:

Melissa Acosta, Esq.  
Office of the Tribal Public Defender  
Attorneys for the Defendant

Court of Appeals

By: 



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28 The defendant requested a list of all prior convictions of the alleged victim in this case,  
who is a named defendant in a case arising out of the same incident, CR-14-143. The  
prosecutor is obligated to obtain information from persons who have investigated the case and  
are under the prosecution’s control. Rule 15.1(f) ARCP; *State v. Crone*, 182 Ariz. 319, 321  
n.3, (1995). The Prosecution has a duty to keep itself apprized of the evidence related to the

1 case, and it may be held accountable for the negligence of its investigators. *State v. Towery*,  
2 186 Ariz. 168, 186-87 (1996); accord *Kyles*, 514 U.S. at 437. The Tribe's prosecutor can  
3 obtain such documents requested by the defendant by using due diligence to do so. The Tribe  
4 shall use all due diligence to obtain the information requested. This order is not subjecting the  
5 Tribe to any "fishing expedition" or requiring it to perform the defendant's investigation, but  
6 rather, it is merely requiring the Tribe to access information to which it has easy access and  
7 may obtain from persons who have investigated the case. Under *Brady v. Maryland*, 373 U.S.  
8 83, (1963), *U.S. v. Augurs*, 427 U.S. 97 (1976), *U.S. Bagley*, 473 U.S. 667 (1985), the Tribe  
9 has a duty to produce such disclosure, whether such request for police reports are made as a  
10 specific request, or as a general or no request, if there is a reasonable probability that had the  
11 evidence not been disclosed to the defense, the result of the proceeding would have been  
12 different:

13 . . . **the individual prosecutor has a duty to learn of any favorable evidence known**  
14 **to the others acting on the government's behalf in the case, including the police.**  
15 But whether the prosecutor succeeds or falls in meeting this obligation, . . . the  
16 prosecution's failure to disclose known, favorable evidence rising to a material level of  
17 importance is inescapable.

18 *Kyles v. Whitley*, 514 U.S. 419 (1995). (emphasis added).

19 The Court, for good cause shown, should grant the defendant's motion to compel  
20 production of the criminal history of the defendant named in CR-14-143, who is the named  
21 victim in this case, involving the defendant in this case, no later than March 19, 2014.

22 As to the last item that had been requested by the defendant, but which was produced  
23 today, several photographs of the defendant evidencing his alleged injuries, the court finds  
24 that the Tribe failed to comply with the statutory provisions of the criminal code, as well as  
25 standards established by the Court of Appeals for disclosure of evidence because the tribe on  
26 January 23, 2014 disclosed that it may be using photographs at the time of trial, the  
27 photographs were available on January 1, 2014, and in its February 10, 2014 response stated:

28 4) The requested photos are in the process and will be disclosed in due course  
upon receipt; the tribe objects to requests for unspecified "other evidence" as  
vague and overly broad.

The Court finds that a delay in producing the known photographs on March 12, 2014, nearly 2  
½ months after the date of the alleged crime, is not a timely production of disclosure

1 materials, does not comport with the statutory requirements for disclosure, or with the court of  
2 appeals cases, or any of the other written materials that have previously been sent by the court  
3 to the prosecutor and defense counsel in prior hearings in other cases involving disclosure  
4 including the following:

5 copies of 3 PYTC § 2-2-380, **DISCOVERY, Disclosure by Tribe**, ABA Criminal  
6 Justice Standards for prosecutors, ABA Opinion 09-054, Prosecutor's Duty to  
7 Disclose Evidence and Information Favorable to the Defense, Memorandum for  
8 Department Prosecutors, Jan, 4, 2010, from David Ogden, Deputy Attorney General,  
9 Re: Guidance for Prosecutors Regarding Criminal Discovery, US Attorney's Manual,  
10 9-5.00, Issues Related to Trials and Other Court Proceedings, Policies regarding  
11 Exculpatory and Impeachment Information and Policy Regarding the Disclosure to  
Prosecutors of Potential Impeachment Information Concerning Law Enforcement  
Agency Witnesses ("Giglio Policy"), and Federal Rules of Criminal Procedure as to  
Producing a Witness's Statement and Discovery and Inspection.

12 Although the court is not unsympathetic with the Tribe's dilemma that it requests disclosure  
13 from the police department, and that department fails to respond timely, then the prosecutor  
14 can advise the department that evidence may be excluded, or the Tribe can dismiss the action  
15 if the police do not want to cooperate. Once a prosecutor undertakes prosecution, they must  
16 do so with due diligence, and based on a delay of nearly two months in producing the  
17 photographs, that may be exculpatory because they may indicate injuries to the defendant  
18 caused by the alleged victim, the court should fine the prosecutor \$100.00, such fine  
19 suspended, so long as there are no other failures to comply with the court orders in this matter.

20 **IT IS ORDERED** that the court grants the defendant's motion to compel for good  
21 cause shown, and the prosecutor shall provide a copy of fire department investigative reports,  
22 and copies of the criminal history of the named defendant in CR-14-143, who is the alleged  
victim in this case, no later than 5:00 p.m. on March 19, 2014.



23 **IT IS FURTHER ORDERED** that the court shall sanction the Tribe for producing  
24 photographs nearly two months after such photos should have been disclosed, fines the  
25 prosecutor \$100.00, such fine suspended, so long as there are no other failures to comply with  
26 the court orders in this matter.

27 **IT IS FURTHER ORDERED** that the attorneys for the parties have been previously  
28 been provided with copies of 3 PYTC § 2-2-380, **DISCOVERY, Disclosure by Tribe**, ABA  
Criminal Justice Standards for prosecutors, ABA Opinion 09-054, Prosecutor's Duty to

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Disclose Evidence and Information Favorable to the Defense, Memorandum for Department Prosecutors, Jan, 4, 2010, from David Ogden, Deputy Attorney General, Re: Guidance for Prosecutors Regarding Criminal Discovery, US Attorney's Manual, 9-5.00, Issues Related to Trials and Other Court Proceedings, Policies regarding Exculpatory and Impeachment Information and Policy Regarding the Disclosure to Prosecutors of Potential Impeachment Information Concerning Law Enforcement Agency Witnesses ("Giglio Policy"), and Federal Rules of Criminal Procedure as to Producing a Witness's Statement and Discovery and Inspection. It is hoped that all of the attorneys will share the attached documents made part of this order, with their co-workers to alleviate future motions to compel and to ensure compliance with disclosure standards for both prosecution and defense.

SO ORDERED THIS 12<sup>th</sup> DAY OF MARCH, 2014.

  
Associate Judge, Pascua Yaqui Tribal Court  


Date 03/14/14  
cc:  Tribe  Defendant  Counsel  
Celina Pafala  
Clerk