



1 PASCUA YAQUI PUBLIC DEFENDER  
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4 Melissa L. Acosta  
Office of the Public Defender  
Attorney for Appellant  
5 PYT Bar No. 10185

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

9	PASCUA YAQUI TRIBE,	)	Court of Appeals Case No.: CA-17-005
10		)	
11	Plaintiff/Appellee,	)	Tribal Court Case No.: CR-16-236
12	vs.	)	
13	JAIMEZ, FRANK,	)	<b>MOTION TO WITHDRAW NOTICE OF</b>
14	Defendant/Appellant.	)	<b>APPEAL</b>
15		)	

16  
17 COMES NOW the Appellant, FRANK JAIMEZ, by and through counsel, pursuant to 3  
18 PYTC § 2-3-80 of the Pascua Yaqui Tribe Rules of Appellate Procedure, respectfully withdraws  
19 its Notice of Appeal in the Pascua Yaqui Tribal Appellate Court in the above case number.  
20 Appellant no longer wishes to pursue an appeal in this matter.

21 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of July, 2018.

22 PASCUA YAQUI PUBLIC DEFENDER

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Melissa L. Acosta  
25 Chief Public Defender

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Original of the foregoing delivered to PYT  
Court and filed:

Copy of the foregoing provided to PYT  
Prosecutor by:

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the original copy of the Motion to withdraw the Notice of Appeal  
3 was delivered this date to:

4 Clerk of the Court of Appeals  
5 Pascua Yaqui Court of Appeals  
6 7777 S. Camino Huivism  
Tucson, AZ 85757

7 and that one copy was delivered this date to:

8 Pascua Yaqui Tribal Court  
9 7777 S. Camino Huivism  
Tucson, AZ 85757

10 and that one copy was delivered this date to:

11 Deputy Prosecutor Kendrick Wilson  
12 Office of the Prosecutor of the Pascua Yaqui Tribe  
13 7777 S. Camino Huivism  
Tucson, AZ 85757

14 and that one copy of was delivered this date to:

15 Laura Berglan, Attorney General  
16 Office of the Attorney General  
17 7777 S. Camino Huivism  
Tucson, AZ 85757

18  
19 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of July, 2018  
20

21 PASCUA YAQUI PUBLIC DEFENDER

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23 \_\_\_\_\_  
24 Melissa L. Acosta  
25 Chief Public Defender

No. CA-17-005

**Pascua Yaqui Tribe Court of Appeals**

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**Pascua Yaqui Tribe, Appellee**

**v.**

**Frank Jaimez, Appellant.**

For the Office of the Prosecutor: Oscar J. Flores, Jr., Chief Prosecutor

For the Public Defender: Melissa L. Acosta, Chief Public Defender

**ORDER**

A stay of this appeal was ordered July 10, 2017. That stay is now lifted.

The briefing schedule is as follows: The Public Defender will submit its opening brief by September 24, 2018; the Prosecutor will file its response brief by October 26, 2018; and a reply brief, if any, will be filed by November 12, 2018. A decision whether to hold oral argument will be determined at a later date.

So ORDERED this 20<sup>th</sup> day of July, 2018.

  
\_\_\_\_\_  
Hon. Robert Miller

**No. CA-17-005**  
Pascua Yaqui Court of Appeals

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Pascua Yaqui Tribe, Appellee  
v.  
Frank Jaimez, Appellant

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

Amanda Lomayesva, Interim Attorney General, 7777 S. Camino Huivisim, 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, 4725 Calle Tatakusim, Bld. B, Tucson AZ 85757.

**Order Issuing Stay of Proceedings in CA-17-005, PYT v. Jaimez**

Pursuant 3 PYTC § 2-3-50, the appellate court may suspend the requirements or provisions of any of the rules in a particular case and order proceedings in accordance with its discretion. On June 30, 2017 Appellant Jaimez filed a Notice of Appeal regarding the final judgment in Tribal Case Number CR- 16-236. This Court is currently considering a motion regarding CA-17-003, the results of which could affect this current appeal of PYT v. Jaimez. This Court issues a stay of execution of any appellate proceedings regarding PYT v. Jaimez, CA-17-005 until matters in CA-17-003 with this Court are resolved.

So **ORDERED** this 10<sup>th</sup> day of July 2017.



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James Hopkins, Chief Judge



1 A copy of the Pascua Yaqui Tribal Court's Order is attached hereto as required by 3  
2 PYTC § 2-3-90(A)(1), Pascua Yaqui Rules of Appellate Procedure.

3 The Appellant further respectfully requests that this Honorable Court enter an order  
4 directing the Clerk of the Pascua Yaqui Tribal Court to prepare and submit the record within  
5 thirty (30) days.

6 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of June, 2017.

8 PASCUA YAQUI PUBLIC DEFENDER

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William R. Soland  
12 Deputy Public Defender

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14 Original of the foregoing delivered to PYT  
15 Court and filed:

16 Copy of the foregoing provided to PYT  
17 Prosecutor by:  
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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that the original copy of the Notice of Appeal was delivered this date to:

5 Clerk of the Court of Appeals  
6 Pascua Yaqui Court of Appeals  
7 7777 S. Camino Huivism  
8 Tucson, AZ 85757

9 and that one copy of the Notice of Appeal was delivered this date to:

10 Pascua Yaqui Tribal Court  
11 7777 S. Camino Huivism  
12 Tucson, AZ 85757

13 and that one copy of the Notice of Appeal was delivered this date to:

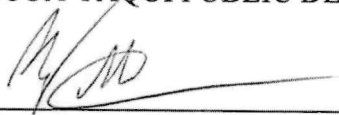
14 Deputy Prosecutor Kendrick Wilson  
15 Office of the Prosecutor of the Pascua Yaqui Tribe  
16 7777 S. Camino Huivism  
17 Tucson, AZ 85757

18 and that one copy of the Notice of Appeal was delivered this date to:

19 Amanda Lomayesva, Interim Attorney General  
20 Office of the Attorney General  
21 7777 S. Camino Huivism  
22 Tucson, AZ 85757

23 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of June, 2017.

24 PASCUA YAQUI PUBLIC DEFENDER

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\_\_\_\_\_  
William R. Soland  
Deputy Public Defender

1 IN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 PASCUA YAQUI TRIBE, ) CASE NO. CR-16-236  
4 PLAINTIFF, )  
5 vs. ) ORDER DENYING MOTION  
6 JAIMEZ, FRANK ) FOR JUDGMENT OF ACQUITTAL  
7 DEFENDANT. ) NOTWITHSTANDING THE VERDICT

8 On June 1, 2017, the Court reviewed the defendant's motion for judgment of acquittal  
9 notwithstanding the verdict, the Tribe's response, and the defendant's reply, and it should deny  
10 the motion.

11 The Court in deciding such a motion must consider only the evidence and any inferences  
12 therefrom, and must do so in the light most advantageous to the non-moving party.

13 In this case, the court finds that the testimony of Aydeluz Sewa Leyva Jaimez as to the  
14 non-Indian status of the defendant, who is her husband, was her personal opinion, that her  
15 opinion as to her husband's status was important to her because she wanted to enroll their  
16 daughter in the Tribe, and she needed to know about his blood quantum for enrollment  
17 purposes, so the child may be eligible to receive tribal benefits. As noted in the court's ruling  
18 over the defendant's objection, the victim's wife could provide her lay opinion as to the non-  
19 Indian status. She was not presented as an expert, and opinion testimony of a lay witness is  
20 allowable when it is rationally based on the witness' perception and helpful to clearly  
21 understand the witnesses' testimony or to determining a fact in issue. F.R.Evid 701(a)(b); 3  
22 PYT R.Evid. 43. The victim's opinion was based on personal knowledge (see Fed. Evid. Rule  
23 602), *U.S. v. Kaplan*, 490 F3d 110, 118-119 (2d Cir 2007) (lay opinion inadmissible absence  
24 of evidence that it was based on first hand knowledge), and the opinion of Ms. Leyva Jaimez  
25 that her husband was non-Indian was an opinion that a reasonable person could draw from the  
26 underlying facts, *U.S. v. Riddle*, 103 F3d 423, 428-429 (5<sup>th</sup> Cir. 1997).


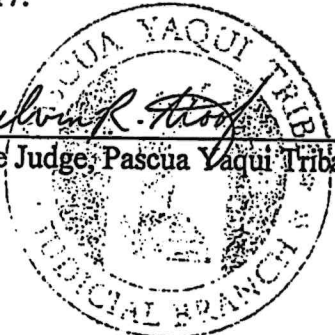
27 The jury reviewed all evidence and concluded, based on the victim's credibility, that a  
28 reasonable inference could be drawn by the jury that the defendant was a non-Indian. The  
"court should not substitute its own determination of the credibility of the witnesses, the weight  
of the evidence and the reasonable inferences to be drawn for that of a jury." *U.S. v. Mariani*,  
725 F2d 862, 865 (2<sup>nd</sup> Cir. 1984).


1 The jury made its decision based on the credibility of witnesses and surrounding  
2 circumstances, including the testimony of Ms. Aydeluz Sewa Leyva Jaimez, and her testimony  
3 was substantial evidence, based on the weight the jury gave such testimonial evidence. The  
4 evidence presented at trial by the Tribe as to the defendant's non-Indian status was sufficient  
5 evidence to establish beyond a reasonable doubt that the defendant was a non-Indian, who was  
6 a spouse of the victim, his wife, with whom he shared a child in common, she was an Indian,  
7 and that the act of domestic violence occurred on the Pascua Yaqui Reservation. The defendant  
8 himself admitted that he was not enrolled in any Indian tribe. There was nothing in the court  
9 record that indicated the jurors did not understand the jury instruction as given to them by the  
10 court, or that they did not consider all substantial evidence in the record. *Tak Sun Tan v.*  
11 *Runnels*, 413 F.3d 1101, 115 (9<sup>th</sup> Cir. 2014) (Reviewing courts presume jurors follow the  
12 court's instructions absent extraordinary situations).

13 The court should deny the defendant's motion to dismiss, for lack of good cause shown,  
14 because the Tribe has met its burden in establishing the defendant's guilt beyond a reasonable  
15 doubt, as determined by a jury, who weighed all of the evidence in reaching their conclusions.

16 **IT IS ORDERED** that the Court denies the defendant's motion for judgment of  
17 acquittal is denied, for lack of good cause shown.

18 SO ORDERED THIS 1<sup>st</sup> DAY OF JUNE, 2017.

19   
20 Associate Judge, Pascua Yaqui Tribal Court  
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22 cc: Date 06-01-17  
23 X Tribe X Defendant X Counsel  
24   
25 Clerk  
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1 IN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 PASCUA YAQUI TRIBE, )  
4 Plaintiff, )  
5 Vs. )  
6 JAIMEZ, FRANK, )  
7 Defendant. )

CASE NO. CR-16-236

8 JUDGMENT ON A JURY VERDICT


9 This action was tried by a jury with Judge Melvin R. Soof presiding, and the jury has  
10 rendered a verdict, a copy of which is attached to this judgment.

11 IT IS ORDERED that the defendant having been found guilty by the jury as to Count  
12 One, Malicious Mischief, Domestic Violence, shall be ordered to appear for a sentencing  
13 hearing on that Count on June 7, 2017 at 9:00 a.m. In the event the defendant is transferred to  
14 another detention facility, the court shall issue a transport order.

14 THIS IS THE ONLY NOTICE OF HEARING YOU SHALL RECEIVE.

15 IT IS FURTHER ORDERED that probation shall provide a pre-sentence report to  
16 the court, no later than June 2, 2017.


17 SO ORDERED this 9<sup>th</sup> day of May, 2017.

18   
19 Judge, Pascua Yaqui Tribal Court

20 I certify a copy of the foregoing has been mailed to the respective parties' legal counsel.

21 Date: May 9, 2017

22 Signature of Clerk of Court

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24 Clerk of Court

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1 *Voisine v. U.S.*, at p. 6.

2 The Court concluded that the definition of a "misdemeanor crime of violence" contains no  
3 exclusion for convictions based on reckless behavior:

4 A person who assaults another recklessly uses force, no less than one who carries out  
5 that same act knowingly or intentionally.

6 Destructive acts that aren't directed at a victim may still be considered domestic violence.  
7 Although destruction of property is typically considered a vandalism crime, in the context of  
8 intimate party relationships, destroying property of an intimate partner may be considered as  
9 abusive behavior, supporting an alleged crime of domestic violence.

10 The American Academy of Experts in Traumatic Stress through numerous articles on  
11 domestic violence (citations omitted), have defined various forms of what conduct constitutes  
12 domestic violence, that include physical abuse, emotional abuse and verbal, or non-verbal  
13 abuse. Forms of emotional abuse include verbal and non-verbal abuse, such as threats or  
14 intimidation to gain compliance, destruction of the victim's personal property and possessions,  
15 or threat to do so. Violence to an object, such as a wall, piece of furniture, pets, in the presence  
of an intended victim, can be used as a way of instilling fear of further violence.

16 The Department of Justice, Office of Violence against Women, in its web site,  
17 [www.justice.gov/ovw/domestic-violence](http://www.justice.gov/ovw/domestic-violence), defines domestic violence as a "pattern of abusive  
18 behavior that is used by one partner to gain or maintain power or control over another intimate  
19 partner. . . Psychological abuse: elements of psychological abuse include – but are not limited  
20 to – causing fear by intimidation; . . destruction of pets and property." (emphasis added).

21 The probable cause statement in this case contains the description that Mr. Jaimez tried:

22 to break a small table inside the residence but that he never touched her but that she is  
23 afraid of him and was crying when officers arrived at the residence.

24 Context is everything. The mere breaking of a piece of furniture, in and of itself, may  
25 constitute only malicious mischief or vandalism, but when the "use" of force on someone's  
26 personal property nearby an alleged victim is used with intent to create an atmosphere of  
27 intimidation of an intimate partner, such an act may constitute an act of domestic violence.